

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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**TITLE 10**  
**ATTORNEY GENERAL**



## JANUARY 2016

### CHAPTER 10-01-01 GENERAL ADMINISTRATION

#### Section

10-01-01-01 Organization of Office of Attorney General

10-01-01-02 Inquiries

#### **10-01-01-01. Organization of office of attorney general.**

1. **History.** The attorney general is a constitutional officer whose duties are primarily legal in nature. The office is not, for most purposes, an administrative agency. However, the legislative assembly has determined that certain licensing functions should be under the administration of the attorney general and some of these functions involve the adoption of rules pursuant to the Administrative Agencies Practice Act, North Dakota Century Code chapter 28-32.

The attorney general is the constitutionally elected head of the office of attorney general. The ~~staff consists of~~ office includes a general counsel, assistant attorneys general, investigators, licensing regulators, accountants, training officers, statisticians, and other necessary support staff. Some state agencies ~~that~~ have legal counsel with the title of ~~assistant attorney general~~ ~~or~~ special assistant attorney general who are paid by the employing agency but appointed by the attorney general and are legally responsible to the attorney general.

2. **Divisions and functions.** The office of attorney general of the state of North Dakota is divided into ~~nine~~ the divisions described in this subsection. The ~~advantage of the division concept is that it~~ organization by divisions provides for supervision at a lower level and allows all of the portfolios to be assigned on a centralized basis rather than by individual subject matter or attorney.

Each division is headed by ~~an appointed~~ a director appointed by the attorney general. The director of each division is the primary contact person for that division and is responsible for the overall management of the division.

The ~~agency consists of~~ office includes the following divisions ~~and sections~~:

- a. Attorney general administration division. The attorney general division includes the attorney general, the chief deputy attorney general, an executive assistant, and a public information officer for the office of the attorney general. The executive assistant may serve also as the public information officer. The division is primarily responsible for executive staff management, the agency's human resources requirements, constituent resources, and serves as a liaison with the legislative assembly and elected officials.

b. Finance and administration division. The finance and administration division is responsible for supervising ~~all~~ office financial and administrative functions. This division handles office budget matters, bill payments, data and word processing duties, and procurement and support staff duties, ~~and nonlegal employee personnel matters~~.

b.c. State and local government division. The state and local government division is responsible for the successful and timely preparation, coordination, and distribution of a broad range of legal services to state agencies, and professional and occupational boards and has primary responsibility for all attorney general's opinions and letter responses.

Attorneys assigned to the division are responsible for providing the necessary legal advice and assistance to state governmental agencies, including the university system, and occupational and licensing boards served by the division. ~~However, when~~ When agencies or occupational and licensing boards represented by the state and local government division become involved in litigation, either civil or criminal ~~administrative litigation~~, the state and local government division ~~attorney~~ coordinates the ~~activities with respect to that~~ litigation with the ~~criminal and regulatory division or the~~ civil litigation division ~~as appropriate~~.

~~This~~ The state and local government division also responds to ~~requests for noncriminal assistance~~ law-related questions from ~~local governmental agencies~~ city attorneys and state's attorneys on noncriminal matters.

e.d. Criminal and regulatory division. The criminal and regulatory division is responsible for the administration and enforcement ~~and application of all~~ laws dealing with alcoholic beverage licensing, tobacco licensing, gaming licensing, polygraph examiners licensing, and transient merchant licensing. The attorneys assigned to this division provide legal assistance to ~~those~~ the divisions of the office of attorney general involved in ~~matters such as gaming, and consumer protection and antitrust~~.

~~The division is also responsible for matters involving criminal laws, law enforcement, and state's attorneys~~ charitable gaming, sex offender and felony crimes against children registration, and concealed weapons licenses. Attorneys assigned to ~~this~~ the criminal and regulatory division are responsible for meeting ~~this~~ the office's responsibilities to the ~~various~~ state crime laboratory, the peace officer standards and training board, the parole board and pardon advisory board, and state law enforcement agencies, including the bureau of criminal investigation, North Dakota highway patrol, and the North Dakota department of corrections and rehabilitation. The criminal and regulatory division assists state's attorneys in criminal prosecutions, state and federal post-conviction cases, and also assists the United States attorney's office in drug prosecutions, and for other issues relating to the enforcement of the criminal law. The attorneys also represent the attorney general's office with the state child protection team, the child fatality review panel, the domestic violence fatality review panel, the human trafficking commission, the task force on substance exposed newborns, and the sexual assault evidence collection protocol committee.

d.e. Civil litigation division. The civil litigation division, ~~which~~ is supervised by the solicitor general, and is responsible for the overall coordination of all civil litigation and all civil appellate cases involving or affecting the state of North Dakota. ~~These~~ The civil litigation division's responsibilities include:

(1) Civil litigation brought against the state, state agencies, state officials, and state employees ~~(other than, except~~ natural resources and Indian affairs litigation).

- (2) Representation of agencies at administrative hearings ~~(other than, except~~ natural resources and Indian affairs, gaming, liquor licensing, and consumer protection hearings).
- (3) Appeals to state and federal courts ~~(other than those, except appeals~~ involving cases in natural resources and Indian affairs, gaming, liquor licensing, ~~and~~ consumer protection), and state and federal post-conviction cases.
- (4) Debt collection and foreclosures.
- (5) Representing ~~(and advising)~~ state agencies with regard to personnel-related questions and litigation.

It is the solicitor general's responsibility to oversee ~~those~~ cases involving or affecting the state of North Dakota so the attorney general may be kept informed of the status of such cases. Finally, the solicitor general is responsible for reviewing requests to the state of North Dakota to join other states in state and federal courts as amicus ~~presented to North Dakota~~ curiae when requested by other states.

e.f. Natural resources and Indian affairs division. The natural resources and Indian affairs division is responsible for legal issues involving agriculture, water, oil and gas, the land department, ~~environment~~ environmental law, the game and fish department, ~~and~~ the parks and recreation department, and Indian law. ~~Additionally, Indian law issues are handled by this division.~~ The division's duties include ~~the management of~~ litigation and appeals in these areas, environmental law enforcement, and the preparation of attorney general opinions and letter responses concerning natural resources, agriculture, and Indian affairs.

f.g. Bureau of criminal investigation. The bureau of criminal investigation is the state criminal investigative agency that responds to requests from sheriffs, chiefs of police, prosecutors, judges, and public officials for assistance in criminal investigations. The bureau is involved in the investigation, arrest, detection, prosecution, or suppression of crimes when directed by the attorney general. The bureau of criminal investigation also participates in the drug task forces and cooperates with and assists federal law enforcement agencies and cooperates with and assists the federal bureau of investigation and similar law enforcement agencies in other states in carrying on a complete system of criminal identification. In addition, the bureau of criminal investigation works with all North Dakota judges, prosecutors, and other law enforcement to establish a system of criminal identification. The bureau serves as the state repository for criminal history record information and maintains and publishes an annual crime report. The bureau assists with the blue alert notice system and with information for lost, missing, or runaway children. The bureau conducts or schedules training of all types for law enforcement in North Dakota. The bureau operates the following sections in carrying out its duties:

- (1) ~~Criminal section~~ Investigation, including general criminal investigations and narcotics investigations.
- (2) ~~Narcotics section~~ Cyber-crime unit, including the investigation of internet crimes against children.
- (3) ~~Training section~~ State and local intelcenter, which provides criminal intelligence information to state and local law enforcement agencies.
- (4) ~~Grants management section~~ Finance, including grant administration and business operations.

- (5) ~~Criminal justice information services section.~~ Information services, including criminal records, uniform crime reporting, and the automated fingerprint identification system.
- (6) Sex offender and felony crimes against children registration.
- (7) Concealed weapons license administration.
- (8) Administration and support for the peace officer standards and training board.
- (9) Support for the twenty-four seven sobriety program.
- (10) Information processing.

~~The bureau of criminal investigation is responsible for conducting criminal and narcotics investigations, for training criminal justice personnel, for maintaining training and licensing records for peace officers, for administering federal grant funds for criminal justice programs, and for maintaining criminal justice information systems.~~

g.h. Fire marshal division. The state fire marshal is appointed by the attorney general and supervises the operation of the fire marshal division. The division is responsible for enforcing state laws for prevention of fires; coordinating resources for large rural wild-land fires; storage, sale, and use of combustibles and explosives; installation and maintenance of fire alarms and fire extinguishing equipment; adequacy of exits from public buildings; investigation of arson and the cause and origin of fires and education on hazards of fire. The division also has responsibility for the state's emergency response to hazardous materials incidents and hazardous materials training.

h.i. Consumer protection and antitrust division. The consumer protection and antitrust division is responsible for enforcing the state consumer fraud laws, investigating claims of fraud, misrepresentation, and deceptive practices in the sale or advertisement of merchandise, and mediating consumer complaints against businesses. The division plays an important role in educating members of the public regarding consumer issues. The division is also responsible for investigating antitrust violations and enforcing state antitrust laws.

i.j. Gaming division. The gaming division is responsible for regulating, enforcing, and administering charitable gaming activity in North Dakota. The gaming division performs office and field audits and investigations of gaming organizations, distributors, and manufacturers; ensures that the receipt, control, and disbursement of gaming funds are accurate and according to law; reviews gaming tax returns; issues administrative complaints; ~~issues work permits to gaming employees;~~ conducts criminal history background checks of applicants, including and officers and stockholders of distributors, manufacturers, and Indian casino management companies; provides guidance and trains representatives of organizations, distributors, manufacturers, and local law enforcement agencies; and ensures compliance with five tribal-state Indian casino gaming compacts.

k. Crime laboratory division. The crime laboratory division provides forensic criminal examinations, including firearms testing, fiber analysis, latent fingerprint analysis, DNA analysis, biological screening, and drug analysis. The crime laboratory also performs toxicology analysis, including testing blood samples for alcohol concentration and samples from the North Dakota medical examiner. The crime laboratory is also responsible for training law enforcement to conduct breath testing to determine alcohol concentration and to certify and repair breath alcohol testing equipment for the entire state of North Dakota.

l. Lottery division. The lottery division is responsible for administering, regulating, enforcing, and promoting the state's lottery. The lottery division selects and licenses retailers, trains employees of retailers to use lottery terminals, sell tickets and redeem winning tickets, assists retailers in promoting lottery games, pays high-tier prizes to players, ensures that retailers and players comply with the lottery law and rules, and provides full accountability to the public and legislature.

m. Criminal justice information sharing division. The criminal justice information sharing division is responsible for developing policies, processes, and statewide information systems to capture and provide complete, accurate, and timely criminal justice data. The criminal justice information sharing division administers the portal, which is a secure criminal justice information sharing hub, and the broker, which allows sharing of criminal justice information in information technology systems. Additionally, the division supports several statewide information systems, including a law enforcement records management system, a jail records management system, and a state's attorney case management system. Other programs within the criminal justice information sharing division include automated victim notification and the common statute table.

n. Information technology division. The information technology division provides technology planning and assistance services to all divisions of the office of the attorney general. The division maintains data repositories for the key information obtained by the various divisions of the office, including: sex offender and felony crimes against children registration; concealed weapon licenses; gaming and other various licenses; criminal history and other criminal justice repositories, including biometrics; crime laboratory management system; lottery management; consumer protection management; twenty-four seven sobriety management; crime statistics; and fire marshal and legal billing. The division also provides information from these repositories in response to open-record requests. The division maintains a helpdesk to support technology requests for the entire office and for criminal justice organizations across the state that have access to the data repositories. The division is also responsible to maintain a high level of security for the computer infrastructure in accordance with federal bureau of criminal investigation security policy; to forward appropriate criminal justice information to the federal bureau of criminal investigation; to maintain real-time communications with law enforcement across the state and the nation through North Dakota state radio and criminal justice data information sharing for access to the information in the state's criminal justice repositories; and to support those communications twenty-four hours a day, seven days a week.

~~3. Although not a division, the North Dakota racing commission is located within the office of attorney general. The racing commission is appointed by the governor and is responsible for providing for racing under the certificate system, setting racing dates, adopting and administering rules for the regulation of live and simulcast parimutuel racing, administering special funds (breeders, purse, race promotion), licensing all participants in live and simulcast racing, regulating bids on licensed activities, and considering and authorizing all proposed extensions, additions, or improvements to facilities owned or leased by a licensee. The racing commission also is responsible for licensing live and simulcast horse racing under a racing addendum to a tribal gaming compact if the tribe so elects. The racing commission appoints a director of racing who is responsible for carrying out the duties and responsibilities of the commission.~~

**History:** Amended effective September 1, 1982; June 1, 1986; September 1, 1989; May 1, 1992; May 1, 1994; January 1, 2016.

**General Authority:** NDCC ~~28-32-02.~~128-32-02, 54-12-01

**Law Implemented:** NDCC ~~28-32-02.~~112-60-01, 12-60-05, 12-60-07, 18-01-01, 53-06.1-03, 53-12.1-02, 54-12-01, 54-12-17, 54-12-24, 54-12-26, 54-12-27, 54-12-32, 54-12-33, 54-12-34, 62.1-04-03

**10-01-01-02. Inquiries.**

All inquiries, requests for records, and correspondence is to be addressed to the office of the attorney general as follows:

Office of the Attorney General  
600 East Boulevard Avenue, Department 125  
Bismarck, ND 58505-0040

**History:** Effective January 1, 2016.

**General Authority:** NDCC 28-32-02, 54-12-01

**Law Implemented:** NDCC 28-32-02

## CHAPTER 10-13-01 REPORTING OF CRIMINAL HISTORY RECORD INFORMATION

### Section

10-13-01-01	Reporting Forms
10-13-01-02	Reporting to Federal Bureau of Investigation Prohibited
10-13-01-03	<del>Fingerprint Cards</del> <u>Biometric Data Submissions</u>
10-13-01-04	Reporting Check Offenses <u>[Repealed]</u>

#### 10-13-01-01. Reporting forms.

Criminal justice agencies required by statute law to report criminal history record information to the bureau shall adhere to ~~such~~ procedures and use ~~such forms as shall be promulgated~~ electronic or paper formats prescribed by the bureau.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.1, 12-60-16.3

#### 10-13-01-02. Reporting to federal bureau of investigation prohibited.

Arresting agencies may not report ~~arrest~~ criminal history information directly to the federal bureau of investigation, ~~but shall allow all arrest information to be forwarded to the federal bureau of investigation by.~~ Only the bureau may submit criminal history record information directly to the federal bureau of investigation.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

#### 10-13-01-03. ~~Fingerprint cards~~ Biometric data submission.

~~Arresting Criminal justice agencies, or agencies acting on behalf of an arresting agency, shall prepare one fingerprint card on the multipart form, and one federal bureau of investigation fingerprint card, for submission to~~ submit biometric data to the bureau in the electronic or paper format prescribed by the bureau for each ~~arrest for a~~ reportable event. ~~Arrests for check offenses are excluded from this requirement.~~

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3

#### 10-13-01-04. Reporting check offenses.

Repealed effective January 1, 2016.

~~—Convictions for check offenses included in North Dakota Century Code sections 6-08-16 and 6-08-16.1 must be reported to the bureau on forms prescribed by the bureau. These forms may require a single print of the right index finger in lieu of a complete set of fingerprints.~~

**History:** Effective November 1, 1987.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-02

### 10-13-02-01. Bureau responsibility.

The bureau shall establish procedures and ~~forms~~electronic or paper formats for collecting criminal history record information from criminal justice agencies. ~~Such procedures must include, including~~ methods ~~for facilitating~~to facilitate the collection of prosecution or disposition information or reportable events relating to initial arrest reports.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3, 12-60-16.4

## CHAPTER 10-13-03

### 10-13-03-01. Rules apply to manual and automated systems.

Criminal history record information may be maintained in manual files or in ~~computerized~~electronic criminal history files.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-03-02. Local criminal history records.

Local criminal justice agencies may compile and maintain criminal history records, as defined by North Dakota Century Code section ~~12-60-16.3~~12-60-16.1, based on information generated within and by actions of an agency, or agencies ~~as~~ in the case of joint or shared record systems.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.1, 12-60-16.3

### 10-13-03-03. Rules governing local criminal history records.

Criminal history records maintained by local criminal justice agencies are subject to the ~~standards established by~~requirements of North Dakota Century Code ~~section 12-60-16.3~~chapter 12-60 and this article and may be audited by the bureau for compliance.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-04 EXCHANGING CRIMINAL HISTORY RECORD INFORMATION

### Section

10-13-04-01	Limitation on Use of Exchanged Information
10-13-04-02	Exchange Log
10-13-04-03	Disclosure <del>Under the Security Clearance Information Act of 1985 -- Public Law No. 99-169, 99 Stat. 1009, Codified in Part at 5 U.S.C. Section 801</del> <u>for National Security Purposes</u>

#### 10-13-04-02. Exchange log.

Criminal justice agencies shall maintain a transaction log of requests received for criminal history record information and their response to those requests for a minimum of three years. ~~Such~~The log must include:

1. Name of record subject.
2. Requesting agency.
3. Officer name or unit number.
4. Date of request.
5. Type of response (and indicating record exchange or no record).

~~Exchange logs must be retained for a minimum of three years.~~

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.5

**10-13-04-03. Disclosure ~~under the Security Clearance Information Act of 1985 -- Public Law No. 99-169, 99 Stat. 1009, codified in part at 5 U.S.C. Section 801~~for national security purposes.**

Criminal justice agencies shall release criminal history record information to the department of defense (~~DOD~~), department of state, department of transportation, office of personnel management, central intelligence agency (~~CIA~~), and ~~the office of personnel management (OPM)~~federal bureau of investigation as required ~~by the Security Clearance Information Act of 1985 (SCIA)~~under federal law if the following requirements are met:

1. The ~~subagency within the three authorized agencies is in fact authorized to make requests for criminal history records (local agencies or the bureau may ask the requesting~~ federal agency ~~for~~provides its legal authorization ~~under the Security Clearance Information Act of 1985)~~to the bureau or criminal justice agency.
2. The request relates to an individual under investigation by the department of defense, department of state, department of transportation, office of personnel management, central intelligence agency, or the ~~office of personnel management~~federal bureau of investigation for the purpose of determining eligibility for ~~(a) a security clearance,~~ access to classified information ~~(a security clearance); or (b),~~ assignment to or retention in sensitive national security duties, acceptance or retention in the armed forces, appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the federal government or performing a federal government contract.

3. The requesting federal agency has received a written consent from the individual under investigation ~~authorizing release~~ to authorize disclosure of criminal history record information for the purposes specified ~~above~~ in this rule.
4. The request for record check is written and contains ~~a.~~ The:  
the biometric data of the record subject, or if the request is made without the submission of biometric data, the request must also include the name of the record subject:  
~~b.~~ At and at least two items of information used to retrieve criminal history records, including:
  - ~~(1)~~ The fingerprints of the record subject.
  - ~~(2)~~ a. The state identification number assigned to the record subject by the bureau.
  - ~~(3)~~ b. The social security number of the record subject.
  - ~~(4)~~ c. The date of birth of the record subject.
  - ~~(5)~~ d. A specific reportable event identified by date and by either a criminal justice agency or a court.
5. The information has not been purged or sealed.
6. The identifying information ~~supporting~~ in support of a request for a criminal history record does not match the record of more than one individual.
7. The information to be disclosed is information relative to a reportable event initiated within that criminal justice agency, in accordance with section 10-13-04-01.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.5, 12-60-16.6

## CHAPTER 10-13-05 DISSEMINATING CRIMINAL HISTORY RECORD INFORMATION

### Section

10-13-05-01	Criminal Justice Agency Response to Dissemination Requests
10-13-05-02	Bureau Handling of Dissemination Requests
10-13-05-03	Fee for Record Check
10-13-05-04	Dissemination Log
<u>10-13-05-05</u>	<u>Retention of Fingerprints and Other Identifying Information for Rap Back Purposes</u>

#### **10-13-05-01. Criminal justice agency response to dissemination requests.**

Criminal justice agencies receiving requests for criminal history record information from noncriminal justice sources shall refer those requests to the bureau ~~by providing the requestor with a request form supplied by.~~ Only the bureau may disseminate criminal history record information for noncriminal justice purposes.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC ~~12-60-16.3,~~ 12-60-16.6, 12-60-16.7

#### **10-13-05-02. Bureau handling of dissemination requests.**

The bureau shall provide forms and establish and publish procedures for noncriminal justice entities to acquire criminal history record information ~~and shall make those procedures known to inquiring agencies. Request forms will be provided through criminal justice agencies and directly to noncriminal justice entities upon request.~~

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.6, 12-60-16.7

#### **10-13-05-03. Fee for record check.**

Requests from noncriminal justice agencies for criminal history record checks must be accompanied by ~~a check, money order, cash, or government purchase order in the amount of twenty dollars to cover the authorized fee~~ payment in the amount required in North Dakota Century Code section 12-60-16.9. Checks, money orders, or purchase orders ~~should~~ must be made payable to the "Attorney General's Office". Any request ~~not accompanied by the twenty dollar~~ that does not include the statutory fee will not be processed and will be returned to the requesting party ~~unprocessed.~~ A receipt for payment of the fee will be ~~returned~~ provided to the requesting party.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.9

#### **10-13-05-04. Dissemination log.**

The bureau shall maintain a transaction log of all requests for criminal history record checks, and in those cases wherein which criminal history record information is released, the details of the release must be recorded. In those cases wherein which dissemination is prohibited, ~~in accordance with North Dakota Century Code section 12-60-16.7~~ under state or federal law, the reason for not disseminating criminal history record information must be recorded. ~~Such dissemination log must be retained by the~~ The recording agency shall maintain the dissemination log for a minimum of three years.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.5, 12-60-16.6, 12-60-16.7

**10-13-05-05. Retention of fingerprints and identifying information for rap back purposes.**

The bureau and the federal bureau of investigation may retain fingerprints and other identifying information obtained through the criminal history record information background investigation process for rap back at the request of the agency, official, or entity that submitted the fingerprints and other identifying information. The subject of the record request must be provided notice of the retention of the fingerprints and other identifying information. Fingerprints and other identifying information may be searched against future submissions, including latent fingerprint searches.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-24

## CHAPTER 10-13-06

### 10-13-06-01. Policies and procedures required.

All criminal justice agencies maintaining criminal history record systems, whether manual or automated must have written policies and procedures to protect criminal history data from unauthorized access. Written policies and procedures ~~will~~must include ~~at a minimum~~:

1. Designation of personnel authorized access to criminal history files.
2. Screening of personnel authorized access.
3. Screening of noncriminal justice personnel with ~~indirect~~ access or work proximity to criminal history ~~files (such as computer programmers~~record information, including information technology personnel, contractors, maintenance personnel, and nonagency janitorial personnel).
4. Supervision of personnel with ~~direct or indirect~~ access or proximity to criminal history ~~files~~record information.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-06-02. Facilities.

All criminal justice agencies maintaining criminal history record systems, ~~whether manual or automated,~~ must have adequate facilities and security systems to protect criminal history data from unauthorized access. Buildings and rooms used for ~~file~~criminal history record information maintenance ~~should~~and storage must be constructed and utilized ~~so as~~ to prevent unrestricted physical access by unauthorized persons.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-06-03. Automated systems.

Criminal justice agencies operating automated criminal history record information systems must provide ~~the following~~:

1. ~~Protection against unauthorized access~~Access to only authorized individuals and agencies using secure passwords. Authorized individuals may not disclose passwords.
2. ~~Protection~~Security against tampering or destruction of the criminal history record information system.
3. Detection and logging of unauthorized attempts to access ~~attempts~~the criminal history record information system.
4. Protection of criminal history record information system software.
5. ~~Assurance of restricted access in a shared computer system~~Compliance with the security requirements under 28 C.F.R. Part 20 and NCIC.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-07

### 10-13-07-01. Inspection.

Any record subject ~~shall~~may, upon submission of a written request and ~~satisfactory~~ verification of ~~his~~ identity, ~~be entitled to~~ review, without undue burden to either the criminal justice agency or the record subject, any criminal history record information maintained by any criminal justice agency about the record subject.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-07-02. Record subject identification.

Satisfactory verification of identity may ~~consist of~~include fingerprint comparison or presentation of a current government-issued photo-identification ~~such as~~, including a driver's license or passport. If fingerprint comparison is required for positive identification, the record subject may be required to return at a later date to the agency where the inspection was requested.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.6

### 10-13-07-03. Inspection by representative.

A representative of a record subject ~~must satisfactorily establish his identity as representative and shall present evidence of a~~ power of attorney ~~or~~, notarized authorization, or satisfactory proof of authority as a legal representative of the record subject before being allowed to view the information on file for the record subject.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC ~~12-60-16.1(7)~~, 12-60-16.3

**Law Implemented:** NDCC 12-60-16.1(9), 12-60-16.3

### 10-13-07-04. Inspection of local and state central repository records.

A record subject may make a request at any criminal justice agency in North Dakota to inspect ~~his~~the subject's criminal history record, if any, retained by that agency and by the bureau. ~~The agency receiving that request will prepare a form provided by the bureau containing information necessary to comply with that request and will forward that request form to the bureau within five working days. Upon confirmation of the record subject's identity, the bureau will return a copy of any record information to the requesting agency within twenty working days.~~The record subject shall provide satisfactory verification of identity before the agency may permit the record subject to inspect the records.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-07-05. Request for inspection from out-of-state.

Any request for inspection of a criminal history record must be made in person at a criminal justice agency by the record subject or ~~a duly~~an authorized representative of the record subject. ~~Any requests~~Requests made by mail or any other means from out-of-state ~~cannot~~may not be processed by ~~either~~ the receiving agency or the bureau.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

#### **10-13-07-06. Notification of record availability.**

Criminal justice agencies shall notify the record subject when the ~~individual's~~subject's record is available for review and shall establish a time within normal working hours when that review can take place.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

#### **10-13-07-07. Negative response to request for inspection.**

A criminal justice agency or the bureau may deny inspection of a record if the record subject is not satisfactorily identified. Agencies or the bureau ~~will~~shall also respond negatively if no record is found for the individual. ~~In either situation, the~~The agency or the bureau shall notify the individual ~~will be informed~~ in writing of the reason for the negative response and ~~will be advised of his~~the right to challenge the denial.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.7

#### **10-13-07-08. Record copies restricted.**

~~Persons~~Individuals inspecting criminal history records may make notes of the information in the record but ~~will~~may not ~~be provided~~receive a copy of the ~~information except when~~record unless the ~~person inspecting~~record subject intends to challenge the information in the record. If a ~~challenge is indicated~~a record subject challenges information in a criminal history record, the criminal justice agency ~~will~~or the bureau shall limit ~~the copy~~copies of the record to those portions ~~to be challenged~~of the record that have been challenged.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

#### **10-13-07-09. Challenge of denial to inspect.**

If an ~~individual is denied~~agency or the bureau denies a record subject the right to inspect ~~his~~the ~~subject's~~ criminal history record, ~~he~~the subject may challenge ~~this~~the denial by submitting a challenge form and a complete set of fingerprints; within ten days of the denial; to the administrator of the agency which has issued the denial.

The agency administrator ~~must, within thirty days, either~~shall allow inspection of the records requested; or respond to the ~~individual in writing~~record subject with ~~his~~written findings ~~as to~~ why the denial is upheld.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

#### **10-13-07-10. Challenge of completeness and accuracy.**

~~Any~~A record subject may challenge, ~~in writing,~~ the completeness or accuracy, or both, of specific criminal history record entries pertaining to the ~~individual~~record subject and request ~~that~~ incomplete or

inaccurate entries be corrected. Upon challenge, the criminal justice agency originating the record entries shall ~~conduct an administrative review of~~ review the alleged incomplete or incorrect entries, and shall notify the record subject, in writing, of the results of the review within twenty working days of the receipt of the challenge.

The record subject ~~must~~ shall specify in writing the incomplete or inaccurate entries and ~~indicate~~ what ~~he deems to be the~~ are complete or correct entries.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

#### **10-13-07-12. Notification of corrections to a criminal history record.**

In the event ~~that corrections of~~ an originating criminal justice agency corrects criminal history record entries ~~are made by the originating criminal justice agency~~, the originating agency shall notify all criminal justice and noncriminal justice agencies that have received the erroneous information within the year preceding the challenge of ~~said~~ the corrections.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-08

### 10-13-08-01. Auditing local criminal history record systems.

The bureau shall conduct annual audits of a representative sample of local criminal justice agencies to ensure completeness and accuracy of criminal history record information and to ensure compliance with legal requirements for the reporting, collection, maintenance, and dissemination of ~~such~~ criminal history record information. ~~Such audits~~ Audits must be conducted to ascertain compliance with North Dakota Century Code sections 12-60-16.1 through ~~12-60-16.10~~ 12-60-24 and this article. Upon completion of each audit, the bureau shall submit to the attorney general a written report setting forth the audit methodology and a summary of findings and recommendations.

The audits of state and local agencies ~~will~~ must include: an inspection of facilities and equipment; observation of equipment and procedures; interviews with management and staff personnel; examination of files, documents, and other material; analysis of record samples; and review of all relevant written standards, guidelines, regulations, manuals, and training materials.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-08-02. Auditing of bureau.

The bureau shall conduct an annual audit of the state central repository for criminal history record information. This audit will examine compliance with North Dakota Century Code sections 12-60-16.1 through ~~12-60-16.10~~ 12-60-24, this article, and the policies and procedures established for operation of the bureau's central repository. The results of such audit must be reported to the attorney general.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-09

### 10-13-09-01. Agreements between the bureau and criminal justice agencies.

Any formal agreement required by state or federal law ~~or regulation~~ between criminal justice agencies ~~will be prescribed as needed~~ must be in the form required by the bureau.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3, 12-60-16.5

## CHAPTER 10-13-10

### 10-13-10-01. Purposes warranting disclosure.

~~Disclosure of~~The bureau may disclose criminal history record information for research and statistics ~~is authorized~~ for bona fide studies and analyses ~~of such matters as~~, including the incidence of crime, recidivism, demographic trends, or the administration of criminal justice.

**History:** Effective November 1, 1987; amended January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-10-02. Disclosure of personal identifiers.

Criminal history records may be disclosed in a form that identifies record subjects; for the purposes authorized in section 10-13-10-01, ~~only~~ if the results will only be released to the public in statistical, aggregate, and anonymous form and published information does not disclose the identity of record subjects. If the purposes of the study and analysis can be accomplished without access to personal identifiers, the required data will be made available without personal identifiers.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-10-03. Written agreement required.

The recipient of criminal history record information for research and statistical purposes shall execute a written agreement with the bureau that defines the purposes of the study or analysis, ~~and~~ the intended use of the information, and establishes safeguards to assure the integrity, confidentiality, and security of the information. The recipient may not use the information for purposes other than those specified in the agreement; or disclose information in a form that identifies the record subject; without the express written authorization of the record subject.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-11

### 10-13-11-01. Court order required.

Criminal history records, or portions thereof, may be purged or sealed only when expressly authorized by state or federal law and pursuant to a court order from a court of competent jurisdiction.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-11-02. Purging limited.

Purging must be accomplished so as to retain records or portions of records which are not the direct objective of a purge order. Agencies may destroy an entire record, including fingerprintsbiometric data, photos, and arrest and disposition data, or they may destroy only specific portions of a record to accomplish the required purge.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-11-03. Access to sealed records.

Criminal justice agencies may access sealed records for the following purposes:

1. Records management.
2. Review by the record subject.
3. Authorized research and statistical purposes.
4. Upon court order from a court of competent jurisdiction.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

### 10-13-11-04. Methods of sealing.

Records may be sealed by attaching a special marking to sealed files, or by removal from the general record file and storage in a separate, secured file. In automated systems, sealing willmust be accomplished by limiting access to the sealed records or portions thereof of the records to specific terminals or specifically authorized persons, or both to specific terminals and specifically authorized persons.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

**CHAPTER 10-13-12**  
**AGENCY RESPONSIBILITY FOR REPORTING CRIMINAL HISTORY RECORD**  
**INFORMATION**

Section

10-13-12-01	<del>Law Enforcement and Arresting</del> <u>Criminal Justice</u> Agencies
10-13-12-02	Prosecuting Attorneys
10-13-12-03	Local <u>and Regional</u> Correctional Facilities
10-13-12-04	<del>State Penitentiary</del> <u>North Dakota Department of Corrections and Rehabilitation</u>
10-13-12-05	<del>Board of Pardons</del> <u>Pardon Advisory Board</u> and Parole Board

**10-13-12-01. ~~Law enforcement and arresting~~Criminal justice agencies.**

~~Law enforcement and arresting~~Criminal justice agencies shall report ~~to the bureau~~ the following reportable events and information to the bureau:

1. Arrests.
  - a. ~~Fingerprints~~Biometric data.
  - b. Physical description.
  - c. Charges.
2. Decisions not to refer arrests for prosecution.
3. ~~Fingerprints~~Biometric data ordered by the court after a determination that biometric data has not been previously collected from a defendant ~~has not been previously fingerprinted~~ for the current charge.
4. The arresting agency ~~retains responsibility for ensuring that~~ is responsible for reporting the required information ~~is reported~~ to the bureau even though another agency is under agreement to provide fingerprinting services or collection of biometric data.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3, 12-60-16.4

**10-13-12-02. Prosecuting attorneys.**

Prosecuting attorneys shall report ~~to the bureau~~ the following events and information to the bureau:

1. Charges filed.
2. Charges added subsequent to the filing of a criminal ~~court~~ case.
3. Decisions not to file charges after a reported arrest.
4. Judgments of not guilty.
5. Judgments of guilty, including the sentence imposed.
6. Dismissal of charges.
7. Reversal of conviction.
8. Remand.
9. Vacation of sentence.

10. Sentence amendment or modification.
11. Judgment or order modifying or terminating probation.
12. Judgment or order revoking probation, including resentencing and the sentence imposed.
13. Deferred imposition of sentence or suspended sentence.
14. Death of defendant prior to trial.
15. ~~Conviction of misdemeanor check offenses~~ Deferred prosecution or pretrial diversion of offenses under rule 32.2 of the North Dakota rules of criminal procedure.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3, 12-60-16.4

**10-13-12-03. Local and regional correctional facilities.**

1. Local and regional correctional facilities shall report to the bureau the following events and information:

- ~~1.~~ a. ~~Receipts~~ Receipt of an inmate.
- ~~2.~~ b. Escape of an inmate.
- ~~3.~~ c. Death of an inmate.
- ~~4.~~ d. Release of an inmate from custody.

2. This information shall be reported only for those offenders actually sentenced to the custody of the sheriff or local or regional correctional facility for reportable offenses. It does not apply to ~~those~~ offenders who happen to be in custody awaiting trial or transfer to another facility, except in the event of ~~their~~ the offender's escape or death.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3

**10-13-12-04. ~~State penitentiary~~ North Dakota department of corrections and rehabilitation.**

The ~~state penitentiary~~ department of corrections and rehabilitation shall report to the bureau the following events and information:

1. Receipt of an inmate.
2. Escape of an inmate.
3. Death of an inmate.
4. Release of an inmate from custody.
5. Transfer of an inmate to an out-of-state correctional facility
6. Admission of an offender to supervision of probation or parole under the interstate compact for adult offender supervision.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3

**10-13-12-05. ~~Board of pardons~~Pardon advisory board and parole board.**

The ~~board of pardons~~pardon advisory board and parole board, through the department of ~~parole and probation~~corrections and rehabilitation, shall report to the bureau the following events and information for each sentence assigned to a record subject for each reportable offense:

1. Pardon.
2. Parole.
3. Commutation of sentence.
4. Discharge of a parolee from custody or supervision.
5. Termination or revocation of parole.
6. Termination of supervision under the interstate compact for adult offender supervision.

~~The preceding events and information must be reported for each sentence assigned to a record subject for each reportable offense.~~

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3

## CHAPTER 10-13-13

### 10-13-13-01. Time limits.

Reports and substantiating documents of reportable events must be submitted to the bureau within the following time limits after the completion of the [reportable](#) event:

1. Arrest - within twenty-four hours.
2. Decision not to refer - within forty-eight hours.
3. Decision not to file charges - within forty-eight hours.
4. All other reportable events - within thirty days.

**History:** Effective November 1, 1987; [amended January 1, 2016](#).

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.3

## CHAPTER 10-13-14 DEFINITIONS

Section

10-13-14-01 Definitions ~~As Used in This Article~~

### 10-13-14-01. Definitions ~~as used in this article.~~

~~Certain terms~~ As used in this article are defined as follows, unless the context otherwise requires:

1. "Agency" means a criminal justice agency in the state of North Dakota as defined in North Dakota Century Code subsection 6 of section 12-60-16.1. For purposes of these rules, an agency includes a North Dakota state or municipal court.

2. "Biometric data" includes fingerprints, palm prints, voice prints, retinal or iris images, facial recognition, and DNA profiles.

3. "Bureau" means the North Dakota attorney general's bureau of criminal investigation.

~~4.4.~~ "Challenge" means to formally, in writing, call into question the completeness, contents, accuracy, dissemination, or denial of access to a criminal history record.

~~2.5.~~ "Collect" means to solicit and receive information pertaining to reportable events.

6. "Court" means the North Dakota supreme court, a North Dakota district court, or a municipal court of the state of North Dakota.

~~3.7.~~ "Exchange" means to disclose criminal history record information, by any means, to another criminal justice agency or to a court.

~~4.8.~~ "Maintain" means to file or store criminal history record information and to combine information on related reportable events for identified record subjects.

9. "NCIC" means the federal bureau of investigation, national crime information center.

~~5.10.~~ "Originating agency" means the criminal justice agency ~~which~~that recorded and reported a reportable event.

11. "ORI" means the originating agency identifier assigned by the federal bureau of investigation.

~~6.12.~~ "Personal identifiers" means an individual's name, social security number, other number, or descriptive information ~~which~~that is sufficiently unique to identify one individual.

13. "Prosecuting attorney" includes state's attorneys, assistant state's attorneys, city attorneys, assistant city attorneys, and assistant attorney generals who prosecute individuals charged with offenses.

~~7.14.~~ "Purge" means destroying, blotting out, striking out, expunging, or effacing a record so that no trace of the individual identification remains.

15. "Rap back" means the retention of fingerprints submitted for noncriminal purposes under North Dakota Century Code section 12-60-24 and used for the purpose of authorized notification regarding the contributor of a future reportable event, including latent fingerprint search comparison.

16. "Record subject" means the individual who is the primary subject of a criminal history record, and includes any authorized or lawful representative of the individual.

~~8.17.~~ "Report" means to submit ~~to the bureau~~ information to the bureau pertaining to reportable events.

~~18.~~ "Reportable event" includes information a criminal justice agency is required to submit to the bureau for a reportable offense under North Dakota Century Code section 12-60-16.4 and includes arrest information, all charges filed, or not filed or not referred for prosecution if a report of an arrest was submitted to the bureau, all dispositions of criminal cases, correctional supervision, judgments amending, modifying, terminating, or revoking a sentence to probation and any resentencing after revocation, and information concerning the receipt, escape, death, release, transfer to another institution, pardon, conditional pardon, reprieve, parole, commutation of sentence, or discharge of an individual sentenced to custody for a reportable offense.

~~9.19.~~ "Reviewing agency" means the criminal justice agency at which a record subject has appeared to request an inspection of ~~his~~the record subject's criminal history record.

~~10.20.~~ "~~Seal~~Sealed record" means ~~retaining~~ a record, ~~but prohibiting access or dissemination except as provided by~~ that has been retained, but is inaccessible under state or federal law or pursuant to a valid state or federal court order. Access to a sealed record may only be allowed in accordance with section 10-13-11-03.

**History:** Effective November 1, 1987; amended effective January 1, 2016.

**General Authority:** NDCC 12-60-16.3

**Law Implemented:** NDCC 12-60-16.2, 12-60-16.3, 12-60-16.4

## ARTICLE 10-16 MULTI-STATE LOTTERY

Chapter	
10-16-01	General Rules
10-16-02	Retailer
10-16-03	Conduct and Play
10-16-04	POWERBALL® Game
10-16-05	HOT LOTTO® Game
10-16-06	WILD CARD 2® Game
10-16-07	2BY2® Game
10-16-08	MEGA MILLIONS® Game
10-16-09	North Dakota Lottery Players Club <sup>SM</sup> Points for Prizes®
10-16-10	North Dakota Lottery Players Club <sup>SM</sup> Points for Drawings™
10-16-11	<u>LUCKY FOR LIFE™ Game</u>

### CHAPTER 10-16-01

#### 10-16-01-01. Definitions.

As used in this article:

1. "Applicant's agent" means a general manager, sole proprietor, partner of a partnership, or, for a corporation, an officer or director who is primarily responsible for financial affairs or a shareholder who owns ten percent or more of the common stock, of a business that is applying for or renewing a license. A general manager is a person who regularly is onsite and primarily responsible and accountable for managing and controlling the day-to-day operation of the business.
2. "Cash voucher" means a voucher generated by the lottery's player-activated terminal that can be validated for cash at the retailer's lottery terminal.
3. "Draw" means the formal process of randomly selecting winning numbers, letters, or symbols that determine the number of winning plays for each prize level of a game.
4. "Game" means an on-line game authorized by the lottery.
5. "Game group" means a group of lotteries that have joined together to offer a game on a multi-state basis according to the terms of the MUSL and/or the game group's rules or both.
6. "Grand prize" means the top prize that can be won in a game.
7. "Group play" means two or more individuals sharing a purchase made.
8. "Lottery" means the North Dakota lottery.
9. "Multi-state lottery" means a lottery game that spans the individual borders of a state, jurisdiction, province, district, commonwealth, territory, or country.
10. "MUSL" means the multi-state lottery association.
11. "North Dakota Lottery Players Club<sup>SM</sup>" means a program that players can join to earn exclusive benefits and rewards.
12. "Online gaming system" means a computer system designed to control, monitor, communicate with a terminal, and record play transactions and accounting data.

13. "Play" means the numbers, letters, or symbols that are on a ticket or properly and validly registered subscription play to be played by a player in a draw, excluding a lottery promotion.
14. "Play area" means the area of a play slip that contains one or more sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers, letters, or symbols that correspond to the game.
15. "Play slip" means a card used in marking a player's selections of numbers, letters, or symbols and containing one or more play areas for a game.
16. "Player-activated terminal" means a device authorized by the lottery and operated by a player to function in an online, interactive mode with the lottery's computer system to receive and process lottery transactions, including the purchase and issuance of a ticket, the validation of a ticket, and the issuance of a cash voucher.
17. "Points for Drawings™" means a program where players can enter drawings by using points received from the submission of valid tickets.
18. "Points for Prizes®" means a rewards program where players can earn points by becoming registered members and submitting valid tickets.
19. "Quick pick" means a random selection of numbers, letters, or symbols by a computer system that are printed on a ticket or properly and validly registered subscription play and played by a player for a draw in a game.
20. "Retailer fraud" means an owner or employee of a licensed retailer who knowingly and intentionally:
  - a. Fails to properly validate a player's winning ticket;
  - b. Fails to pay the player the proper prize amount on a winning ticket;
  - c. Fails to provide the player the proper exchange ticket on a winning multi-draw ticket; or
  - d. Performs any other act that causes financial harm to a player in violation of the lottery law or rules.
21. "Set prize" means all prizes, except the grand prize for a game that are to be paid by a single cash payment and, except as provided by rule, will be equal to the prize amount established by the MUSL and/or the game group for the prize level of the game.
22. "Subscription" means a purchase of a draw game play for drawings up to one year.
23. "Terminal" means a device authorized by the lottery and operated by a retailer or the lottery to function in an on-line, interactive mode with the lottery's computer system to issue a ticket and enter, receive, and process a lottery transaction, including a purchase, validation of a ticket, and issuance of a report.
24. "Ticket holder" means a person who has signed a ticket or possesses an unsigned ticket.
25. "Top prize" means the first prize that can be won in a game.
26. "Validation" means the process of determining whether a ticket presented for a prize is a winning ticket.
- 26-27. "Winning account" means the account to which subscription winnings are deposited and from which player withdrawals are made.

~~27.~~28. "Winning numbers" means the numbers, letters, or symbols randomly selected in a draw to determine a winning play contained on a ticket or properly and validly registered subscription play or randomly selected in a lottery promotion to determine a winning prize stated on a ticket or coupon.

**History:** Effective February 1, 2004; amended effective April 1, 2006; July 1, 2008; July 6, 2014; January 31, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**CHAPTER 10-16-02**

**10-16-02-07. Sales commission and bonus.**

1. The lottery shall credit a retailer's account for:
  - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;
  - b. A sales commission of five percent of the amount of a subscription sale that is transacted through the North Dakota Lottery Players Club™ when a player chooses a specific retailer. The retailer must be currently licensed when the subscription is purchased; and
  - c. A sales bonus for selling a ticket with a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play of a ticket. If the winning play for POWERBALL® has the power play option, or the winning play for MEGA MILLIONS® has the Megaplier® option, or the winning play for HOT LOTTO® has the triple sizzler option, the retailer's account must also be credited for an additional bonus as stated below:

<u>Prize</u>	<u>Bonus</u>	<u>Additional Bonus</u>
<b>POWERBALL®</b>		
Grand prize	\$50,000	Additional \$50,000 with power play
\$1,000,000	\$5,000	Additional \$5,000 with power play
<del>\$10,000</del> <u>\$50,000</u>	<del>\$500</del> <u>\$1,000</u>	Additional <del>\$500</del> <u>\$1,000</u> with power play
<b>MEGA MILLIONS®</b>		
Grand prize	\$50,000	Additional \$50,000 with Megaplier®
\$1,000,000	\$5,000	Additional \$5,000 with Megaplier®
\$5,000	\$250	Additional \$250 with Megaplier®
<b>HOT LOTTO®</b>		
Grand prize	\$5,000	Additional \$5,000 with triple sizzler
\$30,000	\$750	Additional \$750 with triple sizzler
\$3,000	\$150	Additional \$150 with triple sizzler
<b><u>LUCKY FOR LIFE™</u></b>		
<u>\$7,000/week for life</u>	<u>\$25,000</u>	
<u>\$25,000/year for life</u>	<u>\$2,500</u>	
<u>\$5,000</u>	<u>\$250</u>	
<b>WILD CARD 2®</b>		
Grand prize	\$2,000	
\$6,000	\$250	
<b>2BY2®</b>		
Grand prize	\$500	
\$22,000		

\$44,000\*

\$1,000

\*Tuesday draw double grand prize winning play on a qualifying multi-draw ticket.

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, Megaplier®, and triple sizzler, that the lottery conducts for a certain period of time based on parameters set by the lottery.

**History:** Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008; January 31, 2010; January 15, 2012; October 19, 2013; July 6, 2014; [October 4, 2015](#).

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

## CHAPTER 10-16-03

### 10-16-03-01. Games authorized.

The lottery may conduct online games of POWERBALL®, MEGA MILLIONS®, HOT LOTTO®, WILD CARD 2®, ~~and 2BY2®~~, and LUCKY FOR LIFE™.

**History:** Effective February 1, 2004; amended effective November 8, 2005; July 1, 2008; January 31, 2010; January 31, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

### 10-16-03-08. Claim of a prize.

A prize for a validated winning ticket must be claimed as follows:

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.
2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.
3. A ticket for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. An unclaimed prize is forfeited and retained by the lottery. However, if the grand prize for the game of POWERBALL®, MEGA MILLIONS®, HOT LOTTO®, or WILD CARD 2® is unclaimed, the MUSL shall administer the grand prize money. If the top prize or second prize for LUCKY FOR LIFE™ is unclaimed, the lottery's liability for that prize expires and no settlement of funds will be scheduled. If a lower tier prize for LUCKY FOR LIFE™ is unclaimed, the lottery's liability for that prize expires and is allocated back to the lottery in relation to the sale's percent for the specific drawing.
4. A person who owns or redeems a winning ticket:
  - a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and game group game rules related to the game for which the ticket was issued; and
  - b. Agrees that the state, lottery, the MUSL, game group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.
5. The owner of a winning ticket may win only one prize per play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.
6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.
7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.

8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:
  - a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or
  - b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.
9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may redeem the ticket and pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.
10. If an apparent winning ticket has a total prize value of all plays of six hundred dollars or more and one person signed or claims ownership of the ticket, a retailer may not redeem the ticket and shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery. The ticket holder shall complete and sign the form and back side of the ticket and present or mail the form and ticket to the lottery. For a validated winning ticket, the lottery shall present or mail a check to the player for the amount of the prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. The lottery shall pay the prize to the person whose name is on the ticket, notwithstanding the name on the claim form. For a nonwinning ticket, the lottery shall deny the claim, notify the claimant, and return the ticket.
11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim form and instruct the claimant how to file a claim with the lottery, as follows:
  - a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;
  - b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;
  - c. The prize claim form and ticket must be presented or mailed to the lottery;
  - d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, at the claimant's request, the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants or present or mail a check to each claimant for the amount of each player's prize; and

- e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.
12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.
13. Except as provided by rule, if two or more plays win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a set prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.
14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.
15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.
16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.
17. A prize may not be payable to a trust until after the lottery conducts a debt setoff on the beneficiaries of the trust.
18. If a player redeems an original multi-draw ticket before the ticket's last draw and a retailer returns the original ticket, rather than an issued exchange ticket, to the player, the lottery may not pay another prize on the original ticket until after the exchange ticket expires and has not been redeemed.
19. A winning ticket with a total prize value of all plays of six hundred dollars or more may not be paid to a person who is identified as being in the United States illegally.

**History:** Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; January 31, 2010; January 1, 2011; October 19, 2013; [January 31, 2016](#).

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

#### **10-16-03-08.1. Subscription.**

1. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery through the North Dakota Lottery Players Club™ website and payment processor. A player may use automated clearinghouse, debit card, or authorized credit card to pay for a subscription.
2. A person must be at least eighteen years of age.
3. A person must provide the following information when registering as a player, or a member of a group, for the lottery subscription service:
  - a. Name;
  - b. Address;
  - c. Date of birth;
  - d. Telephone number;

- e. Valid email address; and
  - f. Last four digits of their social security number.
4. A person, whether individually or as a member of a group, must have a North Dakota mailing address and must pass all verification processes used by the lottery during the player's registration process.
  5. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for up to fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, the subscription would be canceled by the lottery and funds used to purchase the subscription would be refunded to the player's winning account through the lottery's subscription service, based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased.
  6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.
  7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may split a prize among two or more persons who are registered members of a group play.
  8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation email to the subscriber. The confirmation email is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation email must include:
    - a. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of MEGA MILLIONS®, indication of whether the play has the Megaplier® option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;
    - b. Number of and starting and ending dates of the draws;
    - c. Numbers, letters, or symbols of the play;
    - d. The subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and
    - e. Explanation of how a prize will be awarded.
  9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified in the confirmation email. The effective date of a new subscription play will be invalid for the present draw in the game, if it is purchased by 8:58 p.m. central time.
  10. If the value of a prize on a winning POWERBALL®, HOT LOTTO®, WILD CARD 2®, MEGA MILLIONS®, LUCKY FOR LIFE™, or 2BY2® subscription play for a draw is:
    - a. Less than six hundred dollars, the lottery shall automatically deposit the funds into the player's winning account.
    - b. Equal to or more than six hundred dollars, the lottery shall contact the player by email and phone to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.

11. If the owner of a subscription changes the owner's name, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

**History:** Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008; July 1, 2010; October 19, 2013; July 6, 2014; [January 31, 2016](#).

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

## CHAPTER 10-16-04

### 10-16-04-01. Game description.

To play POWERBALL®, a player selects five different white numbers, between one and ~~fifty-nine~~sixty-nine, and one additional red number (powerball) between one and ~~thirty-five~~twenty-six. The additional number may be the same as one of the first five numbers selected. The price of a play is two dollars. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis. A set prize (cash prize of one million dollars or less) is paid on a single-payment cash basis. Draws are held every Wednesday and Saturday.

**History:** Effective February 1, 2004; amended effective November 8, 2005; January 4, 2009; January 15, 2012; October 4, 2015.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

### 10-16-04-02. Expected prize pool percentages and odds.

The minimum grand prize is forty million dollars and is paid on a pari-mutuel basis. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts with these expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
5 white + 1 red	Grand prize	<del>63.95%</del> <u>68.01%</u>	<del>1:175,223,510</del> <u>1:292,201,338</u>
5 white + 0 red	\$1,000,000	<del>19.40%</del> <u>8.56%</u>	<del>1:5,153,633</del> <u>1:11,688,054</u>
4 white + 1 red	<del>\$10,000</del> <u>\$50,000</u>	<del>1.54%</del> <u>5.48%</u>	<del>1:648,976</del> <u>1:913,129</u>
4 white + 0 red	\$100	<del>0.52%</del> <u>0.27%</u>	<del>1:19,088</del> <u>1:36,525</u>
3 white + 1 red	\$100	<del>0.82%</del> <u>0.69%</u>	<del>1:12,245</del> <u>1:14,494</u>
3 white + 0 red	\$7	<del>1.94%</del> <u>1.21%</u>	<del>1:360</del> <u>1:580</u>
2 white + 1 red	\$7	<del>0.99%</del> <u>1.00%</u>	<del>1:706</del> <u>1:701</u>
1 white + 1 red	\$4	<del>3.61%</del> <u>4.35%</u>	<del>1:111</del> <u>1:92</u>
0 white + 1 red	\$4	<del>7.22%</del> <u>10.44%</u>	<del>1:55</del> <u>1:38</u>

Overall odds of winning a prize on a two dollar play are ~~1:31.85~~1:24.87.

\*Reflects the odds of winning and probable distribution of winning tickets in and among each prize tier, based on the total number of possible combinations.

**History:** Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008; January 4, 2009; January 15, 2012; October 4, 2015.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-04-06. Power play option.**

1. The power play option is a limited extension of the POWERBALL® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply or increase the amount of a set prize.
2. A qualifying play is a single POWERBALL® play for which the player pays an extra one dollar for the power play option. Power play does not apply to the grand prize.
3. A qualifying play which wins one of the seven lowest set prizes (excluding the match 5+0 prize) will be multiplied by the number selected, two through five or sometimes ten, in a separate random power play drawing. The match 5+0 prize, for players selecting the power play option, shall be paid two million unless a higher limited promotional dollar amount is announced by the game group or unless a lower dollar amount is announced by the game group under its limitation of liability rules.
4. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying power play will pay the amounts shown below when matched with the power play number drawn:

POWERBALL® Pays Instead

<u>Matches Per Play</u>	<u>Set Prize Amount</u>	<u>Prize Amount With Power Play Purchase</u>				
		<u>10X</u>	<u>5X</u>	<u>4X</u>	<u>3X</u>	<u>2X</u>
5 white + 0 red	\$1,000,000	\$2,000,000	<del>\$2,000,000</del>	<del>\$2,000,000</del>	<del>\$2,000,000</del>	<del>\$2,000,000</del>
4 white + 1 red	<del>\$10,000</del> <u>\$50,000</u>	<del>\$500,000</del> <u>\$500,000</u>	<del>\$50,000</del> <u>\$25,000</u>	<del>\$40,000</del> <u>\$20,000</u>	<del>\$30,000</del> <u>\$15,000</u>	<del>\$20,000</del> <u>\$10,000</u>
4 white + 0 red	\$100	<u>\$1,000</u>	\$500	\$400	\$300	\$200
3 white + 1 red	\$100	<u>\$1,000</u>	\$500	\$400	\$300	\$200
3 white + 0 red	\$7	<u>\$70</u>	\$35	\$28	\$21	\$14
2 white + 1 red	\$7	<u>\$70</u>	\$35	\$28	\$21	\$14
1 white + 1 red	\$4	<u>\$40</u>	\$20	\$16	\$12	\$8
0 white + 1 red	\$4	<u>\$40</u>	\$20	\$16	\$12	\$8

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, the eight lowest power play prizes will be changed to an amount announced after the draw. For example, if the match 4+1 set prize amount of ~~ten~~fifty thousand dollars becomes ~~five~~twenty-five thousand dollars under the game group's rules, a power play player winning that prize amount when a "5" has been drawn would win ~~one hundred~~twenty-five thousand dollars (~~\$5,000~~\$25,000 x 5).

~~6-5.~~ The following table reflects the probability of the power play numbers being drawn:

When the 10X multiplier is available:

<u>Power Play</u>	<u>Probability of Prize Increase</u>
<u>10X - Prize won times 10</u>	<u>1 in 43</u>
5X - Prize won times 5	<del>2</del> in <del>10</del> <u>43</u>
4X - Prize won times 4	<del>3</del> in <del>10</del> <u>43</u>



## CHAPTER 10-16-09

### 10-16-09-01. General.

1. The North Dakota Lottery and its designated agents Scientific Games International, Inc., and MDI Entertainment, LLC, a subsidiary of Scientific Games International, Inc., will operate the Points for Prizes® program.
2. Points for Prizes® program is a rewards program that is part of the North Dakota Lottery's North Dakota Lottery Players Club™. Players can earn points by becoming registered members of the program and submitting valid tickets at club.lottery.nd.gov. Players can redeem their points for items at the Points for Prizes® store at store.lottery.nd.gov.
3. The Points for Prizes® program is void where prohibited by law.
4. The North Dakota Lottery reserves the right to change Points for Prizes® in any way and at any time or to terminate Points for Prizes® entirely upon reasonable and appropriate public notice.
5. By submitting a ticker to earn Points for Prizes® points, an entrant agrees to and is bound by the Points for Prizes® rules, the North Dakota Lottery Players Club™ terms of service, all other applicable North Dakota Lottery rules and laws, and the laws of the state of North Dakota.
6. The North Dakota Lottery may use, without limitation, an entrant's name, hometown, likeness, and/or voice in any promotions, research, marketing, publications, or other advertising media including, but not limited to, North Dakota Lottery websites, without compensation or additional release.
7. The North Dakota Lottery reserves the right to use the names, addresses, and telephone numbers of all entrants for research and marketing purposes.

~~8. These rules may be amended at the North Dakota Lottery's sole discretion.~~

**History:** Effective July 6, 2014; [amended effective October 4, 2015.](#)

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

## CHAPTER 10-16-10

### 10-16-10-01. General.

1. The North Dakota Lottery and its designated agents Scientific Games International, Inc., and MDI Entertainment, LLC, a subsidiary of Scientific Games International, Inc., will operate the Points for Drawings™ program.
2. Points for Drawings™ is part of the Points for Prizes® program that is part of the North Dakota Lottery's North Dakota Lottery Players Club™. Players can enter drawings by using some or all points received from submission of eligible tickets or subscription purchases at club.lottery.nd.gov.
3. Drawing entries may be submitted at store.lottery.nd.gov.
4. The Points for Drawings™ program is void where prohibited by law.
5. The North Dakota Lottery reserves the right to change Points for Drawings™ in any way and at any time or to terminate Points for Drawings™ entirely upon reasonable and appropriate public notice.
6. By submitting an entry into Points for Drawings™, an entrant agrees to and is bound by the Points for Drawings™ rules, the Points for Prizes® rules, the North Dakota Lottery Players Club™ terms of use, all other applicable North Dakota Lottery rules and laws, and the laws of the state of North Dakota.
7. North Dakota Lottery may use, without limitation, an entrant's name, hometown, likeness, and/or voice in any promotions, research, marketing, publications, or other advertising media including, but not limited to, North Dakota Lottery websites, without compensation or additional release.
8. The North Dakota Lottery reserves the right to use the names, addresses, and telephone numbers of all entrants for research and marketing purposes.

~~9. These rules may be amended at the North Dakota Lottery's sole discretion.~~

**History:** Effective July 6, 2014; amended effective October 4, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**CHAPTER 10-16-11  
LUCKY FOR LIFE™ GAME**

Section

<u>10-16-11-01</u>	<u>Game Description</u>
<u>10-16-11-02</u>	<u>Prizes and Odds</u>
<u>10-16-11-03</u>	<u>Prize Pool and Payment</u>
<u>10-16-11-04</u>	<u>Prize Liability Limits</u>

**10-16-11-01. Game description.**

To play LUCKY FOR LIFE™, a player selects five different numbers, between one and forty-eight, and one additional number (Lucky Ball) between one and eighteen. The additional number may be the same as one of the first five numbers selected. The price of a play is two dollars. Draws are held every Monday and Thursday.

**History:** Effective January 31, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**10-16-11-02. Prizes and odds.**

The top prize is seven thousand dollars a week for life. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Odds</u>
<u>5 of 5 + Lucky Ball</u>	<u>\$7,000/week for life*</u>	<u>1:30,821,472</u>
<u>5 of 5</u>	<u>\$25,000/year for life*</u>	<u>1:1,813,028</u>
<u>4 of 5 + Lucky Ball</u>	<u>\$5,000*</u>	<u>1:143,356</u>
<u>4 of 5</u>	<u>\$200</u>	<u>1:8,433</u>
<u>3 of 5 + Lucky Ball</u>	<u>\$150</u>	<u>1:3,413</u>
<u>3 of 5</u>	<u>\$20</u>	<u>1:201</u>
<u>2 of 5 + Lucky Ball</u>	<u>\$25</u>	<u>1:250</u>
<u>2 of 5</u>	<u>\$3</u>	<u>1:15</u>
<u>1 of 5 + Lucky Ball</u>	<u>\$6</u>	<u>1:50</u>
<u>Lucky Ball</u>	<u>\$4</u>	<u>1:32</u>

Overall odds of winning a prize on a two dollar play are 1:7,769.

\*Prize amounts may be split if there are multiple winners, in accordance with the provisions established in these rules. Split prizes may be lower than the published prize amounts.

**History:** Effective January 31, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

### **10-16-11-03. Prize pool and payment.**

1. The prize pool for all prize categories consists of approximately fifty-nine and one-half percent of each draw period's sales.
2. All annuitized payments must be made for a minimum of twenty years.
3. All low-tier set prizes, all prizes except the top prize and second prize, must be paid in a single lump sum cash payment.

**History:** Effective January 31, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

### **10-16-11-04. Prize liability limits.**

There are ten prize levels in the game.

1. Except as provided in these rules, the top prize must be annuitized and based on a top prize liability that will be split equally among the number of winning game tickets. A top prize winner may request the cash option, the amount of which is to be established by the game group for a defined period of drawings. Notice of the amount of and changes to the cash option must be posted on the game's website. Under certain circumstances, as detailed below, the top prize is required to be paid in a single lump sum cash payment and no annuitized payment option is available.
  - a. One top prize winner. If there is one top prize winner, the annuitized prize value will be seven thousand dollars per week for life. As an alternative to the annuitized payment option, the top prize winner may request the top prize cash option.
  - b. Two to fourteen top prize winners. If there are between two and fourteen top prize winners, the annuitized prize option, based on an annuitized prize value of seven thousand dollars per week, will be divided by the total number of top prize winners. Any of these two to fourteen top prize winners may choose the cash option as an alternative to the annuitized payment option. The amount of the cash option for this category will be the amount of the top prize cash option divided by the total number of top prize winners.
  - c. Fifteen or more top prize winners. If there are fifteen or more top prize winners, the top prize liability will be capped at seven million one hundred twenty-five thousand dollars, must be split equally among all top prize winners, and paid in a single lump sum cash payment without an annuitized payment option.
  - d. The winner or winners of the top prize who do not request the cash option must be paid their appropriate top prize share on a weekly basis, or according to such other schedule of payments set at the discretion of the lottery as permitted in the rules for a minimum period of twenty years. The first top prize payment will be made when the prize is claimed at the lottery's office.
  - e. Measuring life. For a single wager, the measuring life of a top prize winner used to determine the duration over which the top prize is paid, shall be the natural life of the individual determined by the lottery to be the top prize winner. If the top prize under a single wager is being claimed by more than one natural person or by a legal entity, the measuring life for that top prize winner shall be twenty years.
  - f. If paid in a single lump sum cash payment, top prize amounts will be rounded to the nearest whole dollar.

2. Except as provided in these rules, the second prize winner will be paid twenty-five thousand dollars a year for life. A second prize winner may request the cash option, the amount of which is to be established by the game group for a defined period of drawings. Notice of the amount of and changes to the cash option must be posted on the game's website. Under certain circumstances, as detailed below, the second prize is required to be paid in a single lump sum cash payment and no annuitized payment option is available.

a. One to twenty second prize winners. If there are between one and twenty second prize winners, the annuitized prize value will be twenty-five thousand dollars per year for life. Any of these one to twenty second prize winners may choose the second prize cash option as an alternative to the annuitized payment option.

b. Twenty-one or more second prize winners. If there are twenty-one or more second prize winners, the second prize liability is capped at nine million four hundred thousand dollars, must be split equally among all second prize winners, and paid in a single lump sum cash payment without an annuitized payment option.

c. The winner or winners of the second prize who do not request the cash option must be paid their appropriate second prize share on an annual basis for a minimum period of twenty years. The initial second prize payment will be made when the prize is claimed at the lottery's office; subsequent second prize payments will be made annually thereafter.

d. Measuring life. For a single wager, the measuring life of a second prize winner used to determine the duration over which the second prize is paid, is the natural life of the individual determined by the lottery to be the second prize winner. If the second prize under a single wager is being claimed by more than one natural person or by a legal entity, the measuring life for that second prize winner is twenty years.

e. If paid in a single lump sum cash payment, second prize amounts will be rounded to the nearest whole dollar.

3. Except as provided in these rules, the third prize will be paid as a five thousand dollar set prize. If there are more than one thousand winners of this prize level in a single drawing, the total prize liability of five million dollars will be split equally among the winners. Under no circumstances, however, will the value of the third prize fall below a minimum prize value of two hundred dollars per winner regardless of the number of winners. Third prizes will be rounded to the nearest whole dollar and paid in a single lump sum cash payment.

**History:** Effective January 31, 2016.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-13

**ARTICLE 10-18**  
**CRIMINAL JUSTICE DATA INFORMATION SHARING**

Chapter  
10-18-01 Criminal Justice Data Information System

**CHAPTER 10-18-01**  
**CRIMINAL JUSTICE DATA INFORMATION SYSTEM**

Section  
10-18-01-01 Definitions  
10-18-01-02 Organization and Operation of the Criminal Justice Information Sharing Advisory Board  
10-18-01-03 Criminal Justice Information Sharing Access  
10-18-01-04 Security Requirements  
10-18-01-05 Denial, Suspension, or Revocation of Access  
10-18-01-06 Notification of Denial, Suspension, or Revocation of Access

**10-18-01-01. Definitions.**

As used in this article, unless the context otherwise requires:

1. "Access" means authorized access to the criminal justice information sharing system, including entry, collection, review, acquisition, and use of criminal justice data information.
2. "Advisory board" means the criminal justice information sharing advisory board.
3. "Agency" includes a criminal justice agency in the state of North Dakota as defined in North Dakota Century Code subsection 6 of section 12-60-16.1.
4. "Applicant" means any agency or individual that applies for access to the criminal justice information sharing system.
5. "Authorized agency" means an agency the attorney general has authorized to have access to the criminal justice information sharing system.
6. "Authorized user" means an individual the attorney general has authorized to have access to the criminal justice information sharing system.
7. "Biometric data" includes fingerprints, palm prints, voice prints, retinal or iris images, facial recognition, and DNA profiles.
8. "Chief officer" means the designee of the attorney general responsible for the management and operation of the criminal justice data information sharing system.
9. "Court" means the North Dakota supreme court, district courts, and municipal courts in the North Dakota judicial system.
10. "Criminal history record information" includes information collected from agencies on individuals and includes biometric data and identifiable descriptions and notations of: arrests; detentions; complaints, indictments or informations, or other criminal charges; dispositions of criminal charges, including sentencing, correctional supervision, release from custody, and events required to be reported under North Dakota Century Code section 12-60-16.2.

11. "Criminal justice data information" includes correctional facility booking records, concealed weapons license information, DNA information, North Dakota highway patrol citations, North Dakota game and fish hunting and fishing license information, watercraft license information, central warrants information system information, sex offender and felony crimes against children registration information, criminal history record information, domestic violence protection orders, disorderly conduct restraining orders, parole and probation information, and motor vehicle and driver's license records and information.

12. "Criminal justice data information sharing system" means the data information system authorized in North Dakota Century Code section 54-12-34 and includes dissemination to authorized agencies and users of correctional facility booking records, concealed weapons license information, DNA information, North Dakota highway patrol citations, North Dakota game and fish hunting and fishing license information, watercraft license information, central warrants information system information, sex offender and felony crimes against children registration information, criminal history record information, domestic violence protection orders, disorderly conduct restraining orders, parole and probation information, and motor vehicle and driver's license records and information.

13. "NCIC" means the federal bureau of investigation national crime information center.

14. "ORI" means the originating agency identifier assigned by the federal bureau of investigation.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 54-12-34

**Law Implemented:** NDCC 54-12-34

#### **10-18-01-02. Organization and operation of the criminal justice information advisory board.**

1. The criminal justice information sharing advisory board consists of: the chief justice of the North Dakota supreme court or designee, the director of the department of emergency services or designee, the director of the department of corrections and rehabilitation or designee, the superintendent of the highway patrol or designee, the chief of the bureau of criminal investigation, the chief information officer of the state or designee, the director of the department of transportation or designee, a representative of a city police department, a representative of a county sheriff's office, a state's attorney, a city government representative, and a county government representative. The chief of the bureau of criminal investigation is the chairman of the advisory board.

2. The advisory board shall meet at least two times annually and for special meetings called by the chairman.

3. The attorney general shall advise and consult with the advisory board on access and security policies and procedures, eligibility for access, the collection, storage, and sharing of criminal justice and driver's license information, the systems necessary to perform these functions, and in the promulgation of administrative rules.

4. If the attorney general has denied, suspended, or revoked the access of an agency, applicant, or authorized user and the agency, applicant, or authorized user has submitted a written request for review in accordance with these rules, the advisory board shall review the request and make a recommendation to the attorney general to affirm, reverse, or modify the attorney general's decision.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 54-12-34

**Law Implemented:** NDCC 54-12-34

### **10-18-01-03. Criminal justice data information sharing access.**

1. For purposes of these rules, "attorney general" includes the chief officer of the criminal justice data information sharing system designated by the attorney general.
2. The attorney general may authorize an individual employed by an agency to access the criminal justice data information sharing system.
3. The attorney general may authorize an individual not employed by an agency as defined in this article to access the criminal justice data information sharing system if the individual meets the requirements of this article unless prohibited by federal law.
4. The agency and the individual shall sign a criminal justice data information sharing system agreement in a form prescribed by the attorney general.
5. Each agency is responsible for providing its own technology infrastructure and security procedures to assure there is no unauthorized access or dissemination of criminal justice data information.
6. The agency and the individual shall agree to comply with all requirements governing access and use of the criminal justice data information sharing system before access is authorized.
7. All individual applicants for access shall complete an application form prescribed by the attorney general and shall submit to a criminal history background investigation, including the submission of biometric data as defined in North Dakota Century Code subsection 1 of section 12-60-16.1.
8. Only agencies assigned an ORI by the federal bureau of investigation, and users employed by agencies assigned an ORI, or users authorized by the attorney general unless prohibited by federal law, may be authorized to have access to the criminal justice data information sharing system.
9. The attorney general shall review all applications for access and determine whether or not to authorize the applicant access.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 54-12-34

**Law Implemented:** NDCC 54-12-34

### **10-18-01-04. Security requirements.**

1. The criminal justice data information sharing system, including its system design and access requirements, is a critical infrastructure and part of a security system plan under North Dakota Century Code section 44-04-24.
2. Authorized individuals and authorized agencies shall keep access passwords and procedures secure and may not disclose access passwords and procedures to individuals or agencies that do not have access to the criminal justice information sharing system.
3. Unauthorized disclosure of any part of the criminal justice information sharing system may result in denial, suspension, or revocation of access to the authorized individual or an authorized agency.
4. Authorized individuals and agencies shall comply with the security requirements under 28 C.F.R. Part 20 and NCIC.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 54-12-34

10-18-01-05. Denial, suspension, or revocation of access.

1. The attorney general may not grant an application for access:
  - a. If the individual applicant has pled guilty to, pled nolo contendere to, or has been found guilty of, a felony offense in any state court or federal court;
  - b. If the individual applicant has pled guilty to, pled nolo contendere to, or has been found guilty of, any offense in any state court or federal court involving domestic violence, identify theft, or fraud;
  - c. If the individual applicant has pled guilty to, pled nolo contendere to, or has been found guilty in a military court for a violation of the military code of justice resulting in a sentence of imprisonment, dishonorable or bad conduct discharge, or both; or
  - d. If the individual applicant or the individual applicant's employing agency has committed fraud, falsification, or material misrepresentation in the application for access.
2. The attorney general may deny an application for access if a complaint, indictment, or information has been filed against the individual applicant in any state or federal court charging the individual with a felony offense or an offense involving making false statements in a governmental matter or making a false statement in an official proceeding and the individual is under oath or equivalent affirmation, or charging the individual with an offense involving giving false information to a law enforcement officer.
3. If the individual applicant has pled guilty to, pled nolo contendere to, or has been found guilty of, a class A misdemeanor offense, or equivalent offense, in any state or federal court, the attorney general may grant access not less than five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
4. If the individual applicant has pled guilty to, pled nolo contendere to, or has been found guilty of, a class B misdemeanor offense, or equivalent offense, in any state or federal court, but excluding first-time offenses for issuing checks with insufficient funds or without an account and first-time criminal traffic offenses, the attorney general may grant access not less than two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
5. The attorney general may suspend or revoke an authorized user's access for a violation of this article or for a violation of any part of the access agreement.
6. The attorney general may suspend or revoke an authorized user's access if the authorized user has been arrested or charged with a felony offense, an offense involving violence or domestic violence, or an offense involving fraud or identity theft.
7. The attorney general may suspend or revoke an authorized user's access if the authorized user has used access for noncriminal justice purposes or has disseminated or misused information obtained from the criminal justice information system for noncriminal justice purposes.
8. The attorney general may suspend or revoke an agency's access if the agency fails to report to the attorney general that an employee of the agency who is an authorized user has been charged with, pled guilty to, pled nolo contendere to, or has been found guilty of, a felony or misdemeanor criminal offense in any state or federal court, has committed a violation of this article, or has violated any part of the access agreement.

9. An agency, applicant, or authorized user shall cooperate with the attorney general in the investigation of an application for access, a breach of any security requirements, or a violation of these rules or the access agreement.
10. The attorney general may reconsider a determination to deny, suspend, or revoke access to an agency, applicant, or authorized user.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 54-12-34

**Law Implemented:** NDCC 54-12-34

**10-18-01-06. Notification and review of denial, suspension, or revocation of access.**

1. If the attorney general denies an application for access, or if the attorney general suspends or revokes access, the attorney general shall notify the agency, the applicant or authorized user, or both the agency and applicant or authorized user, in writing and shall state the reasons for denial, suspension, or revocation of access.
2. An agency, applicant, or authorized user whose access has been denied, suspended, or revoked may request review of the denial, suspension, or revocation within twenty days from the date the agency or individual has received notice of denial, suspension, or revocation of access.
3. The request for review must be in writing and mailed or delivered to the chief officer of the criminal justice information sharing system and set forth with particularity the basis of the request for review and must include any supporting documentation.
4. The advisory board shall conduct the review and any documentation submitted in support of the request for review and make a recommendation to the attorney general. The advisory board may request or allow the applicant, authorized user, or a representative of the agency to personally appear before the advisory board before it makes its recommendation to the attorney general. The determination and order of the attorney general is final and not subject to appeal or further review.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 54-12-34

**Law Implemented:** NDCC 54-12-34

**TITLE 17**  
**CHIROPRACTIC EXAMINERS, BOARD OF**



## JANUARY 2016

### CHAPTER 17-01-01

#### 17-01-01-01. Organization and functions of the board of chiropractic examiners.

1. **History.** The board of chiropractic examiners was first established in 1915 under laws now codified as North Dakota Century Code chapter 43-06. North Dakota was the first state in the United States to issue a license to practice chiropractic.
2. **Functions.** One function of the board is to examine, or designate a testing agency to examine, candidates coming into the state to see if they are qualified to practice chiropractic in North Dakota. It is also the function of the board to prevent those who are unqualified from practicing chiropractic in the state.
3. **Board membership.** The board consists of five members appointed by the governor. Each member is a doctor of chiropractic. Members of the board serve five-year terms, and one term expires each year. Board members annually elect from board membership the president, vice president, and secretary-treasurer of the board.
4. **Secretary-treasurer.** The secretary-treasurer of the board is elected by the board and is responsible for overseeing the board's activities as stated in section 17-01-03-02.
5. **Executive director.** The board may hire an executive director to oversee the clerical needs of the board, and who will answer to the board president.
6. **Inquiries.** Any questions or suggestions concerning these rules should be sent to the executive director: [Jerry.Blanchard@nd.gov](mailto:Jerry.Blanchard@nd.gov).

~~Jerry Blanchard,  
D.C.  
Box 185  
Grafton, ND 58237  
Telephone  
701-352-1690  
Fax 701-352-2258~~

**History:** Amended effective December 1, 1981; March 1, 1986; April 1, 1988; July 1, 1990; April 1, 2001; July 1, 2008; [January 1, 2016](#).

**General Authority:** NDCC 43-06-04.1

**Law Implemented:** NDCC 28-32-02.1, 43-06-04, 43-06-04.1

## CHAPTER 17-02-01

### 17-02-01-01.2. Definitions.

1. Unless specifically stated otherwise, all definitions found in North Dakota Century Code section 43-06-01 are applicable to this title.
2. "Actual consultation" as used in North Dakota Century Code section 43-06-02 means seeking or giving professional advice, opinions, or assistance in conjunction with a licensed chiropractor in this state with regard to a specific patient for the purpose of providing chiropractic treatment to the patient.
3. In this title, unless the context or subject matter otherwise requires:
  - a. "National board" means the national board of chiropractic examiners or its successor or equivalent.
  - b. "Special purposes examination for chiropractic" or "SPEC" means the special purposes examination for chiropractic offered by the national board.
  - c. "Ethics and boundaries examination" or "E&B" means the ethics and boundaries examination offered by the Ethics and Boundaries Assessment Services, LLC (EBAS).

**History:** Effective May 1, 1993; amended effective April 1, 2001; July 1, 2008; January 1, 2016.

**General Authority:** NDCC 28-32-02, 43-06-04.1

**Law Implemented:** NDCC 43-06-02, 43-06-10, 43-06-10.1

### 17-02-01-02.1. Reciprocity.

An applicant for reciprocal licensure will be considered by the board if the following conditions are met:

1. The applicant has a license and is in good standing to practice chiropractic in another state or jurisdiction;
2. The applicant has been licensed to practice chiropractic for at least the preceding two years in the other state or jurisdiction;
3. The applicant has successfully passed the appropriate parts of the national board on an earlier occasion;
4. The applicant successfully passes the special purposes examination for chiropractic or part IV of the national board examination, or qualifies for the license transfer application, unless waived by the board for good cause; and
5. The applicant successfully passes the jurisprudence examination ~~required by North Dakota law~~ and provides an affidavit acknowledging that the applicant has read and understands North Dakota statutes and administrative rules governing the practice of chiropractic.
6. The applicant applies for a temporary license under the "travel to treat" program as authorized under North Dakota Century Code chapter 43-51.

**History:** Effective May 1, 1993; amended effective April 1, 2001; July 1, 2008; January 1, 2016.

**General Authority:** NDCC 28-32-02, 43-06-04.1, 43-06-10.1

**Law Implemented:** NDCC 43-06-10, 43-06-10.1

### **17-02-01-08. Examination subjects and requirements.**

Examinations will be provided by the national board, or its successor, except for jurisprudence, which will be administered by the board. An applicant must satisfy the following criteria:

1. The applicant must hold a diploma from a chiropractic college fully accredited by the council on chiropractic education or equivalent.
2. If the applicant graduated before 1966, the applicant must have been in active practice and have passed five examinations (x-ray, orthopedics, jurisprudence, nutrition, and neurology) and also five practicals (x-ray, spinal biomechanics, extremity adjusting, first aid, and case management).
3. If the applicant graduated between 1966 and 1988, the applicant must have passed parts I and II of the national board examination. In addition, the applicant must have passed part IV or the SPEC.
4. If the applicant graduated between July 1988 and January 1997, the applicant must have passed parts I, II, and III of the national board examination. In addition, the applicant must have passed part IV or the SPEC.
5. If the applicant graduated after January 1997, the applicant must have passed parts I, II, III, and IV of the national board examination.
6. Passing grades for part IV of the national board examination are effective for seven years after which time the applicant may be required to take and pass the SPEC.
7. Graduates after January 1, 2001, must reflect a passing score on the national board's physiotherapy examination.

**History:** Amended effective February 1, 1990; April 1, 2001; July 1, 2008; January 1, 2016.

**General Authority:** NDCC 28-32-02, 43-06-04.1, 43-06-05

**Law Implemented:** NDCC 43-06-10, 43-06-10.1

### **17-02-01-13. License renewal and fees.**

1. Every chiropractor who has been licensed by the board shall renew the license by remitting a renewal fee on or before September first of each year and completing the questionnaire provided by the board. For applicants who receive an initial license after July first, the license will be deemed to be automatically renewed on September first for an additional year without payment of an additional renewal fee.
2. Subject to subsection 3, a license which has not been renewed as a result of nonpayment of the annual registration fee may be reinstated upon payment to the board of past renewal fees plus an additional administrative fee set by the board. Proof of appropriate continuing education hours must be presented.
3. If a license has not been renewed during a continuous two-year period, no renewal of the license may be issued unless the applicant passes the special purposes examination for chiropractic or part IV of the national board examination, or has passed part IV within the seven years immediately preceding the date of application for renewal, unless waived by the board for good cause. Further, the applicant must ~~pass~~complete the jurisprudence ~~examination—required~~requirement under ~~North—Dakota—laws~~subsection 5 of section 17-02-01-02.1.

**History:** Amended effective April 1, 1984; February 1, 1990; May 1, 1993; April 1, 2001; July 1, 2008; January 1, 2016.

**General Authority:** NDCC 28-32-02, 43-06-04.1, 43-06-05

**Law Implemented:** NDCC 43-06-04.1, 43-06-13

## CHAPTER 17-02-03

### 17-02-03-04. Reporting child or vulnerable adult abuse.

A chiropractor having knowledge of or reasonable cause to suspect that there is child or vulnerable adult abuse or neglect is mandated to report the circumstances to the department of human services if the knowledge or suspicion is derived from information received by the chiropractor in the chiropractor's professional capacity.

**History:** Effective July 1, 2008; amended effective January 1, 2016.

**General Authority:** NDCC 28-32-02, 43-06-04.1, 43-06-05

**Law Implemented:** NDCC 43-06-04.1, 43-06-13, 50-25.1-03, 50-25.2-03

## CHAPTER 17-03-01 UNPROFESSIONAL CONDUCT

### Section

17-03-01-01	Unprofessional Conduct
17-02-01-02	TelemarketingMarketing
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17-03-01-04	Code of Ethics
17-03-01-05	Prepaid Care Plans

### **17-03-01-01. Unprofessional conduct.**

The board may revoke, suspend, or deny a license to any person otherwise qualified or licensed by the board who is found to have committed unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

1. Exploitation of patients for financial gain, which includes:
  - a. Overutilization of chiropractic services. Overutilization is defined as services rendered or goods or appliances sold by a chiropractor to a patient for the financial gain of the chiropractor or a third party which are excessive in quality or quantity to the justified needs of the patient.
  - b. Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
  - c. Exercising undue influence on a patient or client, including the promotion or the sale of services, goods, or appliances in such a manner as to exploit the patient or client.
  - d. The administration of treatment or the use of diagnostic procedures which are excessive as determined by the customary practices and standards of the local community of licensees.
2. Willfully harassing, abusing, or intimidating a patient, either physically or verbally.
3. Failing to maintain the chiropractic standard of care for a patient record and a billing record for each patient which accurately reflects the evaluation or treatment, or both, of the patient and the fees charged to the patient. Unless otherwise provided, all patient records must be retained for at least ten years.
4. The willful or grossly negligent failure to comply with the substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
5. Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public including habitual alcohol abuse, illegal use of controlled substances, or conducting unauthorized experiments or tests upon patients.
6. Conviction of a crime which is substantially related to the qualifications, functions, or duties of a chiropractor.
7. Conviction of a felony or any offense involving moral turpitude, dishonesty, or corruption.
8. Violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances.

9. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as a licenseholder or otherwise.
10. Knowingly making or signing any false certificate or other document relating to the practice of chiropractic care which falsely represents the existence or nonexistence of a state of facts.
11. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate any provision of the law or the rules adopted by the board.
12. Making or giving any false statement or information in connection with the application for issuance of a license.
13. Participation in any act of fraud or misrepresentation.
14. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
15. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.
16. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate supervision professional services which a licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
17. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, by experience, or by licensure, to perform them.
18. Advertising or soliciting for patronage that is not in the public interest, which includes:
  - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
  - b. Advertising or soliciting which guarantees any service or result.
  - c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
  - d. Advertising or soliciting which make claims of professional superiority which cannot be substantiated by the licensee.
  - e. Advertising or soliciting which is based upon a claim that the chiropractor uses a secret or special method of treatment and the chiropractor refuses to divulge the secret or special method of treatment to the board.
  - f. Advertising no out-of-pocket expenses or practicing same.
  - g. Advertising free examination or service.
19. Violation of any term of suspension or probation imposed by the board.
20. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient, even if the patient attempts to sexualize the relationship, except when the patient is the chiropractor's spouse.

**History:** Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; [January 1, 2016](#).

**General Authority:** NDCC 43-06-04.1, 43-06-15

**Law Implemented:** NDCC 43-06-15

#### **17-03-01-02. ~~Telemarketing~~Marketing.**

1. Chiropractors who use ~~telemarketing~~marketing, either personally or through a professional company, are responsible for any representations made or statements given.
2. All ~~telemarketing~~marketing must comply with the rules pertaining to advertising adopted by the board.
3. Chiropractors who use telemarketing are required to keep records regarding the telemarketing for a period of two years. The records must include the script used, the name of the individual or company conducting the telemarketing, and the dates the telemarketing was conducted.
4. Chiropractors must make available to the board a copy of their ~~telemarketing~~marketing records upon the board's request.

**History:** Effective May 1, 1993; [amended effective January 1, 2016](#).

**General Authority:** NDCC 28-32-02, 43-06-04.1

**Law Implemented:** NDCC 43-06-04.1, 43-06-15

#### **17-03-01-04. Code of ethics.**

The board adopts the ~~2000~~2007 edition of the American chiropractic association code of ethics as the code of ethical conduct governing the practice of chiropractic in the state of North Dakota.

**History:** Effective April 1, 2001; amended effective July 1, 2008; [January 1, 2016](#).

**General Authority:** NDCC 43-06-04.1

**Law Implemented:** NDCC 43-06-04.1

#### **17-03-01-05. Prepaid care plans.**

Any arrangement or agreement between a chiropractor and a patient for a course of future treatment for which funds in an amount of five hundred dollars or more during any twelve month period are collected in advance of these services shall be considered a prepaid care plan within the meaning of this section. Services under a prepaid care plan may cost less than if the services were purchased individually. The reduction in cost must bear a reasonable relationship to the expense avoided by the provider due to reduced accounting and debt collection activities in accordance with Office of Inspector General (OIG) Advisory Opinion 08-03, regarding prompt payment discount. The prepaid care plan may provide for either an annual or monthly fee out of pocket. A chiropractor who offers such a plan is subject to the following requirements:

1. Escrow account. A designated escrow account insured by the FDIC shall be established for deposit of all funds received in connection with the prepaid care plan. Such funds may not be commingled with a chiropractor's personal or business account.
  - a. All instruments, including checks and deposit slips, must bear the phrase "Escrow Account."
  - b. The chiropractor shall maintain a clear accounting of all funds received, including date and from whom the funds were received.
  - c. The chiropractor shall maintain a clear accounting of all disbursements including the dates and to whom the disbursements were made, and to which patient the disbursements are to be applied or accounted for.

- d. If a patient's deposit in the escrow account earns in excess of five dollars during a twelve-month period, the interest must be paid or credited to the patient by the end of the period.
  - e. No more than one account is required regardless of the number of prepaid plans maintained by the chiropractor.
  - f. Funds may only be transferred out of the escrow account for the following reasons:
    - (1) After services, goods, or appliances have been provided to the patient, and only in the usual and customary amounts specifically related to the services, goods, or appliances provided.
    - (2) To reimburse the patient any amounts owed following a notice by either the patient or the chiropractor to terminate the prepaid plan. Any amounts must be transferred according to the written agreement.
    - (3) Payment to the patient of interest earned when it exceeds five dollars per twelve month period.
  - g. The chiropractor shall cause a reconciliation of the escrow account to be made no less than quarterly, with a copy provided to the patient, and shall retain a copy of the reconciliations and all supporting documents for no less than seven years.
2. Written plan. All prepaid care plans require a written plan, signed by both the chiropractor and the patient, with a copy maintained in the patient's record and a copy provided to the patient, and must include at least the following:
- a. A list of all services, goods, and appliances which are covered by the plan.
  - b. A list of all fees related to the services described in the plan.
  - c. A statement that an accounting can be requested by the patient at any time. This accounting must:
    - (1) Be provided to the patient within five working days of a written or verbal request;  
and
    - (2) Itemize all fees used to calculate any reimbursement.
  - d. An explanation of the reimbursement policies and formula that are used in returning unused funds to the patient in the event of early termination by either the chiropractor or the patient.
  - e. An explanation of any policy modifying the plan in the event of a injury, such as an auto injury or work-related injury or in the event of extended absence or new illness. These explanations must be separately initialed by the patient.
  - f. A provision that the patient will be notified in writing when the patient's account reaches a zero balance.
  - g. A statement that indicates the chiropractor makes no claim or representation that a particular treatment, procedure, or service, or any combination of treatments, procedures, or services, is guaranteed to result in a particular clinical outcome.
  - h. A statement that the patient has the right to cancel the prepay plan without penalty within three business days of entering into the plan by submitting a written and signed cancellation notice, and upon the chiropractor's receipt of the cancellation notice, the

chiropractor shall have seven working days to fully refund any unused funds to the patient. This right of cancellation may not be waived or otherwise surrendered.

3. Early termination. The patient has the right to terminate the prepaid plan at any time; under such circumstances as completing care early, moving, or a new injury or illness. The chiropractor may terminate the prepaid plan at any time, for good and sufficient cause, except the chiropractor must ensure that patient abandonment does not occur.
  - a. In event of early termination of a prepaid plan by the patient, the maximum fee charged cannot exceed the chiropractor's usual and customary fee for services rendered.
  - b. In event of early termination of a prepaid plan by the chiropractor, any cost reduction for the package of services must be prorated when determining the amount of repayment.
  - c. In event of early termination of a prepaid plan, the fee for the unused portion must be returned with no penalty.
4. Prepaid plans must be compliant with all applicable state and federal laws.
5. When providing care as a part of a prepaid plan a chiropractor shall provide competent, necessary care in a timely and professional manner. All care recommended and rendered must be clinically justified and appropriately documented.
6. A prepaid plan is not health insurance and does not meet the Affordable Care Act "individual mandate" requirements for health insurance coverage.
7. The regulations in this section do not release a chiropractor from any contractual obligations that the chiropractor has with an insurer or other entity. A chiropractor who is contracted with an insurance carrier shall adhere to the terms of their provider contract in regards to the collection of copayments, co-insurances, and applied deductibles. A chiropractor may not bill a reimbursement entity or a patient for any amount exceeding what is earned and distributed to the chiropractor.
8. Failure to abide with the requirements of this section is unprofessional conduct.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 28-32-02, 43-06-04(1) & (6), 43-06-04.1.

**Law Implemented:** NDCC 43-06-04(6)(a) & (g), 43-06-15(1)(e).

## CHAPTER 17-03-02

### 17-03-02-01. Professional education.

1. All licensees shall complete a minimum of twenty hours of approved continuing chiropractic education per year. Only hours earned at board-approved continuing chiropractic education programs will be acceptable. In order to receive board approval, a continuing chiropractic education program must meet one of the following:
  - a. A program sponsored by the board;
  - b. A program approved by providers of approved continuing education (PACE);
  - c. A program sponsored by a college of chiropractic accredited by the council on chiropractic education or its successor or equivalent;
  - d. A health-related seminar sponsored by an equally accredited college or university;
  - e. A medical seminar qualifying for continuing education credits; or
  - f. An educational program arranged by the North Dakota chiropractic association and approved by the board.
2. In order to have a program approved, the sponsor shall submit to the board the following information in addition to any other information requested by the board:
  - a. A detailed course outline or syllabus including such items as the method of instruction and the testing materials.
  - b. The qualifications and subjects taught by each instructor appearing in the program.
  - c. The procedure to be used for recording attendance of those attendees seeking to apply for continuing chiropractic education credit.
  - d. The instructor is approved by the board of chiropractic examiners.
3. The board must be the sole determinant of whether the courses are approved for continuing chiropractic education credit. The board shall make that determination based on the information submitted to it. In making its decision, the board shall determine whether or not the course submitted for credit meets the basic objectives and goals of continuing chiropractic education. Those basic goals include the growth of knowledge, the cultivation of skills and greater understanding, the continual striving for excellence in chiropractic care, and the improvement of health and welfare of the public.
4. On or before September first of each year, licensees may elect to renew their licenses as inactive. The inactive status is at a reduced fee for those licensees who do not practice, consult, or provide any service relative to the chiropractic profession in the state. The inactive licensee does not have to provide proof of continuing educational hours. Any inactive licensee may activate the license at any time by paying an additional fee and showing proof of twenty hours of continuing education in the last twelve months.
5. All licensees must have four hours of professional boundary study every three years prior to renewal of their licenses. These four hours will be included in the annual twenty-hour requirement in the year taken.
6. During the first calendar year a new license is issued to practice chiropractic in North Dakota, the licensee will be required to attend a seminar put on by the board. The seminar will be provided twice a year without charge.

**History:** Effective February 1, 1990; amended effective April 1, 2001; July 1, 2008; [January 1, 2016](#).

**General Authority:** NDCC 43-06-13, 43-06-04.1, 43-06-05

**Law Implemented:** NDCC 43-06-13

**17-03-02-02. Peer review.**

1. Peer review must be performed by a committee of three individuals appointed by the president of the board. Membership on the committee shall consist of three licensed chiropractors, none of whom may be in a direct or indirect business or personal relationship with the provider, insurer, or patient whose care is being reviewed.
2. The peer review committee shall investigate ~~cases~~[any complaint](#) referred by the board ~~that concern~~[concerning](#) whether a licensed chiropractor:

~~a. Properly utilized services;~~

~~b. Rendered or ordered appropriate treatment or services; or~~

~~c. Charged unconscionable fees or charges for treatment.~~

- ~~3. The fees and charges for treatment include all services provided to the consumer regardless of the monetary consideration paid to the health care provider.~~

- ~~4. The term "unconscionable fees or charges" means:~~

~~a. Charges for improperly utilized services; or~~

~~b. Unreasonable charges for provider services, tests, or treatments.~~

- ~~5. The term "properly utilized services" means a determination of whether the services provided were necessary and reasonable as substantiated by clinical records and reports of the provider~~[may have violated any standard of practice.](#)

**History:** Effective February 1, 1990; amended effective July 1, 2008; [January 1, 2016](#).

**General Authority:** NDCC 43-06-14.1

**Law Implemented:** NDCC 43-06-14.1

**TITLE 30**  
**GAME AND FISH DEPARTMENT**



**JANUARY 2016**

**ARTICLE 30-02  
WILDLIFE MANAGEMENT**

Chapter	
30-02-01	Aircraft Hunting Permits
30-02-02	Falconry
30-02-03	Operation of Private Game Bird Shooting Preserves
30-02-04	Plugging or Tagging North American Wild Sheep Horns and Trophy Heads
30-02-05	Elk License Raffle
30-02-06	Moose License Raffle
30-02-07	Mule Deer License Raffle
30-02-08	Antelope License Raffle
<u>30-02-09</u>	<u>Elk License Raffle</u>

**CHAPTER 30-02-09**  
**ELK LICENSE RAFFLE**

<u>Section</u>	
<u>30-02-09-01</u>	<u>Procedures and Conditions</u>
<u>30-02-09-02</u>	<u>Accounting Statement</u>
<u>30-02-09-03</u>	<u>Financial Report</u>

**30-02-09-01. Procedures and conditions.**

Before printing or distributing any raffle tickets, Annie's house at Bottineau winter park shall submit to the director an overall plan of raffle procedures and program conditions for the director's approval. A detailed copy of guidelines for volunteers who are assisting in the sales of raffle tickets must also be submitted. Upon the director's approval, Annie's house at Bottineau winter park must provide a copy of these guidelines to all volunteers before the volunteers are issued tickets for sale to the public. The raffle must be organized and conducted in accordance with North Dakota Century Code chapter 53-06.1 and North Dakota Administrative Code article 99-01.3.

**History:** Effective January 1, 2016.  
**General Authority:** NDCC 20.1-08-04.14  
**Law Implemented:** NDCC 20.1-08-04.14

**30-02-09-02. Accounting statement.**

Annie's house at Bottineau winter park will provide the director with a detailed accounting statement within thirty days after the completion of the raffle drawing. This statement will include

information regarding raffle expenses, gross and net raffle income, number of tickets sold and unsold, as well as documented proof that no more than ten percent of the gross raffle proceeds were used to promote the raffle.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 20.1-08-04.14

**Law Implemented:** NDCC 20.1-08-04.14

**30-02-09-03. Financial report.**

Annie's house at Bottineau winter park will provide the director with a financial report for all projects funded with raffle proceeds and the balance of unspent funds.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 20.1-08-04.14

**Law Implemented:** NDCC 20.1-08-04.14

## CHAPTER 30-03-06

### 30-03-06-05. Water prohibited.

~~—All water must be drained from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, to include livewells and baitwells, when out of water or upon entering the state. Water used for in-state transportation of legal live bait and legal live baitfish in bait buckets no larger than five gallons in volume is allowed. Fish transported and held in or on ice is allowed. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions. Potable and sewage water is excluded.~~

1. Refer to the North Dakota game and fish department website for a listing of state waters infested with class I prohibited aquatic nuisance species. Fish transported and held in or on ice are allowed.
2. All water must be drained from all watercraft and recreational, commercial, and construction equipment bilges and confined spaces, livewells, and baitwells, when out of water or upon entering the state. Water used for instate transportation of legal live bait and legal live baitfish in bait buckets no larger than five gallons in volume is allowed to and from waters of the state not designated as infested with class I prohibited aquatic nuisance species. Refer to the current fishing proclamation for legal live bait and legal live baitfish definitions. Potable water and sewage water are excluded from this restriction.
3. Water may not be transported away from waters of the state designated as infested with class I prohibited aquatic nuisance species unless permitted by the state water commission or otherwise authorized.
4. All drain plugs must be removed from all watercraft and recreational, commercial, and construction bilges and confined spaces, when entering the state or leaving any state waters infested with class I prohibitive aquatic nuisance species.

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016.

**General Authority:** NDCC 20.1-17-01

**Law Implemented:** NDCC 20.1-17-06

### 30-03-06-07. Penalty.

Any person violating a provision of this chapter, except subsection 3 of North Dakota Administrative Code section 30-03-06-05, is guilty of a noncriminal offense and shall pay a one hundred dollar fee. Any person violating subsection 3 of North Dakota Administrative Code section 30-03-06-05 is guilty of a class b misdemeanor under the authority of North Dakota Century Code section 20.1-17-09

**History:** Effective April 1, 2008; amended effective October 1, 2010; January 1, 2016.

**General Authority:** NDCC 20.1-02-05(22)

**Law Implemented:** NDCC 20.1-02-05(22)



**TITLE 33**  
**STATE DEPARTMENT OF HEALTH**



**JANUARY 2016**

**ARTICLE 33-03  
STATE DEPARTMENT OF HEALTH**

Chapter	
33-03-01	Free Standing Outpatient Facility - Including Surgical Facilities - Excluding Physicians Clinic [Repealed]
33-03-02	Abortion
33-03-03	Maintenance and Operation of Public Waterworks Systems, Swimming Pools, and Sewerage Systems [Repealed]
33-03-04	Quality of Water [Repealed]
33-03-05	School Water and Sewerage Systems [Repealed]
33-03-06	Sale of Bulk and Bottled Water Supplies Intended for Domestic Purposes [Repealed]
33-03-07	Care and Disposal of Refuse and Garbage [Repealed]
33-03-08	Approval of Plans and Specifications Prior to Construction of Water Works and Sewerage Systems
33-03-09	Health Maintenance Organizations [Repealed]
33-03-10	Home Health Agencies [Repealed]
33-03-10.1	Home Health Agencies
33-03-11	Electronic Hair Removal Technician
33-03-11.1	Electrolysis
33-03-12	Hemophilia
33-03-13	Construction Standards for Residential Facilities for the Physically Disabled
33-03-14	Construction Standards for Small Intermediate Care Facilities for the Mentally Retarded
33-03-15	Hospice Programs
33-03-16	Construction and Location of Toilets [Repealed]
33-03-17	Temporary Work Camps [Repealed]
33-03-18	Milk Sanitation [Repealed]
33-03-19	Food and Drink Sanitation [Repealed]
33-03-20	Minimum Requirements for Sanitation in Places of Employment [Repealed]
33-03-21	Minimum Requirements for Sanitation in Camps [Repealed]
33-03-22	Migrant Labor Housing [Repealed]
33-03-23	Health Care Claims Data
33-03-24	Basic Care Facilities [Repealed]
33-03-24.1	Basic Care Facilities
33-03-24.2	General Standard for Construction and Equipment for Basic Care Facilities
33-03-25	Alternative Health Care Services Projects
33-03-26	Organ Transplant Support Fund
33-03-27	State Community Matching Physician Loan Repayment Program
33-03-28	District Health Units

33-03-29	Residential Care Facilities for Children With Autism
33-03-30	Construction Standards for Residential Care Facilities for Children With Autism
33-03-31	Certificate of Public Advantage [Repealed]
33-03-32	State Community Matching Loan Repayment Program For Nurse Practitioners, Physicians Assistants, and Certified Nurse Midwives
33-03-33	Long-Term Care Nursing Scholarship and Loan Repayment Grant Program
33-03-34	<u>Autism Spectrum Disorder Database</u>

**CHAPTER 33-03-34**  
**AUTISM SPECTRUM DISORDER DATABASE**

Section

<u>33-03-34-01</u>	<u>Purpose</u>
<u>33-03-34-02</u>	<u>Definitions</u>
<u>33-03-34-03</u>	<u>Reporting Requirements</u>

**33-03-34-01. Purpose.**

The purpose of these rules is to establish and administer a state autism spectrum disorder database of all reported cases of autism spectrum disorder to improve current knowledge and understanding of autism spectrum disorder in North Dakota.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-01-03, 23-01-04, 23-01-41

**Law Implemented:** NDCC 23-01-41

**33-03-34-02. Definitions.**

As used in this chapter:

1. "Autism spectrum disorder" is a neurodevelopmental disorder that refers to a wide range of symptoms and severity levels which is typically manifested in impaired social interaction; problems with verbal and nonverbal communications; and restricted, repetitive patterns of behavior, interests, or activities.
2. "Autism spectrum disorder database" is the system established by the department for reporting and recording of all reported cases of autism spectrum disorder in the state.
3. "Complete physical evaluation" is the evaluation of an individual which is performed as part of the diagnostic process for autism spectrum disorder. The purpose is to rule out other conditions with similar symptoms to autism spectrum disorder.
4. "Department" means the state department of health.
5. "Reporter" is any physician, psychologist, or other licensed or certified health care professional who is qualified by training and by licensure or certification to make the diagnosis of autism spectrum disorder. Qualified reporters include physicians, psychologists, nurse practitioners, clinical nurse specialists, licensed independent clinical social workers, and licensed professional clinical counselors.
6. "Licensed independent practitioner" is any practitioner permitted by law to provide care and services, without direction or supervision, within the scope of the practitioner license and consistent with individually assigned clinical responsibilities.
7. "Reporter's designee" is a person who has been designated by a reporter to report an individual to the autism spectrum disorder database.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-01-03, 23-01-04, 23-01-41

**Law Implemented:** NDCC 23-01-41

**33-03-34-03. Reporting requirements.**

1. A reporter or the reporter's designee shall report to the department any individual diagnosed with autism spectrum disorder who is the reporter's patient or client, provided the individual or at least one of the individual's parents or guardians is a resident of North Dakota.
2. A reporter or the reporter's designee shall report in the form and manner directed by the department, including the reported individual's diagnosis under the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and whether a complete physical evaluation was performed by a licensed independent practitioner as part of the diagnostic process for autism spectrum disorder.
3. A reporter or the reporter's designee shall report newly diagnosed individuals to the department within thirty days of the diagnosis. A reporter or the reporter's designee shall report a previously diagnosed individual to the department within thirty days of the individual's first patient or client encounter with the reporter or thirty days of the effective date of these regulations, whichever is later.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-01-03, 23-01-04, 23-01-41

**Law Implemented:** NDCC 23-01-41

**ARTICLE 33-10  
RADIOLOGICAL HEALTH RULES**

Chapter	
33-10-01	General Provisions
33-10-02	Registration of Radiation Machine Facilities and Services
33-10-03	Licensing of Radioactive Material [Repealed]
33-10-03.1	Rules of General Applicability to Domestic Licensing of Byproduct Material
33-10-04	Standards for Protection Against Radiation [Repealed]
33-10-04.1	Standards for Protection Against Radiation [Repealed]
33-10-04.2	Standards for Protection Against Radiation
33-10-05	Radiation Safety Requirements for Industrial Radiographic Operations [Repealed]
33-10-05.1	Radiation Safety Requirements for Industrial Radiographic Operations
33-10-06	X-Rays in the Healing Arts
33-10-07	Use of Radionuclides in the Healing Arts [Repealed]
33-10-07.1	Medical Use of Radioactive Material [Repealed]
33-10-07.2	Medical Use of Byproduct Material
33-10-08	Radiation Safety Requirements for Analytical X-Ray Equipment
33-10-09	Radiation Safety Requirements for Particle Accelerators
33-10-10	Notices, Instructions, and Reports to Workers - Inspections [Repealed]
33-10-10.1	Notices, Instructions, and Reports to Workers - Inspections
33-10-11	Fees for Issuance of License and Registration Certificates and Inspections
33-10-12	Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies [Repealed]
33-10-12.1	Licenses and Radiation Safety Requirements for Well Logging
33-10-13	Transportation of Radioactive Material [Repealed]
33-10-13.1	Packaging and Transportation of Radioactive Material
33-10-14	Licenses and Radiation Safety Requirements for Irradiators [Repealed]
33-10-14.1	Licenses and Radiation Safety Requirements for Irradiators
33-10-15	Therapeutic Radiation Machines
33-10-16	Domestic Licensing of Source Material
33-10-17	Domestic Licensing of Special Nuclear Material
33-10-18	General Domestic Licenses for Byproduct Material
33-10-19	Reciprocal Recognition of Licenses
33-10-20	Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material
33-10-21	Specific Domestic Licenses of Broad Scope for Byproduct Material
<u>33-10-22</u>	<u>[Reserved]</u>
<u>33-10-23</u>	<u>Regulation and Licensing of Technologically Enhanced Naturally Occurring Radioactive Material</u>

**CHAPTER 33-10-22  
[RESERVED]**

**CHAPTER 33-10-23**  
**REGULATION AND LICENSING OF TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIAL**

Section

<u>33-10-23-01</u>	<u>Purpose</u>
<u>33-10-23-02</u>	<u>Scope</u>
<u>33-10-23-03</u>	<u>Definitions</u>
<u>33-10-23-04</u>	<u>Exemptions</u>
<u>33-10-23-05</u>	<u>Standards for Radiation Protection for Members of the Public</u>
<u>33-10-23-06</u>	<u>Protection of Workers During Operations</u>
<u>33-10-23-07</u>	<u>Unrestricted Use and Conditional Release</u>
<u>33-10-23-08</u>	<u>Disposal and Transfer of Waste for Disposal</u>
<u>33-10-23-09</u>	<u>Prohibition - Purposeful Dilution</u>
<u>33-10-23-10</u>	<u>General License</u>
<u>33-10-23-11</u>	<u>Specific Licenses</u>
<u>33-10-23-12</u>	<u>Application and Background Review for Specific Licenses</u>
<u>33-10-23-13</u>	<u>Requirements for the Issuance of Specific Licenses</u>
<u>33-10-23-14</u>	<u>Safety Criteria for Consumer and Retail Products</u>
<u>33-10-23-15</u>	<u>Table of Doses</u>
<u>33-10-23-16</u>	<u>Issuance of Specific Licenses</u>
<u>33-10-23-17</u>	<u>Conditions of Specific Licenses</u>
<u>33-10-23-18</u>	<u>Expiration and Termination of Specific Licenses</u>
<u>33-10-23-19</u>	<u>Renewal of Specific Licenses</u>
<u>33-10-23-20</u>	<u>Amendment of Specific Licenses at Request of Licensee</u>
<u>33-10-23-21</u>	<u>Department Action on Applications to Renew and Amend Specific Licenses</u>
<u>33-10-23-22</u>	<u>Modification and Revocation of Specific Licenses</u>
<u>33-10-23-23</u>	<u>Recordkeeping Requirements for Site Reclamation</u>
<u>33-10-23-24</u>	<u>Reciprocal Recognition of Specific Licenses</u>
<u>33-10-23-25</u>	<u>Financial Assurance Arrangements</u>
<u>33-10-23-26</u>	<u>Acceptable Surface Contamination Levels for TENORM</u>
<u>33-10-23-27</u>	<u>Specific Licenses - Radiation Protection Program Required</u>
<u>33-10-23-28</u>	<u>Radiation Safety Officer - Qualifications</u>

**33-10-23-01. Purpose.**

This chapter establishes radiation protection standards for technologically enhanced naturally occurring radioactive material (TENORM). These standards include the possession, use, processing, manufacture, distribution, transfer, and disposal of TENORM and of products containing TENORM. This chapter also provides for the licensing of TENORM, including license termination. The provisions of this chapter are in addition to the definitions and applicable requirements of chapters 33-10-01, 33-10-03.1, 33-10-04.2, 33-10-10.1, and 33-10-13.1.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

**33-10-23-02. Scope.**

1. Except as otherwise provided, this chapter applies to any person who receives, possesses, uses, processes, transfers, distributes, or disposes of TENORM.

2. The manufacture and distribution of products containing TENORM, in which the TENORM's emitted radiation is considered beneficial to the products, are licensed pursuant to the provisions of chapter 33-10-03.1.
3. This chapter addresses the introduction of TENORM into products in which the radiation emitted from the TENORM is not considered to be beneficial to the products.
4. This chapter does not apply to source material and byproduct material as both are defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.] and relevant regulations implemented by the United States nuclear regulatory commission.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-03. Definitions.**

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 23-20.1, except:

1. "Applicant" means a person applying for a license under this chapter and includes any individual or entity that owns or controls the applicant.
2. "Beneficial to the product" means that the radioactivity of the TENORM is necessary to the use of the product.
3. "Conditional release" means release by a licensee for a specified use other than release for unrestricted use.
4. "Consumer" means a member of the public exposed to TENORM from final end-use products available on a retail basis.
5. "Consumer or retail product" means any product, article, or component part thereof, produced, distributed, or sold for use by a consumer in or around a permanent or temporary household or residence, or for the personal use, consumption, or enjoyment of a consumer, or for use in or around a school or playground.
6. "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.
7. "Generator" means any person whose act or process produces TENORM or whose act first causes the TENORM to become subject to regulation.
8. "Purposeful dilution" means a deliberate act of the mixing of clean or unlike materials with contaminated materials for the purpose of changing waste classification or concentration of waste.
9. "Product" means something produced, made, manufactured, refined, or beneficiated.
10. "Radiation safety officer" means an individual with the responsibility for the overall radiation safety program on behalf of the licensee and who meets the requirements of section 33-10-23-28.
11. "Reasonably maximally exposed individual" means a representative of a population who is exposed to TENORM at the maximum TENORM concentration measured in environmental media found at a site along with reasonable maximum case exposure assumptions. The exposure is determined by using maximum values for one or more of the most sensitive

parameters affecting exposure, based on cautious but reasonable assumptions, while leaving the others at their mean value.

12. "Reclaiming" means returning property to a condition or state such that the property no longer presents a health or safety hazard or threat to the environment; the term "reclaiming" includes those activities necessary to decommission the licensed facility (i.e., to remove, as a facility, safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license).
13. "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of chapter 33-10-04.2.
14. "Tank" means a stationary device, other than a container as described in subsection 2 of section 33-10-23-08, designed to contain an accumulation of TENORM waste, which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, or plastic), which provide structural support.
15. "Technologically enhanced naturally occurring radioactive material (TENORM)" means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.] and relevant regulations implemented by the United States nuclear regulatory commission.
16. "Transfer" means the physical relocation of TENORM within a business' operation or between general or specific licensees. This term does not include commercial distribution or a change in legal title to TENORM that does not involve physical movement of those materials.
17. "Total effective dose equivalent" or "TEDE" means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-04. Exemptions.**

1. Persons who receive, possess, use, process, transfer, distribute, or dispose of TENORM are exempt from the requirements of this chapter with respect to any combination of radium-226 and radium-228 if the materials contain, or are contaminated at, concentrations less than one hundred eighty five becquerel per kilogram [five picocuries per gram (5.0 pCi/g)] excluding natural background radiation. The progeny of the exempt TENORM radium-226 and radium-228 are also exempt.
2. Persons who receive products or materials containing TENORM distributed in accordance with a specific license issued by the department pursuant to subsection 1 of section 33-10-23-11, or to an equivalent license issued by another licensing state, are exempt from this chapter with regard to those products or materials.
3. Persons who receive, possess, use, process, transfer, and distribute, including preparation of custom blends for distribution, phosphate or potash ore-based fertilizers containing TENORM are exempt from this chapter.

4. Persons who receive, possess, use, process, transfer, dispose into a permitted landfill, and distribute, including preparation of custom blends for distribution, zirconia, zircon, and products of zirconia and zircon containing TENORM are exempt from this chapter. A facility that manufactures zirconia or zircon from ore is not exempt from this chapter. A facility that chemically processes zirconia or zircon resulting in increased environmental mobility of TENORM is not exempt from this chapter.
5. Persons who possess TENORM waste regulated by the Comprehensive Environmental Response, Compensation and Liability Act, as amended [42 U.S.C. 9601 et seq.] or by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6901 et seq.] or equivalent state authority are exempt from this chapter for the TENORM waste regulated by either of these federal acts.
6. Other persons who possess or use TENORM shall be exempt when the department makes a determination, upon its own initiative or upon request for such determination, that the reasonably maximally exposed individual will not receive a public dose with a TEDE of more than one millisievert [one hundred millirem] in one year from all licensed or registered sources of radiation including TENORM.
7. Persons who possess TENORM in the form of coal combustion residuals (i.e., fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste) from energy conversion facilities are exempt from this chapter.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

#### **33-10-23-05. Standards for radiation protection for members of the public.**

1. All licensees shall conduct operations with TENORM so that individual members of the public will not exceed one millisievert [one hundred millirem] TEDE in a year, exclusive of the dose contributions from background radiation, from all licensed or registered sources of radiation, including TENORM. Doses from inhalation of indoor radon and its short half-life (less than one hour) progeny shall not be included in calculations of the TEDE, except when the dose is due to releases from licensed operations involving the handling or processing of TENORM.
2. Persons subject to a specific or general license under this chapter shall comply with the radiation protection standards in chapter 33-10-04.2.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

#### **33-10-23-06. Protection of workers during operations.**

Each person subject to a specific or general license under this chapter shall conduct operations so that protection of workers complies with the radiation protection standards in chapters 33-10-04.2 and 33-10-10.1.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

#### **33-10-23-07. Unrestricted use and conditional release.**

Each general or specific licensee shall, no less than thirty days before vacating or relinquishing possession or control of premises which may have been contaminated with TENORM as a result of the

licensee's activities, notify the department in writing of intent to vacate. When deemed necessary by the department, the licensee shall decontaminate the premises in accordance with the following or in such other manner as the department may specify.

1. Each licensee before vacating or transferring any premises shall permanently decontaminate the premises to meet the criteria for decommissioning in 10 CFR part 20, subpart E. The licensee shall make a survey after the decontamination and provide a copy to the department and any landlord, subsequent tenant, or transferee. The premises may not be vacated, sold, or transferred until the department verifies and accepts the decontamination survey.
2. No machinery, instruments, laboratory equipment, or any other property used in contact with, or close proximity to TENORM at a licensed premises may be assigned, sold, leased, or transferred to an unlicensed person unless such property has been permanently decontaminated below or equal to the standards specified in table 4.2-07.1 of chapter 33-10-04.2. The licensee shall make a survey after the decontamination and provide a copy to the department and subsequent transferee or owner. The equipment may not be assigned, sold, leased, or transferred until the department verifies and accepts the decontamination survey.
3. Persons with a specific license must also comply with the requirements of subdivisions f and g of subsection 1 of section 33-10-23-17 and section 33-10-23-18 that are applicable to remediation and license termination.
4. Persons with a general license must notify the department in writing before beginning activities to reclaim the site. Decontamination activities require a specific license under section 33-10-23-11.
5. Notification of site or area closure. When the general licensee has permanently ceased use of radioactive materials at a site or portion of a site or facility or when an area has not been used for a period of two years, the licensee shall, within sixty days, provide the following information in writing to the department:
  - a. The location of the site or area; and
  - b. The plan for reclaiming or decontaminating the site or area.
6. Actions taken to confine TENORM on site or to remediate sites shall be based on expected longevity-related controls for one thousand years or longer.
7. Conditional release of metal for recycle. Conditionally released metal for recycle shall be done only under the condition that metal contaminated with TENORM does not exceed a maximum exposure level of fifty microrentgens per hour, including background radiation, at any accessible location of the metal surface prior to release from the site.
8. Equipment not released for unrestricted use. Equipment contaminated with TENORM in excess of levels specified in section 33-10-23-26 may be transferred pursuant to subsection 4 of section 33-10-23-10.
9. Other transfers of TENORM. Other transfers of TENORM shall be in accordance with sections 33-10-23-08, 33-10-23-10, or 33-10-23-11.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### 33-10-23-08. Disposal and transfer of waste for disposal.

1. Each person subject to this chapter's general and specific licensing requirements shall manage and dispose of wastes containing TENORM:

- a. By transfer of the wastes for storage, treatment, or disposal at a facility authorized to accept wastes containing TENORM by the department or other applicable state or federal agency;
- b. By transfer for disposal in another state as otherwise approved by the applicable governmental authority; or
- c. In accordance with alternate methods authorized by the department or other applicable state or federal agency.

2. Containers:

- a. TENORM waste shall be kept in a leak-proof container.
- b. The licensee shall use a container made of, or lined with, materials that will not react with, or be incompatible with the TENORM waste to be stored so that the ability of the container to contain the waste is not impaired or compromised.
- c. A container containing TENORM waste shall always be closed and sealed during storage or while in transport, except when it is necessary to add or remove waste.
- d. A container containing TENORM waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.
- e. At least quarterly, the licensee shall inspect areas where containers of TENORM waste are stored, looking for leaking or deteriorating containers or containment systems.
- f. All containers of TENORM waste shall be stacked in such a manner that each container identification label can be read from the access aisle or area.
- g. Each container of TENORM waste shall be labeled with the following information prior to storage:
  - (1) Name and address of generator.
  - (2) Type of material (e.g., sludge, scale, dirt, scrap metal, etc.).
  - (3) Date stored.
  - (4) Labeled as radioactive material.
- h. Records of inspections shall be maintained by the licensee for inspection by the department for five years.

3. Tanks containing TENORM.

The licensee shall develop a schedule and procedure for assessing the condition of each tank containing TENORM waste. The schedule and procedure must be adequate to detect cracks, leaks, corrosion, and erosion that may lead to cracks, leaks, or wall thinning to less than the required thickness to maintain vessel integrity. Procedures for emptying a tank to allow entry, procedures for personnel protection, and inspection of the interior must be established when necessary to detect corrosion of the tank sides and bottom. The frequency of these

inspections shall be performed at intervals not to exceed twelve months. Records shall be maintained for a period of five years.

4. Each shipment of TENORM shall be accompanied by a manifest containing all of the following information prior to leaving the licensee's site:

a. The licensee's (generator's) name, physical site address, and telephone number;

b. The name, address, telephone number, and radioactive material license number of each transporter;

c. The name, address, and telephone number of the designated disposal facility;

d. The description of the waste material; and

e. The total quantity of all TENORM waste by units of weight in tons or cubic yards and the number and type of containers.

5. The following certification must appear on the manifest and be signed and dated by the licensee as follows:

"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport according to applicable international and national government regulations."

6. The licensee shall:

a. Sign and date the manifest upon initial transporter acceptance of the waste material;

b. Obtain the signature of the initial transporter and date of the acceptance of the manifest;

c. Retain one copy for a period of not less than three years;

d. Provide the initial transporter the remaining copies of the manifest; and

e. Receive the fully signed copy of the manifest from the designated disposal facility within forty-five days from the delivery to the initial transporter. In the event the licensee does not receive the signed manifest within this period, the licensee shall:

(1) Notify the department within seven days;

(2) Conduct an investigation into the reason the manifest was not received; and

(3) Report the results of the investigation to the department within thirty days.

7. The licensee shall file with the department a quarterly summary report stating the date, type, and total quantity by weight in tons or cubic yards, generator and final disposal facility of each TENORM transferred. Each report shall be filed within thirty days of the end of each quarter. If no transfers of TENORM have been made during the reporting period, the report must so indicate. Quarterly summary reports shall be maintained for a period of three years.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-09. Prohibition - Purposeful dilution.**

Purposeful dilution to render TENORM exempt shall not be performed without prior department approval.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-10. General licenses.**

1. A general license is hereby issued to possess, use, transfer, distribute, or dispose of TENORM without regard to quantity, except for those activities requiring a specific license.
2. Employees or contractors under control and supervision of a general licensee may perform routine maintenance on equipment, facilities, and land owned or controlled by the general licensee. Maintenance that provides a pathway for exposure different from that found in periodic maintenance operations and that increases the potential for additional exposure is not considered routine maintenance. The decontamination of equipment, facilities, and land shall be performed only by persons specifically licensed by the department, an agreement state, or another licensing agency to conduct such work.
3. Any person subject to the general license issued under this section shall notify the department within sixty days of the effective date of this chapter or of becoming subject to the general license. The notification shall include the following:
  - a. Name and address of the licensee;
  - b. Location and description of the facility, facilities, or portion of a facility where the TENORM is situated; and
  - c. Description of the TENORM, including estimates of the amount and extent of TENORM.
4. Transfer of material, equipment, or real property.
  - a. The transfer of TENORM, not exempt from article 33-10, from one general licensee to another general licensee is authorized if:
    - (1) The equipment and facilities contaminated with TENORM are to be used by the recipient for a similar purpose, provided that no member of the public shall receive a dose in excess of that allowed under subsection 1 of section 33-10-23-05; or
    - (2) The transfer of control or ownership of land contaminated with TENORM includes an annotation of the deed records to indicate the presence of TENORM.
  - b. For transfers not made in accordance with subdivision a, the transferor shall obtain the department's prior written approval for the transfer.
  - c. For transfers made under subdivision a, the transferor shall assess the amount and extent of TENORM contamination or material present, inform the general licensee receiving the TENORM of these assessments prior to such transfer, and maintain records that include:
    - (1) The date, recipient name, and location;
    - (2) A description and quantity of the material; and

(3) A description of the procedures and mechanisms used to ensure that material will not be released in another manner, such as an unrestricted release.

d. A general licensee intending to transfer material or real property for unrestricted use shall document compliance with the requirements of section 33-10-23-07. Records of such compliance shall be maintained for ten years.

5. Distribution of TENORM products between general licensees. The distribution of TENORM products from one general licensee to another general licensee is authorized provided the product is accompanied by labels or manifests which identify the type and amount of TENORM.

6. The department may, by written notice, require any person authorized by a general license to apply for and obtain a specific license if the department determines that specific licensure is necessary to ensure that exposures do not exceed the criteria of sections 33-10-23-05 and 33-10-23-06. The notice shall state the reason or reasons for requiring a specific license.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-11. Specific licenses.**

1. A specific license is required to manufacture and distribute any consumer or retail product containing TENORM unless the manufacture and distribution are:

a. Authorized as specified by section 33-10-23-10;

b. Licensed under the provisions of chapter 33-10-03.1; or

c. Otherwise exempt in accordance with another chapter of article 33-10.

2. A specific license is required to decontaminate equipment or land not exempted under the provisions of section 33-10-23-04 or to decontaminate facilities contaminated with TENORM in excess of the levels in section 33-10-23-07. For purposes of this subsection, the term "decontaminate" shall not include routine maintenance which results in the incidental removal of contamination.

3. A specific license is required to receive TENORM from other persons for storage.

4. A specific license is required to possess or use TENORM for the purposes of processing, treatment, or disposal.

5. A specific license is required to transport TENORM upon public roadways.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-12. Application and background review for specific licenses.**

1. Applications for specific licenses shall be in English and filed in a manner and on a form prescribed by the department.

2. The department may at any time after the filing of the original application, and before the termination of the license, require further statements in order to enable the department to determine whether the application shall be granted or denied or whether a license shall be modified or revoked.

3. An applicant must provide information required by the department to complete an environmental compliance background review, including:

a. Consent to a criminal history check under North Dakota Century Code section 12-60-24.

b. Disclosure of personal and business information on a form provided by the department, executed under oath or affirmation, which includes:

(1) The person's name and address;

(2) A description of the person's experience in managing the type of TENORM that will be managed under the license;

(3) A description of every civil and administrative complaint against the person for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application;

(4) A description of every settlement agreement entered into by the person with a federal or state agency to resolve any alleged violation of any state or federal environmental protection law which has resulted in a payment of more than ten thousand dollars within five years before the date of the submission of the application;

(5) A description of every pending notice of violation, civil complaint, administrative complaint, or criminal complaint alleging the violation of any state or federal environmental protection law;

(6) A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law;

(7) A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application; and

(8) Any other information the department deems relevant.

c. In addition to the applicant, the following related individuals and entities may be required to submit personal and business disclosure information:

(1) Each entity that is, or is proposed to be:

(a) A partner;

(b) An entity contracted with the applicant to operate, manage, or supervise the facility or activities for which approval is being sought;

(c) An entity holding of ten percent or more of the applicant's debt;

(d) An entity holding ten percent or more of the applicant's equity;

(e) The parent corporation, holding corporation, and any other entity that exercises control over the facility or activities for which approval is being sought.

(2) Each individual which has, or is proposed to have, any of the following relationships with the applicant:

(a) Director;

(b) Partner;

(c) Officer;

(d) All individuals having managerial or supervisory or substantial decisionmaking authority and responsibility for the management of operations involving TENORM;

(e) Holder of ten percent or more of the applicant's debt;

(f) Holder of ten percent or more of the applicant's equity.

4. The department may deny an application for the issuance, renewal, transfer, or major modification based on its environmental compliance background review.

a. Circumstances justifying denial include:

(1) The applicant has intentionally misrepresented or concealed any material fact in a statement required under this section;

(2) The applicant or related individual or entity has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within five years preceding the application for the license;

(3) The applicant or related individual or entity has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government within five years preceding the application for the license; or

(4) The applicant or related individual or entity has repeatedly violated any state or federal environmental protection laws.

b. The department shall consider the relevance of the offense to the business to which the license is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

5. Each application shall be signed by the applicant or a person duly authorized to act for and on the applicant's behalf.

6. An application for a license may include a request for a license authorizing one or more activities.

7. Each application for a specific license shall be accompanied by the fee prescribed in chapter 33-10-11.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-13. Requirements for the issuance of specific licenses.**

1. A license application will be approved if the department determines that:

a. The applicant is qualified by reason of training and experience to use the TENORM in question for the purpose requested in accordance with article 33-10 in such a manner as to protect the public health and safety or property;

- b. The applicant's proposed equipment, facilities, and procedures are adequate to protect the public health and safety or property;
  - c. The issuance of the license will not constitute a significant risk to the health and safety of the public;
  - d. The applicant satisfied all applicable special requirements in this chapter;
  - e. The applicant has met the financial assurance requirements of section 33-10-23-25;
  - f. The applicant has adequately addressed the following items in the application:
    - (1) Procedures and equipment for monitoring and protecting workers;
    - (2) An evaluation of the radiation levels and concentrations of contamination expected during normal operations;
    - (3) Operating and emergency procedures, including procedures for waste reduction and quality assurance of items released for unrestricted use; and
    - (4) A method for managing the radioactive material removed from contaminated equipment, facilities, and land.
  - g. For each location to be listed on the license as an authorized use location, the applicant shall submit either:
    - (1) A statement that the applicant owns the facility where radioactive material is to be used or stored; or
    - (2) A statement verifying that the facility owner has been informed, in writing, of the use or storage of radioactive material at the facility, and that the use of such material is subject to the rules of the department.
2. An application for a specific license to transfer or manufacture or distribute consumer or retail products containing TENORM to persons exempted from this chapter under subsection 2 of section 33-10-23-04 will be approved if:
- a. The applicant satisfies the general requirements specified in subsection 1;
  - b. The TENORM is not contained in any food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being; and
  - c. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, and conditions of handling, storage, use, and disposal of the TENORM product to demonstrate that the product will meet the safety criteria set forth in section 33-10-23-14. The information shall include:
    - (1) A description of the product and its intended use or uses;
    - (2) The type, quantity, and concentration of TENORM in each product;
    - (3) The chemical and physical form of the TENORM in the product, and changes in chemical and physical form that may occur during the useful life of the product;
    - (4) An analysis of the solubility in water and body fluids of the radionuclides in the product;

- (5) The details of manufacture and design of the product relating to containment and shielding of the TENORM and other safety features under normal and severe conditions of handling, storage, use, reuse, and disposal of the product;
- (6) The degree of access of human beings to the TENORM product during normal handling, use, and disposal;
- (7) The total quantity of TENORM expected to be distributed annually in the product;
- (8) The expected useful life of the product;
- (9) The proposed method of labeling or marking each unit of the product with identification of the manufacturer or initial transferor of the product and the radionuclides and quantity of TENORM in the product;
- (10) The procedures for prototype testing of the product to demonstrate the effectiveness of the containment, shielding, and other safety features under both normal and severe conditions of handling, storage, use, reuse, and disposal;
- (11) The results of the prototype testing of the product, including any change in the form of the TENORM contained in it, the extent to which the TENORM may be released to the environment, any change in radiation levels, and any other changes in safety features;
- (12) The estimated external radiation doses and committed dose equivalent relevant to the safety criteria in section 33-10-23-14 and the basis for such estimates;
- (13) A determination that the probabilities with respect to doses referred to in section 33-10-23-14 meet the safety criteria;
- (14) The quality control procedures to be followed in the processing of production lots of the product, and the quality control standards the product will be required to meet; and
- (15) Any additional information, including experimental studies and tests, required by the department to facilitate a determination of the radiation safety of the product.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-14. Safety criteria for consumer and retail products.**

An applicant for a license under subsection 2 of section 33-10-23-13 shall demonstrate that the product is designed and will be manufactured so that:

1. In normal use and disposal of a single exempt item, and in normal handling and storage of the quantities of exempt items likely to accumulate in one location during marketing, distribution, installation, and servicing of the product, it is unlikely that the dose in any one year, to a suitable sample of the group of individuals expected to be most highly exposed to radiation or radioactive material from the product will exceed the doses in column I of section 33-10-23-15.
2. In use and disposal of a single exempt item and in handling and storage of the quantities of exempt items likely to accumulate in one location during marketing, distribution, installation, and servicing of the product, the probability is low that the containment, shielding, or other safety features of the product would fail under such circumstances that a person would receive an external radiation dose or committed dose equivalent in excess of the dose to the

appropriate part of the body as specified in column II of section 33-10-23-15 and the probability is negligible that a person would receive an external radiation dose or committed dose equivalent in excess of the dose to the appropriate part of the body as specified in column III of section 33-10-23-15.

3. It is unlikely that there will be a significant reduction in the effectiveness of the containment, shielding, or other safety features of the product from wear and abuse likely to occur in normal handling and use of the product during its useful life.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-15. Table of doses.**

The dose limits in this section are the doses above background from the product.

#### 1. Column I doses are:

- a. For the whole body; head and trunk; active blood-forming organs; gonads; or lens of eye - fifty microsieverts [five millirem].
- b. For the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter - seven hundred fifty microsieverts [seventy-five millirem].
- c. For other organs - one hundred fifty microsieverts [fifteen millirem].

#### 2. Column II doses are:

- a. For the whole body; head and trunk; active blood-forming organs; gonads; or lens of eye - five millisieverts [five hundred millirem].
- b. For the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter - seventy-five millisieverts [seven thousand five hundred millirem].
- c. For other organs - fifteen millisieverts [one thousand five hundred millirem].

#### 3. Column III doses are:

- a. For the whole body; head and trunk; active blood-forming organs; gonads; or lens of eye - one hundred fifty millisieverts [fifteen rem].
- b. For ankles and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter - two thousand millisieverts [two hundred rem].
- c. For other organs - five hundred millisieverts [fifty rem].

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-16. Issuance of specific licenses.**

1. Upon a determination that an application meets the requirements of article 33-10, the department will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

2. The department may incorporate in any license at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of TENORM subject to this chapter as it deems appropriate or necessary in order to:

- a. Protect public health and safety or property;
- b. Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be appropriate or necessary; and
- c. Prevent loss, theft, or loss of control of TENORM subject to this chapter.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-17. Conditions of specific licenses.**

1. General terms and conditions.

- a. Each specific license issued under this chapter shall be subject to all the provisions of North Dakota Century Code chapters 23-20, 23-20.1, 23-20.2, and 23-20.5, now or hereafter in effect, and to all rules and orders of the department.
- b. No specific license issued or granted under this chapter and no right to possess or utilize TENORM granted by any license issued under this chapter shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department shall, after securing full information, find that the transfer is in accordance with the provisions of North Dakota Century Code chapters 23-20, 23-20.1, 23-20.2, and 23-20.5, and shall give its consent in writing.
- c. Each person specifically licensed under this chapter shall confine use and possession of the TENORM licensed to the locations and purposes authorized in the specific license.
- d. Transfer of control.

Within thirty days of the existence of any new controlling individual or entity, the licensee shall submit to the department the name of the controlling individual or entity and a statement signed by the controlling individual or entity in which the controlling individual or entity agrees to accept responsibility for the license. The controlling individual or entity must undergo an environmental compliance background review under section 33-10-23-12.

e. Notification of bankruptcy.

(1) Each licensee shall notify the department, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapters of Title 11 (bankruptcy) of the United States Code by or against:

(a) The licensee;

(b) An entity [as that term is defined in 11 U.S.C. 101(15)] controlling a licensee or listing the license or licensee as property of the estate; or

(c) An affiliate [as that term is defined in 11 U.S.C. 101(2)] of the licensee.

(2) This notification shall indicate:

(a) The bankruptcy court in which the petition for bankruptcy was filed; and

(b) The date of the filing of the petition.

f. Each licensee shall notify the department in writing prior to commencing activities to reclaim the licensed facility and site.

g. Notification of site or area closure. When a licensee has permanently ceased use of radioactive materials at a site or portion of a facility and the licensee has not decontaminated the area, or when an area has not been used for a period of two years, the licensee shall, within sixty days, provide the following information in writing to the department:

(1) The location of the facility, site, or area;

(2) The plan for reclaiming or decontaminating the facility, site, or area; and

(3) An evaluation of any changes to the financial assurance submitted in accordance with section 33-10-23-25.

h. Temporary jobsites.

(1) When temporary jobsites are authorized on a specific license, TENORM may be used at temporary jobsites throughout North Dakota in accordance with the reciprocal recognition provisions of section 33-10-23-24 or chapter 33-10-19, in areas not under exclusive federal jurisdiction.

(2) Before TENORM can be used at a temporary jobsite at any federal facility within North Dakota, the jurisdictional status of the jobsite shall be determined as it pertains to the TENORM. Authorization for use of TENORM at jobsites under exclusive federal jurisdiction shall be obtained from the applicable federal agency.

2. Quality control, labeling, and reports of transfer. Each person licensed under subsection 2 of section 33-10-23-13 shall:

a. Carry out adequate control procedures in the manufacture of the product to assure that each production lot meets the quality control standards approved by the department;

b. Label or mark each unit so that the manufacturer, processor, producer, or initial transferor of the product and the TENORM in the product can be identified; and

c. Maintain records identifying, by name and address, each person to whom TENORM is transferred for use under subsection 2 of section 33-10-23-04 or the equivalent rules of another licensing state, and stating the kinds, quantities, and uses of TENORM transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the department. Each report shall cover the year ending December 31, and shall be filed within ninety days thereafter. If no transfers of TENORM have been made pursuant to subsection 2 of section 33-10-23-13 during the reporting period, the report shall so indicate.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-18. Expiration and termination of specific licenses.**

1. Except as provided in subsection 2 of section 33-10-23-19, the authority to engage in licensed activities as specified in the specific license shall expire at the end of the specified day in the

month and year stated therein. Any expiration date on a specific license applies only to the authority to engage in licensed activities. Expiration of a specific license shall not relieve the licensee of responsibility for decommissioning its facility and terminating the specific license.

2. Each licensee shall notify the department immediately, in writing, and request termination of the license when the licensee decides to terminate all activities involving radioactive materials authorized under the license. This notification and request for termination shall include the documents required by subsection 4 and shall otherwise substantiate that the licensee has met all of the requirements in subsection 4.

3. No less than thirty days before the expiration date specified in a specific license, the licensee shall either:

a. Submit an application for license renewal pursuant to section 33-10-23-19; or

b. Notify the department, in writing, if the licensee decides not to renew the license. The licensee requesting termination of a license shall comply with the requirements of subsection 4;

4. Termination of licenses.

a. If a licensee does not submit a complete application for license renewal pursuant to section 33-10-23-19, the licensee shall, on or before the expiration date specified in the license:

(1) Terminate use of the TENORM specified in the license;

(2) Remove radioactive contamination to the level outlined in section 33-10-23-07, to the extent practicable;

(3) Properly dispose of the TENORM specified in the license;

(4) Submit a completed department form "Certificate: Disposition of Radioactive Material" (SFN 18941); and

(5) Submit a radiation monitoring report to confirm the absence of TENORM specified in the license or to establish the levels of residual radioactive contamination, unless the licensee demonstrates the absence of residual radioactive contamination in some other manner acceptable to the department. The radiation monitoring report shall specify the instrumentation used and certify that each instrument was properly calibrated and tested. The licensee shall, as applicable, report levels or quantities of:

(a) Beta and gamma radiation at one centimeter from surfaces in units, multiples, or subunits of sieverts or rem per hour or microrentgens per hour;

(b) Gamma radiation at one meter from surfaces in units, multiples, or subunits of sieverts or rem per hour or microrentgens per hour;

(c) Removable radioactivity on surfaces in units, multiples, or subunits of becquerels or curies per one hundred square centimeters of surface area or in disintegrations (transformations) per minute per one hundred square centimeters of surface area;

(d) Fixed radioactivity on surfaces in units, multiples, or subunits of becquerels or curies per one hundred square centimeters of surface area or in disintegrations

(transformations) per minute per one hundred square centimeters of surface area;

(e) Radioactivity in contaminated liquids such as water, oils, or solvents in units, multiples, or subunits of becquerels or curies per milliliter of volume or per gram of liquid; and

(f) Radioactivity in contaminated solids such as soils or concrete in units, multiples, or subunits of becquerels or curies per gram of solid.

b. If levels of residual radioactive contamination attributable to activities conducted under the license are less than those established in section 33-10-23-07, the licensee shall so certify. If the department determines that this certification and the information submitted under subdivision a is adequate and monitoring confirms the findings, then the department will notify the licensee, in writing, of the termination of the license.

c. If residual radioactive contamination attributable to activities conducted under the license are not in conformance with criteria established in section 33-10-23-07:

(1) The license continues in effect beyond the expiration date, if necessary, with respect to possession of residual TENORM present as contamination until the department notifies the licensee in writing that the license is terminated. During this time the licensee is subject to the provisions of subsection 5.

(2) In addition to the information submitted under subdivision a of subsection 4, the licensee shall submit a plan for decontamination and disposal, if required, as regards residual TENORM contamination remaining at the time the license expires.

5. Each licensee who possesses TENORM under subdivision c of subsection 4, following the expiration date specified in the license, shall:

a. Limit actions involving TENORM as specified in the license to those related to decontamination and other activities related to preparation for release for unrestricted use; and

b. Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the department notifies the licensee in writing that the license is terminated.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-19. Renewal of specific licenses.**

1. Applications for renewal of specific licenses shall be filed in accordance with section 33-10-23-12.

2. In any case in which a licensee, not less than thirty days prior to expiration of an existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, the existing license shall not expire until final action by the department.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-20. Amendment of specific licenses at request of licensee.**

Applications for amendment of a license shall be filed in accordance with section 33-10-23-12 and shall specify the respects in which the licensee desires the license to be amended and the grounds for such amendment.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-21. Department action on applications to renew and amend specific licenses.**

In considering an application by a licensee to renew or amend the license, the department will apply the criteria set forth in section 33-10-23-13.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-22. Modification and revocation of specific licenses.**

1. The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to North Dakota Century Code chapters 23-20, 23-20.1, 23-20.2, or 23-20.5, or by reason of rules and orders issued by the department.
2. Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or because of conditions revealed by such application or any report, record, or inspection or other means which would warrant the department to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of North Dakota Century Code chapters 23-20, 23-20.1, 23-20.2, or 23-20.5, or of the license, or of any rule or order of the department.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-23. Recordkeeping requirements for site reclamation.**

Each licensee shall keep records of information important to the safe and effective reclamation of a facility in an identified location until the license is terminated by the department. If records of relevant information are maintained for other purposes, reference to these records and their locations may be used. The records must include the following information:

1. Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved radionuclides, quantities, forms, and concentrations.
2. As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination, such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

3. If required by section 33-10-23-25, records of this reclaiming cost estimate prepared for the amount approved by the department for reclaiming.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-24. Reciprocal recognition of specific licenses.**

1. Any person who holds a specific license from another agreement state or licensing state, issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within North Dakota for a period not in excess of one hundred eighty days in any twelve-month period, provided that:

- a. A current copy of the licensing document or equivalent authorization is on file with the department and the authorized activities are not limited to specified installations or locations;
- b. The out-of-state licensee notifies the department at least three days before engaging in such activity. Such notification shall indicate the location, period, and type of proposed possession and use within North Dakota. Upon receipt from the out-of-state licensee of a written request containing a schedule of activities to be conducted within North Dakota, the department may waive the requirement for additional notifications during the twelve-month period following the receipt of the initial notification;
- c. The out-of-state licensee complies with all applicable rules of the department and with all the terms and conditions of the licensing document or equivalent authorization, except any such terms and conditions which may be inconsistent with article 33-10;
- d. The out-of-state licensee supplies any other information necessary to show compliance with article 33-10; and
- e. The out-of-state licensee shall not transfer or dispose of TENORM possessed or used under the general license, except by transfer to a person:
  - (1) Specifically licensed by the department or by another licensing state to receive such TENORM; or
  - (2) Exempt from the requirements for a license for such TENORM under section 33-10-23-04.

2. The department may withdraw, limit, or qualify its acceptance of any specific license or equivalent authorization issued by a licensing state, or any product distributed pursuant to such license or equivalent authorization, if the department determines that, had the out-of-state licensee been licensed by North Dakota, the licensee's license would have been subject to action under section 33-10-23-22.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-25. Financial assurance arrangements.**

Each licensee or applicant for a specific license shall post with the department financial assurance, or security, to ensure the protection of the public health and safety and the environment in the event of

abandonment, default, or other inability or unwillingness of the licensee to meet the requirements of article 33-10 and North Dakota Century Code chapter 23-20.1. Financial assurance arrangements shall:

1. Consist of surety bonds, government securities, irrevocable letters of credit, corporate guarantees, insurance, state funds, or any combination of these;
2. Be in an amount sufficient to meet the applicant's or licensee's obligations under article 33-10 and North Dakota Century Code chapter 23-20.1 and shall be based upon department approved cost estimates;
3. Be established prior to issuance of the license or the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the facility;
4. Be continuous for the duration of the license and for a period coincident with the applicant or licensee's responsibility under article 33-10 and North Dakota Century Code chapter 23-20.1;
5. Be available in North Dakota subject to judicial process and execution in the event required for the purposes set forth; and
6. Be established within ninety days of the initial effective date of this chapter for licenses in effect on that date.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-26. Acceptable surface contamination levels for TENORM.**

1. Where surface contamination by both alpha and beta-gamma emitting nuclides exists, the limits established for alpha and beta-gamma emitting nuclides shall apply independently.
2. As used in this section, "disintegrations per minute" means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.
3. Average contamination level.
  - a. For surface contamination by alpha emitting nuclides, the average contamination level shall not exceed five thousand disintegrations per minute per one hundred square centimeters of surface area.
  - b. For surface contamination by beta-gamma emitting nuclides, the average contamination level shall not exceed five thousand disintegrations per minute per one hundred square centimeters of surface area.
  - c. Measurements of average contamination level shall not be averaged over more than one square meter. For objects of less surface area, the average shall be derived for each object.
  - d. The average radiation levels associated with surface contamination resulting from beta-gamma emitters shall not exceed two microgray per hour [two tenths millirad per hour] at one centimeter and ten microgray per hour [one millirad per hour] at one centimeter, respectively, measured through not more than seven milligrams per square centimeter of total absorber.
4. Maximum contamination level.

- a. For surface contamination by alpha emitting nuclides, the maximum contamination level shall not exceed fifteen thousand disintegrations per minute per one hundred square centimeters of surface area.
- b. For surface contamination by beta-gamma emitting nuclides, the maximum contamination level shall not exceed fifteen thousand disintegrations per minute per one hundred square centimeters of surface area.
- c. The maximum contamination level applies to an area of not more than one hundred square centimeters.
- d. The maximum radiation levels associated with surface contamination resulting from beta-gamma emitters shall not exceed two microgray per hour [two tenths millirad per hour] at one centimeter and ten microgray per hour [one millirad per hour] at one centimeter, respectively, measured through not more than seven milligrams per square centimeter of total absorber.

5. Limits on removable contamination.

- a. For surface contamination by alpha emitting nuclides, the removable contamination shall not exceed one thousand disintegrations per minute per one hundred square centimeters of surface area.
- b. For surface contamination by beta-gamma emitting nuclides, the removable contamination shall not exceed one thousand disintegrations per minute per one hundred square centimeters of surface area.
- c. Measurements of average contamination level shall not be averaged over more than one square meter. For objects of less surface area, the average shall be derived for each object.
- d. The amount of removable radioactive material per one hundred square centimeters of surface area shall be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of surface area A (where A is less than one hundred square centimeters) is determined, the entire surface shall be wiped and the contamination level multiplied by the quantity [one hundred divided by A] to convert to a "per one hundred square centimeter" basis.
- e. The maximum radiation levels associated with surface contamination resulting from beta-gamma emitters shall not exceed two microgray per hour [two tenths millirad per hour] at one centimeter and ten microgray per hour [one millirad per hour] at one centimeter, respectively, measured through not more than seven milligrams per square centimeter of total absorber.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

33-10-23-27. Specific licenses - Radiation protection program required.

1. A licensee shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

2. A licensee shall establish, in writing, the radiation safety officer's authority, duties, and responsibilities.
3. A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative, to:
  - a. Identify radiation safety problems;
  - b. Initiate, recommend, or provide corrective actions;
  - c. Stop unsafe operations; and
  - d. Verify implementation of corrective actions.
4. A licensee shall retain a record of actions taken under subsections 1 and 2 of this section for five years.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

### **33-10-23-28. Radiation safety officer - Qualifications.**

1. Except for licenses exclusive to the transport of TENORM waste, the specific licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in section 33-10-23-27 to be an individual who has completed a department approved training program consisting of forty hours of classroom training in the following areas:
  - a. Characteristics of radiation;
  - b. Units of radiation dose and quantity of radioactivity;
  - c. Hazards of exposure to radiation;
  - d. Radiation detection and measurement;
  - e. Minimizing radiation exposure (time, distance, shielding, and respiratory precautions);
  - f. Use and types of personnel-monitoring equipment;
  - g. Proper use of protective equipment; and
  - h. Transportation of licensed material.
2. For licenses exclusive to the transport of TENORM waste, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer to be an individual who has completed a department approved training program consisting of eight hours of classroom training in the following areas:
  - a. Characteristics of radiation;
  - b. Units of radiation dose and quantity of radioactivity;
  - c. Hazards of exposure to radiation;
  - d. Radiation detection and measurement;
  - e. Minimizing radiation exposure (time, distance, shielding, and respiratory precautions);

|           f. Use and types of personnel-monitoring equipment;

|           g. Proper use of protective equipment; and

|           h. Transportation of licensed material.

| **History:** Effective January 1, 2016.

| **General Authority:** NDCC 23-20.1-04

| **Law Implemented:** NDCC 23-20.1-03, 23-20.1-04

**ARTICLE 33-20**  
**SOLID WASTE MANAGEMENT AND LAND PROTECTION**

Chapter	
33-20-01	General Provisions [Repealed]
33-20-01.1	General Provisions
33-20-02	Storage [Repealed]
33-20-02.1	Permit Provisions and Procedures
33-20-03	Collection and Transportation [Repealed]
33-20-03.1	Permit Application Provisions
33-20-04	Resource Recovery [Repealed]
33-20-04.1	General Performance Standards
33-20-05	Standards of Performance for Disposal Operations [Repealed]
33-20-05.1	Inert Waste Landfills
33-20-06	Permit to Construct [Repealed]
33-20-06.1	Municipal Waste Landfills
33-20-07	Permit to Operate [Repealed]
33-20-07.1	Small Volume Industrial Waste Landfills and Special Waste Landfills
33-20-08	Common Provisions Applicable to Both a Permit to Construct and Permit to Operate [Repealed]
33-20-08.1	Surface Impoundment Provisions
33-20-09	Land Treatment Provisions
33-20-10	Large Volume Industrial Waste and MSW Ash Landfills
33-20-11	<u>[Reserved] Landfill Disposal of Technologically Enhanced Naturally Occurring Radioactive Material Waste</u>
33-20-12	Regulated Infectious Waste
33-20-13	Water Protection Provisions
33-20-14	Financial Assurance Requirements
33-20-15	Solid Waste Management Fees
33-20-16	Certification of Operators
33-20-17	Solid Waste Management Planning
33-20-18	Solid Waste Management Fund
33-20-19	Municipal Waste Landfill Release Compensation Fund

**CHAPTER 33-20-01.1**

**33-20-01.1-03. Definitions.**

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 23-29, except:

1. "Agricultural processing operation" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.
2. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.
3. "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
4. "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.

5. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.
6. "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.
7. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, industrial waste, and special waste.
8. "Compliance boundary" means the vertical planar surface that extends downward into the uppermost aquifer and that circumscribes the waste management units at which water quality standards or maximum concentration limits apply.
9. "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.
10. "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").
11. "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.
12. "Energy conversion facility" has the same meaning as in North Dakota Century Code subsection 5 of section 49-22-03, except that refining of liquid hydrocarbon products is excluded.
13. "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.
14. "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
15. "Farming operation" means the production or raising of crops or livestock. Production or raising of crops or livestock includes the following:
  - a. Cultivating, growing, or harvesting agricultural crops;
  - b. Breeding, feeding, grazing, or finishing of livestock; or
  - c. Raising or producing poultry or unprocessed poultry products, unprocessed milk or dairy products, unprocessed livestock products such as wool, or unprocessed fruits, vegetables, or other horticultural products.

The term "farming operation" includes any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03 that recycles or applies its manure and other residual agricultural material to soils as recycled agricultural material, but does not include a concentrated or

confined animal feeding operation that generates manure or other residual agricultural material that is discarded as agricultural waste. The term "farming operation" does not include any processing of crops, livestock, or other agricultural products by an agricultural processing operation.

16. "Final cover" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.
17. "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by a one-hundred-year flood.
18. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
19. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.
20. "Gas condensate" means the liquid generated as a result of gas recovery processes at a landfill disposal unit.
21. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
22. "Hazardous waste" has the meaning given by North Dakota Century Code section 23-20.3-02 and further defined in chapter 33-24-02.
23. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
24. "Incinerator" has the meaning given by section 33-15-01-04.
25. "Industrial waste" has the same meaning as in North Dakota Century Code section 23-29-03. Such waste may include, but is not limited to, residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; textile manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.
26. "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; metal; tree branches; bottom ash from coal fired boilers; and waste coal fines from air pollution control equipment.
27. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.

28. "Landfill" has the meaning given by North Dakota Century Code section 23-29-03 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.
29. "Lateral expansion" means a horizontal extension of the waste boundaries of an existing landfill disposal unit.
30. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.
31. "Leachate removal system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.
32. "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees Celsius [77 degrees Fahrenheit].
33. "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.
34. "Nutrient management plan" means a plan prepared by any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03, or by any agricultural processing operation. This plan shall be submitted to the department for approval and describe the method and schedule by which the recycled agricultural materials generated or stored by the operation are recycled or applied to the land at appropriate agronomic rates as nutrients or fertilizers, rather than discarded as agricultural waste. An approved nutrient management plan must address water pollution, odor, and other environmental and public health problems that are relevant because of size, location, or other environmental factors, and may include the following elements:
  - a. Recycled agricultural material handling and storage, including construction and maintenance of buildings, feedlots, collection systems, storage systems with adequate storage and integrity, and diversion of runoff and flowing surface water from contact with the storage systems and the recycled agricultural material;
  - b. Land application of recycled agricultural material, including soils testing, transportation, timing and methods of application, and nutrient management;
  - c. Conservation management practices, including injection or tillage of the recycled agricultural materials into the soils, crop residue and pasture management practices, use of conservation buffers, and other conservation practices that prevent water pollution from land application of recycled agricultural materials;
  - d. Recordkeeping, including the place, date, and amount of recycled agricultural material applied per acre, plus records of any testing;
  - e. Feed management; and
  - f. Other utilization options where residual agricultural materials are recycled.
35. "Operator" means the person responsible for the overall operation of a facility or part of a facility.
36. "Owner" means the person who owns a facility or part of a facility.
37. "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

38. "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.
39. "Processing" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.
40. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
41. "Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.
42. "Recycled agricultural material" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing or other similar agricultural activities. Recycled agricultural materials also include:
  - a. Material, including manure, generated by any concentrated or confined animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33-16-03 that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan; or
  - b. Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan.

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

43. "Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.
44. "Runoff" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.
45. "Run-on" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.
46. "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.
47. "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.
48. "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.
49. "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.

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

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

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

~~52.53.~~ "Treatment" means a method or process designed to change the physical, chemical, or biological character or composition of a solid waste or leachate so as to neutralize the waste or leachate or so as to render the waste or leachate safer for public health or environmental resources during transport, storage, or disposal. The term does not include resource recovery.

~~53.54.~~ "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

~~54.55.~~ "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.

**History:** Effective December 1, 1992; amended effective August 1, 1993; October 1, 1994; May 1, 1999; January 1, 2016.

**General Authority:** NDCC 23-29-04, 61-28-04

**Law Implemented:** NDCC 23-29-04, 61-28-04

### **33-20-01.1-09. Radioactive waste.**

Every person who handles and disposes of radioactive waste shall comply with article 33-10. Every person who handles and disposes of TENORM shall also comply with the applicable requirements of this article.

**History:** Effective December 1, 1992; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

## CHAPTER 33-20-07.1

### 33-20-07.1-01. Performance and design criteria.

In addition to the requirements of section 33-20-01.1-08 and chapter 33-20-04.1, the owner or operator of an industrial waste landfill or a special waste landfill shall comply with the design, construction, and operating standards as follows:

1. On all areas of the landfill where final cover or additional solid waste will not be placed within six months, eight inches [20.3 centimeters] or more of compacted clay-rich soil material, similar material, or a synthetic cover must be placed to prevent ponding of surface water, to minimize infiltration of surface water, and to control windblown dust.
2. Solid waste disposal in industrial waste landfills and special waste landfills must be limited to those wastes identified in the permit application or permit. Regulated infectious waste, used oil as a free liquid, and hazardous waste, ~~and radioactive waste~~ may not be accepted for disposal at the landfill. TENORM waste may only be accepted under the provisions of chapter 33-20-11.
3. All solid wastes deposited at the landfill must be spread and compacted as densely as practicable to minimize waste volume and promote drainage of surface water.
4. Any new or lateral expansion of an industrial waste landfill or special waste landfill must be designed with an appropriate hydraulic barrier and leachate management system capable of collecting and removing leachate and contaminated surface water within the disposal unit.
  - a. The liner and leachate removal system must be compatible with the waste and leachate.
  - b. The liner and leachate removal system must maintain its integrity during the operating period and through the postclosure period.
  - c. The system must have a collection efficiency of ninety percent or better and must be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.
  - d. For landfills that receive wastes containing water soluble constituents, the liner must consist of at least four feet [1.2 meters] of compacted natural soil having a hydraulic conductivity not to exceed  $1 \times 10^{-7}$  centimeters per second. ~~This requirement does not apply to landfills receiving only oilfield drilling cuttings and drilling mud.~~
  - e. A composite liner is required for landfills receiving TENORM waste or wastes which may contain leachable organic constituents. The liner must consist of at least three feet [91.4 centimeters] of recompacted clay with a hydraulic conductivity not to exceed  $1 \times 10^{-7}$  centimeters per second overlain with at least a sixty mil flexible membrane liner.
  - f. The drainage layer must have a hydraulic conductivity of  $1 \times 10^{-3}$  centimeters per second or greater throughout. The drainage layer must have a sufficient thickness to provide a transmissivity of  $3 \times 10^{-2}$  centimeters squared per second or greater.
  - g. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of at least ninety-eight and one-half percent or better for collection or rejection of the precipitation that falls on the site.
  - h. The requirements of this subsection for a liner, leachate collection system, or both liner and leachate collection system may be modified by the department if the permit applicant demonstrates that, based on factors such as geology and hydrology of the site,

characteristics of the waste, and engineering design, any leachate migration can be prevented or controlled.

**History:** Effective December 1, 1992; amended effective August 1, 1993; October 1, 1994; [January 1, 2016](#).

**General Authority:** NDCC [23-20.1-04](#), 23-29-04

**Law Implemented:** NDCC [23-20.1-03](#), [23-20.1-04](#), 23-29-04, [23-29-07](#)

## CHAPTER 33-20-10

### 33-20-10-03. Waste disposal.

In addition to the requirements of section 33-20-01.1-08 and chapter 33-20-04.1, the owner or operator of a landfill shall comply with the performance and design criteria as follows:

1. Any new or lateral expansion of a landfill must be designed with a hydraulic barrier and leachate management system.
  - a. Synthetic liners, leachate detection systems, and leachate removal systems must be compatible with solid waste disposed and the waste's leachate.
  - b. Leachate removal and management systems must be capable of collecting and removing leachate and contaminated surface water.
  - c. Synthetic liners and leachate removal systems must withstand all physical and chemical stresses during the operating period and through the postclosure period.
  - d. The synthetic liners and leachate removal systems must have a collection efficiency of ninety-seven percent or better of precipitation falling on the fill area before closure and must be capable of removing leachate to limit the hydraulic head above the upper liner, exclusive of collection sumps, to twelve inches [30.5 centimeters] or less within thirty-six hours of a precipitation event.
  - e. A composite liner is required which includes at a minimum from bottom to top:
    - (1) At least three feet [91.4 centimeters] of recompact clay with a hydraulic conductivity not to exceed  $1 \times 10^{-7}$  centimeters per second;
    - (2) A synthetic flexible membrane liner at least sixty mil thick;
    - (3) A secondary drainage layer with a hydraulic conductivity of  $1 \times 10^{-3}$  centimeters per second or greater throughout and with sufficient thickness to provide a transmissivity of  $3 \times 10^{-2}$  centimeters squared per second or greater;
    - (4) A synthetic flexible membrane liner at least eighty mil thick; and
    - (5) A drainage layer with a hydraulic conductivity of  $1 \times 10^{-3}$  centimeters per second or greater and with sufficient thickness to provide a transmissivity of  $3 \times 10^{-2}$  centimeters squared per second or greater.
  - f. No composite liner may be exposed to freezing more than one winter season. At least three feet of solid waste or other material approved by the department must be placed above the upper drainage layer on all lined areas by December first. No disposal may take place after December first in areas which have not met this requirement without first testing the composite liner's integrity and receiving approval from the department.
2. The facility must include a leachate detection and removal system and an onsite leachate management system or offsite leachate management.
  - a. The amount of leachate collected for onsite or offsite management must be measured and recorded.
  - b. The quality of the leachate must be periodically evaluated on a schedule proposed by the facility owner and approved by the department.

- c. The department may require the construction of onsite surface impoundments to achieve the equivalent or better design standards of onsite landfills, based on site specific factors such as hydrogeological characteristics, anticipated leachate quality, anticipated static head or expected duration of use.
- d. The department may require an owner or operator to control wildlife access to onsite surface impoundments based upon leachate quality and site circumstances.
3. Runoff must be contained, collected, and transferred to an onsite surface impoundment, unless another management method is approved by the department.
4. Solid waste disposal in landfills must be limited to those wastes identified in the permit application, waste acceptance plan, or permit. Regulated infectious waste, used oil as a free liquid which can be recovered or recycled, and hazardous waste, ~~and radioactive waste~~ may not be accepted for disposal at the landfill. TENORM waste may only be accepted under the provisions of chapter 33-20-11.
5. All solid wastes deposited at the landfill must be placed, spread, or compacted to minimize or prevent settlement and to promote drainage of surface water. The sequence and direction of below-grade operations must be conducted to prevent surface water from entering the active fill area.
6. On all areas of the landfill where final cover or additional solid waste will not be placed within one month, eight inches [20.3 centimeters] or more of compacted clay-rich soil material, similar material, or a synthetic cover must be placed to prevent ponding of surface water, to minimize infiltration of surface water, and to control windblown dust.
7. The composite liner in combination with the final cover after closure must achieve an efficiency of at least ninety-nine and nine-tenths percent or better for collection or rejection of the precipitation that falls on the landfill.

**History:** Effective August 1, 1993; amended effective October 1, 1994; January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

## CHAPTER 33-20-11

{Reserved}

### LANDFILL DISPOSAL OF TECHNOLOGICALLY ENHANCED NATURALLY OCCURRING RADIOACTIVE MATERIAL WASTE

#### Section

33-20-11-01 Radioactive Waste Disposal

33-20-11-02 Prohibition

33-20-11-03 Authorization

33-20-11-04 Monitoring

33-20-11-05 Reporting

33-20-11-06 Worker Training and Safety

33-20-11-07 Record of Notice

#### 33-20-11-01. Radioactive waste disposal.

Disposal of radioactive waste subject to regulation under chapter 33-10-23, meeting the definition of TENORM, into special waste or industrial waste landfills shall comply with the following requirements and limitations:

1. TENORM waste up to, but not exceeding fifty picocuries per gram of radium-226 plus radium-228, may be disposed in a landfill which complies with chapter 33-20-07.1 or chapter 33-20-10, except that the accumulated amount must not exceed twenty-five thousand tons [22,679.22 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month unless larger amounts in one month resulting from special cleanup projects are preapproved by the department. Drums or shipping containers of TENORM waste which are not of uniform concentration must not exceed an average concentration of fifty picocuries per gram of radium-226 plus radium-228.
2. Equipment contaminated with TENORM which does not exceed a maximum exposure level of one hundred microrentgen per hour, including background radiation, at any accessible location may be disposed in a landfill which complies with chapter 33-20-07.1 or chapter 33-20-10.
3. TENORM waste must be covered by at least one foot of non-TENORM waste or daily cover material by the end of each operating day. For landfills that operate continuously (twenty-four hours per day), all TENORM waste shall be covered at least once every twenty-four hour period.
4. TENORM waste must be disposed at depth greater than ten feet below the surface of the final landfill cover.
5. For a landfill that is subject to chapter 33-20-07.1, if any part of the final cover has slope greater than fifteen percent, then the final cover must have an additional two feet of low permeability soil, for a total minimum cover thickness of five feet.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

#### 33-20-11-02. Prohibition.

Disposal of TENORM waste subject to regulation under article 33-10 is prohibited in all municipal solid waste landfills and inert landfills. Disposal of radioactive waste subject to regulation under article 33-10, which does not meet the definition of TENORM, or TENORM waste that is greater than fifty picocuries per gram of radium-226 plus radium-228 is prohibited in all landfills. If prohibited TENORM

waste is delivered to a landfill for disposal, the waste must be rejected. The owner or operator of the landfill shall note the source, amount, generator, and other identifying information about the rejected waste and shall notify the department within five days of the rejection of such material.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

### **33-20-11-03. Authorization.**

Approval for acceptance of TENORM waste by a landfill not previously authorized to accept such waste in its permit shall follow procedures in section 33-20-02.1-06. The facility is also subject to applicable approval and licensure requirements of chapter 33-10-23.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

### **33-20-11-04. Monitoring.**

The leachate collection system and groundwater monitoring network shall be analyzed for background concentration of radionuclide parameters prior to receipt of any TENORM waste. Leachate shall be analyzed for radionuclides at the same frequency as groundwater samples are collected. If radionuclides are detected in the leachate at a concentration greater than the concentrations listed below, then the groundwater monitoring network must begin analysis for radionuclide parameters.

Radon: 4,000 picocuries per liter (pCi/L).

Combined radium-226 and radium-228: 5 pCi/L.

Alpha particle activity (including radium-226, excluding radon and uranium): 15 pCi/L.

Uranium: 30 micrograms per liter (ug/L).

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

### **33-20-11-05. Reporting.**

Landfills approved for the disposal of TENORM waste shall file with the department a quarterly summary report stating the date, type, and total quantity by weight in tons, generator, and final disposal facility of each TENORM transferred. Each report shall be filed within thirty days of the end of each quarter. If no transfers of TENORM have been made during the reporting period, the report must so indicate.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

### **33-20-11-06. Worker training and safety.**

Landfills approved for the disposal of TENORM waste shall implement a worker training program and safety program to meet the requirements of section 33-10-23-27, so that protection of workers complies with radiation protection standards of chapters 33-10-04.2 and 33-10-10.1. The training and safety program shall be approved by the department prior to receipt of any TENORM waste.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

**33-20-11-07. Record of notice.**

The records of notice required by section 33-20-02.1-04 shall specify that the landfill is approved to accept TENORM waste. The final record of notice shall indicate the total quantity of TENORM waste disposed in the landfill.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.1-04, 23-29-04

**Law Implemented:** NDCC 23-20.1-03, 23-20.1-04, 23-29-04

## CHAPTER 33-24-01 GENERAL PROVISIONS

### Section

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33-24-01-08	Petitions to Amend Chapter 33-24-02 to Exclude a Waste Produced at a Particular Facility and Amend Chapter 33-24-05 to Include Additional Hazardous Waste as Universal Waste
33-24-01-09	<u>Nonwaste Determinations and</u> Variances From Classification as a Solid Waste
33-24-01-10	Standards and Criteria for Variances From Classification as a Solid Waste
33-24-01-11	Variance to Be Classified as a Boiler
33-24-01-12	Procedures for Variances From Classification as a Solid Waste <del>or</del> <u>for Variances</u> to Be Classified as a Boiler <u>or for Nonwaste Determinations</u>
33-24-01-13	Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis
33-24-01-14	Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities
33-24-01-15	Variances
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<u>33-24-01-17</u>	<u>Standards and Criteria for Nonwaste Determinations</u>
<u>33-24-01-18</u>	<u>Notification Requirements for Hazardous Secondary Materials</u>
<u>33-24-01-19</u>	<u>Legitimate Recycling of Hazardous Secondary Materials</u>

### **33-24-01-04. Definitions.**

As used in this article the following words have the meaning ascribed to them unless otherwise made inappropriate by use and context.

1. "Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.
2. "Act" means North Dakota Century Code chapter 23-20.3.
3. "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the department receives certification of final closure.
4. "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of the Act and which is not a closed portion. (See also "closed portion" and "inactive portion".)
5. "Administrator" or "regional administrator" means the administrator or regional administrator of the environmental protection agency, or that officer's designee.
6. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tank or tanks, between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal offsite.

7. "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.
8. "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (for example, part of a facility), for example, the plant manager, superintendent, or person of equivalent responsibility.
9. "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.
10. "Boiler" means an enclosed device using controlled flame combustion and:
  - a. Boilers must have the following characteristics:
    - (1) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
    - (2) The unit's combustion chamber and primary energy recovery section or sections must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section or sections (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section or sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to processed steam) and fluidized bed combustion units;
    - (3) While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
    - (4) The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit should be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or
  - b. The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards of section 33-24-01-11.
11. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (for example, power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.
12. "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.
13. "Cathode ray tube" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact cathode ray tube means a

cathode ray tube whose vacuum has not been released. A used, broken cathode ray tube means glass removed from its housing or casing whose vacuum has been released.

14. "Cathode ray tube collector" means a person who receives used, intact cathode ray tubes for recycling, repair, resale, or donation.

15. "Cathode ray tube exporter" means any person in the United States who initiates a transaction to send used cathode ray tubes outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

16. "Cathode ray tube glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture cathode ray tube glass.

17. "Cathode ray tube processing" means conducting all of the following activities:

a. Receiving broken or intact cathode ray tubes; and

b. Intentionally breaking intact cathode ray tubes or further breaking or separating broken cathode ray tubes; and

c. Sorting or otherwise managing glass removed from cathode ray tube monitors.

~~12-18.~~ "Certification" means a statement of professional opinion based on knowledge and belief.

~~13-19.~~ "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

~~14-20.~~ "Component" means:

a. Either the tank or ancillary equipment of a tank system; or

b. Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (for example, a pump seal, pump, kiln liner, or kiln thermocouple).

21. "Conditionally exempt small quantity generator" means a generator who generates no more than one hundred kilograms of hazardous waste in a calendar month.

~~15-22.~~ "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

~~16-23.~~ "Constituent" or "hazardous waste constituent" means a constituent that caused the department to list the hazardous waste in chapter 33-24-02, or a constituent listed in Table 1 of section 33-24-02-14.

24. "Contained" means held in a unit (including a land-based unit as defined in this section) that meets the following criteria:

a. The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

- b. The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- c. The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- d. Hazardous secondary materials in units that meet the applicable requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819, or subsection 5 of section 33-24-06-16.

17.25. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

18.26. "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of sections 33-24-05-475 through 33-24-05-479 and subpart DD of 40 CFR 265.

19.27. "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

20.28. "Corrosion expert" means a person who, by reason of the person's knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

21.29. "Department" means the North Dakota state department of health.

22.30. a. "Designated facility" means a hazardous waste treatment, storage, or disposal facility ~~which~~that:

a. (1) Has received a permit (or interim status) in accordance with the requirements of chapters 33-24-06 and 33-24-07;

b. (2) Has received a permit (or interim status) from a state authorized in accordance with 40 CFR part 271; or

c. (3) Is regulated under subdivision b of subsection 3 of section 33-24-02-06 or sections 33-24-05-230 through 33-24-05-234; and

d. (4) ~~That has~~Has been designated on the manifest by the generator pursuant to section ~~33-24-01-06. If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste~~33-24-03-04.

b. Designated facility also means a generator site designated on the manifest to receive the generator's waste as a return shipment from a facility that has rejected the waste in accordance with subsection 6 of section 33-24-05-39 or the applicable requirements of subsection 5 of section 33-24-06-16.

c. If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

~~23.~~31. "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in subsections 1 and 3 of section 33-24-05-713. A facility at which a particular category of universal waste is only accumulated is not a destination facility for the purposes of managing that category of universal waste.

~~24.~~32. "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

~~25.~~33. "Dioxins and furans" means tetra-chlorinated, penta-chlorinated, hexa-chlorinated, hepta-chlorinated, and octa-chlorinated dibenzo dioxins and furans.

~~26.~~34. "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

~~27.~~35. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water including ground water.

~~28.~~36. "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which wastes will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

~~29.~~37. "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kickback or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

38. "Electronic manifest" (or e-manifest) means the electronic format of the hazardous waste manifest which is obtained from environmental protection agency's national e-manifest system and transmitted electronically to the system, and which is the legal equivalent of environmental protection agency forms 8700-22 (manifest) and 8700-22A (continuation sheet).

39. "Electronic manifest system (or e-manifest system)" means environmental protection agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

~~30.~~40. "Elementary neutralization unit" means a device which:

- a. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in section 33-24-02-12, or are listed in chapter 33-24-02 only for this reason; and
- b. Meets the definition of tank, tank systems, container, transport vehicle, or vessel.

~~31.~~41. "Equivalent method" means any testing or analytical method approved by the department under sections 33-24-01-06 and 33-24-01-07.

- ~~32.42.~~ "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction commenced on or before ~~July 1, 1984~~ November 19, 1980. A facility has commenced construction if:
- a. The owner or operator has obtained all necessary federal, state, and local approvals or permits necessary to begin physical construction; and
  - b. Either of the following:
    - (1) A continuous onsite, physical construction program has begun; or
    - (2) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.
- ~~33.43.~~ "Existing portion" means that land surface area of an existing waste management unit, included in part A of the permit application, as originally filed, on which wastes have been placed prior to the issuance of a permit.
- ~~34.44.~~ "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.
- ~~35.45.~~ "Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.
- ~~36.46.~~ "Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions, or transporting, or any combination, those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at ~~Resource, Conservation and Recovery Act~~ hazardous waste facilities.
- ~~37.47.~~ "Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include department of defense emergency explosive ordnance disposal, technical escort unit, and department of defense-certified civilian or contractor personnel and other

federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

~~38.48.~~ "Facility" means:

- a. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).
- b. For the purpose of implementing corrective action under section 33-24-05-58, or 33-24-05-1031 all contiguous property under the control of the owner or operator seeking a permit under North Dakota Century Code chapter 23-20.3. This definition also applies to facilities implementing corrective action under Resource Conservation and Recovery Act section 3008(h).
- c. Notwithstanding subdivision b, a remediation waste management site is not a facility that is subject to section 33-24-05-58, but is subject to corrective action requirements if the site is located within such a facility.

~~39.49.~~ "Facility mailing list" means the mailing list for a facility developed and maintained by the department in accordance to the following:

- a. Including those persons who request in writing to be added to the facility mailing list;
- b. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
- c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.)

~~40.50.~~ "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the government printing office.

~~41.51.~~ "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, regulations, or ordinances.

~~42.52.~~ "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under chapter 33-24-05 are no longer conducted at the facility unless subject to the provisions in section 33-24-03-12.

~~43.53.~~ "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

~~44.54.~~ "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

~~45.55.~~ "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

- ~~46.56.~~ "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specification of another component.
- ~~47.57.~~ "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 33-24-02 or whose act first causes a hazardous waste to become subject to regulation.
- ~~48.58.~~ "Ground water" means water below the land surface in a zone of saturation.
59. "Hazardous secondary material" means a secondary material (for example, spent material, byproduct or sludge) that, when discarded, would be identified as hazardous waste under chapter 33-24-02.
60. "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this subsection, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator.
- ~~49.61.~~ "Hazardous waste" means a hazardous waste as defined in chapter 33-24-02.
- ~~50.62.~~ "Hazardous waste constituent". See "constituent".
- ~~51.63.~~ "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.
- ~~52.64.~~ "Hazardous waste number" means the number assigned to each hazardous waste identified in chapter 33-24-02.
- ~~53.65.~~ "Identification number" means the number assigned by the environmental protection agency and the department to each generator, transporter, and treatment, storage, or disposal facility.
- ~~54.66.~~ "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.
- ~~55.67.~~ "Inactive portion" means that portion of a facility which is not operated after the effective date of this chapter. (See also "active portion" and "closed portion".)
- ~~56.68.~~ "Incinerator" means any enclosed device that:
- a. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
  - b. Meets the definition of infrared incinerator or plasma arc incinerator.
- (See appendix III of chapter 33-24-05 for examples.)
- ~~57.69.~~ "Incompatible waste" means a hazardous waste which is unsuitable for:
- a. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

- b. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dust, mists, fumes, or gases, or flammable fumes or gases.

58.70. "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

59.71. "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of material for energy:

- a. Cement kilns;
- b. Lime kilns;
- c. Aggregate kilns;
- d. Phosphate kilns;
- e. Coke ovens;
- f. Blast furnaces;
- g. Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces);
- h. Titanium dioxide chloride process oxidation reactors;
- i. Methane reforming furnaces;
- j. Pulping liquor recovery furnaces;
- k. Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- l. Halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three percent; the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty percent as generated; or
- m. Such other devices as the department may, after notice and comment, add to this list on the basis of one or more of the following factors:
  - (1) The design and use of the device primarily to accomplish recovery of material products;
  - (2) The use of the device to burn or reduce raw materials to make a material product;
  - (3) The use of a device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feed stock;
  - (4) The use of a device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
  - (5) The use of a device in common industrial practice to produce a material product; and

(6) Other factors, as appropriate.

- ~~60.72.~~ "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- ~~64.73.~~ "Inground tank" means a device meeting the definition of a "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.
- ~~62.74.~~ "Injection well" means a well into which fluids are injected. (See also the definition of "underground injection" in this section.)
- ~~63.75.~~ "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.
- ~~64.76.~~ "Installation inspector" means a person who, by reason of knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.
77. "Intermediate facility" means any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.
- ~~65.78.~~ "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- ~~66.79.~~ "Lamp", also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste lamps include fluorescent, high-intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.
- ~~67.80.~~ "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.
81. "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.
- ~~68.82.~~ "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.
- ~~69.83.~~ "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.
84. "Large quantity generator" means a generator who generates one thousand kilograms or more of hazardous waste in a calendar month.
- ~~70.85.~~ "Leachate" means any liquid, including any suspended components in the liquid, that have percolated through or drained from hazardous waste.

- ~~71.86.~~ "Leak detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (for example, daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.
- ~~72.87.~~ "Liner" means a continuous layer of natural or manmade materials beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.
- ~~73.88.~~ "Major facility" means any facility classified as such by the environmental protection agency in conjunction with the department.
- ~~74.89.~~ "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- ~~75.90.~~ "Manifest" means the shipping document ~~uniform hazardous manifest environmental protection agency form 8700-22 and, if necessary, environmental protection agency form 8700-22a, originated and signed by the generator in accordance with instructions included in the appendix to chapter 33-24-03~~environmental protection agency form 8700-22 (including, if necessary, environmental protection agency form 8700-22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of chapters 33-24-03 and 33-24-04, sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, and subsection 5 of section 33-24-06-16.
- ~~76.91~~ "Manifest ~~document~~tracking number" means ~~the state environmental protection agency twelve digit identification number assigned to the generator, plus a unique five digit document number assigned to the uniform hazardous waste manifest by the generator for recording and reporting purposes~~the alphanumeric identification number (for example, a unique three letter suffix preceded by nine numerical digits), which is preprinted in item 4 of the manifest by a registered source.
77. "Mercury-containing ~~device~~equipment" means ~~any electronic control, medical instrument, thermometer, thermostat, switch, bulb, tube, or other similar device that contains metallic mercury in an ampule or other similar container where the metallic mercury acts as a conductor of temperature, pressure, or electricity~~a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.
- ~~78.93.~~ "Military munitions" means all ammunition products and components produced or used by or for the United States department of defense or the United States armed services for national defense and security, including military munitions under the control of the department of defense, the United States coast guard, the United States department of energy, and national guard personnel. The term military munitions includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by department of defense components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

However, the term does include nonnuclear components of nuclear devices, managed under department of energy's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

- ~~79.94.~~ "Mining overburden returned to the minesite" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.
- ~~80.95.~~ "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, containment building, corrective action management unit, unit eligible for research, development, and demonstration permit under section 33-24-06-20, or staging pile.
- ~~81.96.~~ "Movement" means that hazardous waste transported to a facility in an individual vehicle.
- ~~82.97.~~ "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
- ~~83.98.~~ "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced, after ~~July 1, 1984~~ November 19, 1980. (See also "existing hazardous waste management facility".)
- ~~84.99.~~ "New tank system" or "new tank components" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of subdivision b of subsection 7 of section 33-24-05-106, a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)
100. "No free liquids" as used in subdivision w of subsection 1 and subdivision p of subsection 2 of section 33-24-02-04, means that solvent-contaminated wipes may not contain free liquids as determined by method 9095B (paint filter liquids test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (environmental protection publication SW-846), as incorporated by reference in section 33-24-01-05, and that there is no free liquid in the container holding the wipes.
- ~~85.101.~~ "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.
- ~~86.102.~~ "Onsite" means the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right of way. Noncontiguous property owned by the same person, but connected by a right of way which that person controls and to which the public does not have access is also considered onsite property.
- ~~87.103.~~ "Open burning" means the combustion of any material without the following characteristics:
- a. Control of combustion air to maintain adequate temperature for efficient combustion;
  - b. Containment of the combustion reactions in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

c. Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

~~88-104.~~ "Operator" means the person responsible for the overall operation of a facility.

~~89-105.~~ "Owner" means the person who owns a facility or part of a facility.

~~90-106.~~ "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of chapter 33-24-05 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

107. "Permit" means an authorization, license, or equivalent control document issued by the department to implement the requirements of chapters 33-24-06 and 33-24-07. Permit includes permit by rule (section 33-24-06-18), emergency permit (subsection 1 of section 33-24-06-19) and standardized permit (sections 33-24-06-45 through 33-24-06-85). Permit does not include hazardous waste interim status (section 33-24-06-16), or any permit that has not been the subject of final department action, such as a draft permit or a proposed permit.

~~91-108.~~ "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

~~92-109.~~ "Personnel" or "facility personnel" means all persons who work at, or oversee the operation of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of chapter 33-24-05 or 40 CFR part 265, ~~if applicable.~~

~~93-110.~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- a. Is a new animal drug under federal Food, Drug, and Cosmetic Act section 201(w);
- b. Is an animal drug that has been determined by regulation of the secretary of health and human services not to be a new animal drug; or
- c. Is an animal feed under federal Food, Drug, and Cosmetic Act section 201(x) that bears or contains any substances described by subdivision a or b.

~~94-111.~~ "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

~~95-112.~~ "Plasma arc incinerator" means any enclosed device using a high-intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

~~96-113.~~ "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

~~97-114.~~ "Publicly owned treatment works" means any device or system used in the treatment (including recycling or reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by this state or a municipality. This definition includes sewers, pipes, or other

conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

~~98-115.~~ "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground water monitoring and contaminant fate and transport.

116. "Remanufacturing" means processing a higher value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial grade material. For the purpose of this subsection, a hazardous secondary material is considered higher value if it was generated from the use of a commercial grade material in a manufacturing process and can be remanufactured into a similar commercial grade material.

~~99-117.~~ "Remediation waste" means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

~~400-118.~~ "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing, or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under section 33-24-05-58, but is subject to corrective action requirements if the site is located in such a facility.

~~404-119.~~ "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and which is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or department-approved corrective action.

~~402-120.~~ "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or ground water), which can be expected to exhibit the average properties of the universe or whole.

~~403-121.~~ "Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~404-122.~~ "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~405-123.~~ "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~406-124.~~ "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~407-125.~~ "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of two thousand five hundred British thermal unit per pound of sludge treated on a wet-weight basis.

~~408-126.~~ "Small quantity generator" means a generator who generates less than one thousand kilograms of hazardous waste in a calendar month.

~~409.127.~~ "Solid waste" means a solid waste as defined in section 33-24-02-02.

128. a. "Solvent-contaminated wipe" means a wipe that, after use or after cleaning up a spill, either:

(1) Contains one or more of the F001 through F005 solvents listed in section 33-24-02-16 or the corresponding P- or U- listed solvents found in section 33-24-02-18;

(2) Exhibits a hazardous characteristic found in sections 33-24-02-10 through 33-24-02-14 when that characteristic results from a solvent listed in chapter 33-24-02; or

(3) Exhibits only the hazardous waste characteristic of ignitability found in section 33-24-02-11 due to the presence of one or more solvents that are not listed in chapter 33-24-02; or

(4) Any combination of paragraphs 1, 2 or 3.

b. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at subdivision w of subsection 1 of section 33-24-02-04 and subdivision p of subsection 2 of section 33-24-02-04.

~~410.129.~~ "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

~~411.130.~~ "Staging pile" means an accumulation of solid, nonflowing remediation waste that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the department according to the requirements of section 33-24-05-554.

131. "Standardized permit" means a hazardous waste permit issued under sections 33-24-07-40 through 33-24-07-54 and sections 33-24-06-45 through 33-24-06-85 authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the department's discretion.

~~412.132.~~ "State" means this state.

~~413.133.~~ "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

~~414.134.~~ "Sump" means any pit or reservoir that meets the definition of tank and those troughs or trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

~~415.135.~~ "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

- ~~416.~~136. "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic), which provide structural support.
- ~~417.~~137. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
- ~~418.~~138. "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)
- ~~419.~~139. "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.
- ~~420.~~140. "Toxicity equivalence" means the international method of relating the toxicity of various dioxin, or furan, or both congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.
- ~~421.~~141. "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas, or other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.
- ~~422.~~142. "Transport vehicle" means a motor vehicle or railcar used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.
- ~~423.~~143. "Transportation" means the movement of hazardous wastes by air, rail, highway, or water.
- ~~424.~~144. "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.
- ~~425.~~145. "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:
- Whether the waste is amenable to the treatment process;
  - What pretreatment (if any) is required;
  - The optimal process conditions needed to achieve the desired treatment;
  - The efficiency of a treatment process for a specific waste or wastes; or
  - The characteristics and volumes of residuals from a particular treatment process.
- Also included in this definition for the purpose of subsections 5 and 6 of section 33-24-02-04 exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effect studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.
- ~~426.~~146. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~427.~~147. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~428.~~148. "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also the definition of "injection well" in this section.)

~~429.~~149. "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

~~430.~~150. "Unfit for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

151. "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

a. Is required to use a manifest to comply with:

(1) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(2) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

b. Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the environmental protection agency electronic manifest system, or

c. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with paragraph 5 of subdivision b of subsection 1 of section 33-24-05-38, or the applicable requirements of subsection 5 of section 33-24-06-16. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

~~434.~~152. "United States" means the fifty states, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the northern Mariana Islands.

~~432.~~153. "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of sections ~~33-24-05-701~~33-24-05-700 through ~~33-24-05-765~~33-24-05-799:

a. Batteries as described in section 33-24-05-702;

b. Pesticides as described in section 33-24-05-703;

c. Mercury-containing ~~devices~~equipment as described in section 33-24-05-704; and

d. Lamps as described in section 33-24-05-705.

~~433.~~154. "Universal waste handler":

a. Means:

- (1) A generator (as defined in this section) of universal waste; or
- (2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

b. Does not mean:

- (1) A person who treats, except under the provisions of subsection 1 or 3 of section 33-24-05-713, disposes of, or recycles universal waste; or
- (2) A person engaged in the offsite transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

~~434.155.~~ "Universal waste transporter" means a person engaged in the offsite transportation of universal waste by air, rail, highway, or water.

~~435.156.~~ "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

~~436.157.~~ "Uppermost aquifer" means the natural geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~437.158.~~ "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

~~438.159.~~ "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

~~439.160.~~ "Wastewater treatment unit" means a device which:

- a. Is part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act;
- b. Receives and treats or stores an influent wastewater which is a hazardous waste as identified in section 33-24-02-03, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in section 33-24-02-03, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 33-24-02-03; and
- c. Meets the definition of tank or tank system.

~~440.161.~~ "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~441.162.~~ "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form and often walled with bricks or tubing to prevent the earth from caving in.

~~442.163.~~ "Well injection". (See "underground injection".)

164. "Wipe" means a woven or nonwoven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

~~443.165.~~ "Zone of engineering control" means an area under the control of the owner or operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-01-05. References.

1. When used in this article, the following publications are incorporated by reference. [Copies may be inspected at the library, United States environmental protection agency, 1200 Pennsylvania Avenue NW \(3403T\), Washington, D.C. 20460, libraryhq@epa.gov; or at the national archives and records administration. For information on the availability of this material at the national archives and records administration, call 202-741-6030, or go to:](#)

- ~~a. "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester", ASTM Standard D-3278-78, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~b. "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester", ASTM Standard D-93-79 or D-93-80. D-93-80 is available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~c. "ASTM Standard Test Method for Analysis of Reformed Gas by Gas Chromatography", ASTM Standard D-1946-82, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~d. "ASTM Standard Test Method for Heat of Combustion by Hydrocarbon Fuels by Bomb Calorimeter (high-precision method)", ASTM Standard D-2382-83, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~e. "ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis", ASTM Standard E-169-87, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~f. "ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis", ASTM Standard E-168-88, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~g. "ASTM Standard Practice for Packed Column Gas Chromatography", ASTM Standard E-260-85, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~h. "ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography", ASTM Standard D-2267-88, available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~i. "APTI Course 415: Control of Gaseous Emissions", environmental protection agency publication EPA 450/2-81-005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.~~
- ~~j. "Flammable and Combustible Liquids Code" (1977 or 1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.~~
- ~~k. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 [third edition (November 1986), as amended by updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996) and IIIA (April 1998)]. The third edition of environmental protection-~~

agency publication SW-846 and updates I, II, IIA, IIB, and III (document number 955-001-00000-1) are available from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) 512-1800. Update IIIA is available through the environmental protection agency's methods information communication exchange (MICE) service. Methods information communication exchange can be contacted by telephone at (703) 821-4690. Update IIIA can also be obtained by contacting the environmental protection agency, Office of Solid Waste (5307W), OSW-Methods Team, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Copies of the third edition and all its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 605-6000 or (800) 553-6847. Copies may be inspected at the Library, United States environmental protection agency, 1200 Pennsylvania Avenue, Washington, D.C. 20460; or at the office of the Federal Register, 800 North Capitol Street, Northwest, Suite 700, Washington, D.C.

- ~~l. "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised" October 1992, environmental protection agency publication number EPA-450/R-92-019, available from the environmental protection agency, Research Triangle Park, North Carolina 27711.~~
- ~~m. "ASTM Standard Test Method for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals", American standard test method standard E926-88t test method C-bomb, acid digestion method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~n. API Publication 2517, third edition, February 1989, "Evaporative Loss From External Floating-Roof Tanks", available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005.~~
- ~~o. "ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenoscope", ASTM Standard D 2879-92, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.~~
- ~~p. Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Nonpolar Material) by extraction and gravimetry. Available at National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 605-6000 or (800) 553-6847.~~

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

2. The references listed in subsection 1 are also available for inspection at the Office of the Federal Register, 800 North Capitol Street Northwest, Suite 700, Washington, D.C. 20408. These incorporations by reference were approved by the director of the federal register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the federal register. The following materials are available for purchase from the American society for testing and materials, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, Pennsylvania 19428-2959:
  - a. ASTM D93-79 or D93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester".
  - b. ASTM D1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography".

- c. ASTM D2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography".
- d. ASTM D2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)".
- e. ASTM D2879-92, "Standard Test Method for Vapor Pressure -Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope".
- f. ASTM D3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester".
- g. ASTM E168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis".
- h. ASTM E169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis".
- i. ASTM E260-85, "Standard Practice for Packed Column Gas Chromatography".
- j. ASTM E926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C - Bomb, Acid Digestion Method.
- k. ASTM D6450-99, "Standard Test Method for Flash Point by Continuously Closed Cup Tester".

3. The following materials are available for purchase from the national technical information service, 5285 Port Royal Road, Springfield, Virginia 22161, 703-605-600 or 800-553-6847; or for purchase from the superintendent of documents, United States government printing office, Washington, D.C. 20402, 202-512-1800:

- a. "APTI Course 415: Control of Gaseous Emissions," environmental protection agency publication EPA-450/2-81-005, December 1981.
- b. Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Nonpolar Material) by Extraction and Gravimetry:
  - (1) Revision A, EPA-821-R-98-002, February 1999.
  - (2) Revision B, EA-821-R-10-001, February 2010.
- c. The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," environmental protection agency publication SW-846, third edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times):
  - (1) Method 0010, dated September 1986 and in the Basic Manual.
  - (2) Method 0020, dated September 1986 and in the Basic Manual.
  - (3) Method 0030, dated September 1986 and in the Basic Manual.
  - (4) Method 1320, dated September 1986 and in the Basic Manual.

- (5) Method 1311, dated September 1992 and in Update I.
- (6) Method 1330A, dated September 1992 and in Update I.
- (7) Method 1312 dated September 1994 and in Update III.
- (8) Method 0011, dated December 1996 and in Update III.
- (9) Method 0023A, dated December 1996 and in Update III.
- (10) Method 0031, dated December 1996 and in Update III.
- (11) Method 0040, dated December 1996 and in Update III.
- (12) Method 0050, dated December 1996 and in Update III.
- (13) Method 0051, dated December 1996 and in Update III.
- (14) Method 0060, dated December 1996 and in Update III.
- (15) Method 0061, dated December 1996 and in Update III.
- (16) Method 9071B, dated April 1998 and in Update IIIA.
- (17) Method 1010A, dated November 2004 and in Update IIIB.
- (18) Method 1020B, dated November 2004 and in Update IIIB.
- (19) Method 1110A, dated November 2004 and in Update IIIB.
- (20) Method 1310B, dated November 2004 and in Update IIIB.
- (21) Method 9010C, dated November 2004 and in Update IIIB.
- (22) Method 9012B, dated November 2004 and in Update IIIB.
- (23) Method 9040C, dated November 2004 and in Update IIIB.
- (24) Method 9045D, dated November 2004 and in Update IIIB.
- (25) Method 9060A, dated November 2004 and in Update IIIB.
- (26) Method 9070A, dated November 2004 and in Update IIIB.
- (27) Method 9095B, dated November 2004 and in Update IIIB.

4. The following materials are available for purchase from the national fire protection association, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101:

- a. "Flammable and Combustible Liquids Code" (1977 or 1981).
- b. [Reserved]

5. The following materials are available for purchase from the American petroleum institute, 1220 L Street NW, Washington, D.C. 20005:

- a. API publication 2517, Third edition, February 1989, "Evaporative Loss from External Floating - Roof Tanks".
- b. [Reserved]

6. The following materials are available for purchase from the environmental protection agency, Research Triangle Park, North Carolina:

a. "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, environmental protection agency publication number EPA-450/R-92-019.

b. [Reserved]

7. The following materials are available for purchase from the organization for economic cooperation and development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France:

a. Organization for Economic Cooperation and Development Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in appendix 3, appendix 4 and appendix 5, respectively, to the organization for economic cooperation and development council decision C(92)39/FINAL (concerning the control of transfrontier movements of wastes destined for recovery operations).

b. [Reserved]

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-01-06. General rulemaking petitions.**

1. Any person may petition the department to modify or revoke any provisions in chapters 33-24-01 through 33-24-05. This section sets forth general requirements which apply to all such petitions. Section 33-24-01-07 sets forth additional requirements for petitions to add a testing or analytical method to chapter 33-24-02 or sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819 or subsection 5 of section 33-24-06-16. Section 33-24-01-08 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from section 33-24-02-03 or the lists of hazardous wastes in sections 33-24-02-15 through 33-24-02-19. Section 33-24-01-08 sets forth additional requirements for petitions to amend sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 to include additional hazardous wastes or categories of hazardous waste as universal waste.
2. Each petition must be submitted to the department by certified mail and must include:
  - a. The petitioner's name and address;
  - b. A statement of the petitioner's interest in the proposed action;
  - c. A description of the proposed action, including (where appropriate) suggested regulatory language; and
  - d. A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
3. The department will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision.

4. Upon the written request of any interested person, the department may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The department may, in any case, decide on its own motion to hold an informal public hearing.
5. After evaluating all public comments, the department will make a final decision.

**History:** Effective January 1, 1984; amended effective December 1, 1988; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-01-07. Petitions for equivalent testing or analytical methods.**

1. Any person seeking to add a testing or analytical method to chapter 33-24-02 or 33-24-05 may petition for a regulatory amendment to this section and section 33-24-01-06. To be successful, the person must demonstrate to the satisfaction of the department that the proposed method is equal to or superior to the corresponding method prescribed in chapter 33-24-02 or 33-24-05, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.
2. Each petition must include, in addition to the information required by section 33-24-01-06:
  - a. A full description of the proposed method, including all procedural steps and equipment used in the method;
  - b. A description of the types of wastes or waste matrices for which the proposed method may be used;
  - c. Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in chapter 33-24-02 or 33-24-05;
  - d. An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
  - e. A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.
3. After receiving a petition for an equivalent method, the department may request any additional information of the proposed method which it may reasonably require to evaluate the method.
4. [If the department amends the regulations to permit use of a new testing method, the method will be incorporated by reference in section 33-24-01-05.](#)

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-01-08. Petitions to amend chapter 33-24-02 to exclude a waste produced at a particular facility and amend chapter 33-24-05 to include additional hazardous waste or wastes as universal waste.**

1. Any person seeking to exclude a waste at a particular generating facility from the lists in sections 33-24-02-15 through ~~33-24-02-18~~[33-24-02-19](#) may petition for a regulatory amendment under this section and section 33-24-01-06. To be successful:

- a. The petitioner must demonstrate to the satisfaction of the department that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and
  - b. Based on a complete application, the department must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
2. The procedures in this section and section 33-24-01-06 may also be used to petition the department for a regulatory amendment to exclude waste from paragraph 2 of subdivision b of subsection 1 of section 33-24-02-03 or subsection 3 of section 33-24-02-03, a waste which is described in these sections and is either a waste listed in sections 33-24-02-15 through ~~33-24-02-18~~33-24-02-19, or is derived from a waste listed in sections 33-24-02-15 through ~~33-24-02-18~~33-24-02-19. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by subsection 1. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, this demonstration must be made with respect to the waste mixture as a whole; analysis must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
  3. If the waste is listed with codes "I", "C", "R", or "E" in sections 33-24-02-15 through ~~33-24-02-18~~33-24-02-19:
    - a. The petitioner must show that the waste does not exhibit the relevant characteristics for which the waste was listed as defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, or 33-24-02-14 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, or 33-24-02-14 using any applicable methods prescribed therein.
    - b. Based on a complete application, the department must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
  4. If the waste is listed with code "T" in sections 33-24-02-15 through ~~33-24-02-18~~33-24-02-19:
    - a. The petitioner must demonstrate that the waste:
      - (1) Does not contain the constituent or constituents (as defined in appendix IV of chapter 33-24-02) that caused the department to list the waste, ~~using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05;~~ or
      - (2) ~~Containing~~Although containing one or more of the hazardous constituents (as defined in appendix IV of chapter 33-24-02) that caused the department to list the waste, does not meet the criterion of subdivision c of subsection 1 of section

33-24-02-09 when considering the factors used by the department in paragraphs 1 through 11 of subdivision c of subsection 1 of section 33-24-02-09 under which the waste was listed as hazardous; and

- b. Based on a complete application, the department must determine where they have a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and
  - c. The petitioner must demonstrate that the waste does not exhibit any characteristics defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, and 33-24-02-14.
  - d. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
5. If the waste is listed with the code "H" in sections 33-24-02-15 through ~~33-24-02-18~~33-24-02-19:
- a. The petitioner must demonstrate that the waste does not meet the criterion of subdivision b of subsection 1 of section 33-24-02-09;
  - b. Based on a complete application, the department must determine where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and
  - c. The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, and 33-24-02-14 using any applicable methods prescribed therein.
  - d. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
6. Reserved for listing radioactive wastes.
7. Reserved for listing infectious wastes.
8. Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.
9. Each petition must include, in addition to the information required by subsection 2 of section 33-24-01-06:
- a. The name and address of the laboratory facility performing the sampling or tests of the wastes;
  - b. The names and qualifications of the persons sampling and testing the wastes;
  - c. The dates of sampling and testing;
  - d. The location of the generating facility;
  - e. A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

- f. A description of the waste and an estimate of average and maximum monthly and annual quantities of waste covered by the demonstration;
- g. Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste where the demonstration is based on the factors in subdivision c of subsection 1 of section 33-24-02-09;
- h. A description of the methodologies and equipment used to obtain the representative sample;
- i. A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the sample;
- j. A description of the tests performed (including results);
- k. The names and model numbers of the instruments used in performing the tests; and
- l. The following statement signed by the generator of the waste or the generator's authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

10. After receiving a petition for an exclusion, the department may request any additional information which it may reasonably require to evaluate the petition.
11. An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to wastes from any other facility.
12. The department may exclude only part of the waste for which the demonstration is submitted if it has reason to believe that variability of the waste justifies a partial exclusion.
13. Any person seeking to add a hazardous waste or category of hazardous waste to the universal waste regulations of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 may petition for a regulatory amendment under this subsection and sections 33-24-01-06, 33-24-05-760, and 33-24-05-761.
14. To be successful, the petitioner must demonstrate to the satisfaction of the department that regulation under the universal waste regulations of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by subsection 2 of section 33-24-01-06. The petition should include as many of the factors listed in section 33-24-05-761 as are appropriate for the waste or category of waste addressed in the petition.
15. The department will grant or deny a petition using the factors listed in section 33-24-05-761. The decision will be based on the weight of evidence showing that regulation under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 is appropriate for the waste or category of waste, will improve management for the waste or category of waste, and will improve implementation of the hazardous waste program.

16. The department may request additional information needed to evaluate the merits of the petition.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-01-09. ~~Variances~~ [Nonwaste determinations and variances](#) from classification as a solid waste.**

In accordance with the standards and criteria in ~~section~~ [sections](#) 33-24-01-10 [and](#) 33-24-01-17 and the procedures in section 33-24-01-12, the department may determine on a case-by-case basis that the following recycled materials are not solid wastes:

1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in subdivision h of subsection 3 of section 33-24-02-01).
2. Materials that are reclaimed and then reused within the original production process in which they were generated.
3. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.
- [4. Hazardous secondary materials that are reclaimed in a continuous industrial process;](#)
- [5. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate; and](#)
- [6. Hazardous secondary materials that are transferred for reclamation under subdivision y of subsection 1 of section 33-24-02-04, and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste permit or interim status standards.](#)

**History:** Effective October 1, 1986; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-01-10. Standards and criteria for variances from classification as a solid waste.**

1. The department may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The department's decision will be based on the following criteria:
  - a. The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
  - b. The reason that the applicant has accumulated the material for one or more years without recycling seventy-five percent of the volume accumulated at the beginning of the year;

- c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
  - d. The extent to which the material is handled to minimize loss; and
  - e. Other relevant factors.
2. The department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feed stock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:
- a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
  - b. ~~The prevalence of the practice on an industrywide basis;~~
  - ~~c.~~ The extent to which the material is handled before reclamation to minimize loss;
  - ~~d.c.~~ The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
  - ~~e.d.~~ The location of the reclamation operation in relation to the production process;
  - ~~f.e.~~ Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
  - ~~g.f.~~ Whether the person who generates the material also reclaims it; and
  - ~~h.g.~~ Other relevant factors.
3. ~~The department may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed, but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:~~The department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in section 33-24-01-19 and on whether all of the following decision criteria are satisfied:
- a. ~~The degree of processing the material has undergone and the degree of further processing that is required;~~Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
  - b. ~~The value of the material after it has been reclaimed;~~Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;
  - c. ~~The degree to which the reclaimed material is like an analogous raw material;~~Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
  - d. ~~The extent to which an end market for the reclaimed material is guaranteed;~~Whether there is a market for the partially-reclaimed material as demonstrated by known customer

or customers who are further reclaiming the material (for example, records of sales or contracts, or both, and evidence of subsequent use, such as bills of lading); and

e. ~~The extent to which the reclaimed material is handled to minimize loss; and~~ Whether the partially-reclaimed material is handled to minimize loss

~~f. Other relevant factors.~~

4. The department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under subdivision y of subsection 1 of section 33-24-02-04 and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste permit or interim status standards. The department's decision will be based on the following criteria:

a. The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to section 33-24-01-19;

b. The reclamation facility or intermediate facility must satisfy the financial assurance condition in subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04;

c. The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant noncomplier under Resource Conservation and Recovery Act Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

d. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under sections 33-24-02-120 through 33-24-02-129;

e. If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and

f. The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (for example, releases that are not covered by a permit, such as a permit to discharge to water or air), which may include potential releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

**History:** Effective October 1, 1986; amended effective December 1, 1988; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-01-12. Procedures for variances from classification as a solid waste ~~or, for variances to be classified as a boiler or for nonwaste determinations.~~**

The department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers or applications for nonwaste determinations:

- ~~1. The applicant must apply to the department for the variance. The application must address the relevant criteria contained in section 33-24-01-10 or 33-24-01-11~~The applicant must apply to the department for the variance or nonwaste determination. The application must address the relevant criteria contained in section 33-24-01-10, 33-24-01-11 or 33-24-01-17, as applicable..
- The department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The department will accept comments on the tentative decision for thirty days, and may also hold a public hearing upon request or at ~~its~~the department's discretion. The department will issue a final decision after receipt of comments and after the hearing, if any.
- In the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in section 33-24-01-10, 33-24-01-11, or 33-24-01-17 upon which a variance or nonwaste determination has been based, the applicant shall send a description of the change in circumstances to the department. The department may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or nonwaste determination or may require the facility to reapply for the variance or nonwaste determination.
- Variances and nonwaste determination are effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must reapply for a variance or nonwaste determination. If a facility reapplies for a variance or nonwaste determination within six months, the facility may continue to operate under an expired variance or nonwaste determination until receiving a decision on the facility's reapplication from the department.
- Facilities receiving a variance or nonwaste determination must provide notification as required by section 33-24-01-18.

**History:** Effective October 1, 1986; amended effective July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-01-13. Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.**

The department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in paragraph ~~4~~3 of subdivision b of subsection 1 of section 33-24-02-06 should be regulated under subsections 2 and 3 of section 33-24-02-06. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the department will consider the following factors:

- The types of materials accumulated or stored and the amounts accumulated or stored;
- The method of accumulation or storage;
- The length of time the materials have been accumulated or stored before being reclaimed;

4. Whether any contaminants are being released into the environment or are likely to be so released; and
5. Other relevant factors. The procedures for this decision are set forth in section 33-24-01-14 of this chapter.

**History:** Effective October 1, 1986; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-01-14. Procedures for case-by-case regulation of hazardous waste recycling activities.**

The department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in paragraph 4<sup>3</sup> of subdivision b of subsection 1 of section 33-24-02-06 under the provisions of subsections 2 and 3 of section 33-24-02-06 rather than under the provisions of section 33-24-05-230:

1. If a generator is accumulating the waste, the department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of chapter 33-24-03. The notice will become final within thirty days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the department will hold a public meeting and will provide notice of the hearing to the public and allow public participation at the hearing. The department will issue a final order after the hearing stating whether or not compliance with chapter 33-24-03 is required. The order becomes effective thirty days after serving the decision unless the department specifies a later date or unless review by the department is requested. The order may be appealed to the department by any person who participated in the public hearing. The department may choose to grant or to deny the appeal. Final department action occurs when a final order is issued and department review procedures are exhausted.
2. If the person is accumulating the recyclable materials at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of chapters 33-24-06 and 33-24-07. The owner or operator of the facility must apply for a permit within no less than sixty days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the department's decision, the owner or operator may do so in his or her permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question whether the department's decision was proper will remain open for consideration during the public comment period discussed under chapter 33-24-07 and in any subsequent hearing.

**History:** Effective October 1, 1986; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-01-17. Standards and criteria for nonwaste determinations.**

1. An applicant may apply to the department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in subsections 2 or 3, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under section 33-24-01-10).

2. The department may grant a nonwaste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 33-24-01-19, and on the following criteria:

a. The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

b. Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

c. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical, or from a health and environmental risk perspective than would otherwise be released by the production process; and

d. Other relevant factors that demonstrate the hazardous secondary material is not discarded including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under section 33-24-02-02 or 33-24-02-04.

3. The department may grant a nonwaste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 33-24-01-19, and on the following criteria:

a. Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

b. Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

c. Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

d. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical, or from a health and environmental risk perspective than would otherwise be released by the production process; and

e. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under section 33-24-02-02 or 33-24-02-04.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-01-18. Notification requirements for hazardous secondary materials.**

1. Facilities managing hazardous secondary materials under section 33-24-01-09, subdivision x, y, or z of subsection 1 of section 33-24-02-04, must send a notification prior to operating under the regulatory provision and by March first of each even numbered year thereafter, to the department using department-approved forms that include the following information:
  - a. The name, address, and identification number (if applicable) of the facility;
  - b. The name and telephone number of a contact person;
  - c. The North American industry classification system code of the facility;
  - d. The regulation under which the hazardous secondary materials will be managed;
  - e. When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
  - f. A list of hazardous secondary materials that will be managed according to the regulation (reported as the hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
  - g. For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
  - h. The quantity of each hazardous secondary material to be managed annually; and
  - i. The certification (included in the department-approved form) signed and dated by an authorized representative of the facility.
2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation or regulations listed above, the facility shall notify the department within thirty days using a department-approved form. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages or reclaims, or any combination, hazardous secondary materials under the regulation or regulations above and does not expect to manage any amount of hazardous secondary materials for at least one year.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-01-19. Legitimate recycling of hazardous secondary materials.**

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste rules must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this subsection.
  - a. Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:
    - (1) Contributes valuable ingredients to a product or intermediate;
    - (2) Replaces a catalyst or carrier in the recycling process;

(3) Is the source of a valuable constituent recovered in the recycling process:

(4) Is recovered or regenerated by the recycling process; or

(5) Is used as an effective substitute for a commercial product.

b. The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(1) Sold to a third party; or

(2) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

c. The generator and the recycler shall manage the hazardous secondary material as a valuable commodity when the hazardous secondary material is under the generator's or recycler's control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

d. The product of the recycling process must be comparable to a legitimate product or intermediate:

(1) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(a) The product of the recycling process does not exhibit a hazardous characteristic (as defined in sections 33-24-02-10 through 33-24-02-14) that analogous products do not exhibit, and

(b) The concentrations of any hazardous constituents found in Appendix V of chapter 33-24-02 which are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(2) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(a) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (for example, commodity specifications grades for common metals), or

(b) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (for example, closed loop recycling).

(3) If the product of the recycling process has levels of hazardous constituents which are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph 1 or 2, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling shall conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate

based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations that show the recycled product does not contain levels of hazardous constituents which pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained onsite for three years after the recycling operation has ceased. The person performing the recycling shall notify the department of this activity using a department-approved form.

2. [Reserved]

3. [Reserved]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**CHAPTER 33-24-02  
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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<u>33-24-02-172</u>	<u>Standards - Process Vents</u>
<u>33-24-02-173</u>	<u>Standards - Closed-Vent Systems and Control Devices</u>
<u>33-24-02-174</u>	<u>Test Methods and Procedures</u>
<u>33-24-02-175</u>	<u>Recordkeeping Requirements</u>
<u>33-24-02-176</u>	<u>[Reserved]</u>
<u>33-24-02-177</u>	<u>[Reserved]</u>
<u>33-24-02-178</u>	<u>[Reserved]</u>
<u>33-24-02-179</u>	<u>[Reserved]</u>
<u>33-24-02-180</u>	<u>Applicability to Air Emission Standards for Equipment Tanks</u>
<u>33-24-02-181</u>	<u>Definitions</u>
<u>33-24-02-182</u>	<u>Standards - Pumps in Light Liquid Service</u>
<u>33-24-02-183</u>	<u>Standards - Compressors</u>
<u>33-24-02-184</u>	<u>Standards - Pressure Relief Devices in Gas or Vapor Service</u>
<u>33-24-02-185</u>	<u>Standards - Sampling Connection Systems</u>
<u>33-24-02-186</u>	<u>Standards - Open-Ended Valves or Lines</u>
<u>33-24-02-187</u>	<u>Standard - Valves in Gas or Vapor Service or in Light Liquid Service</u>
<u>33-24-02-188</u>	<u>Standards - Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors</u>
<u>33-24-02-189</u>	<u>Standards - Delay of Repair</u>
<u>33-24-02-190</u>	<u>Standards - Closed-Vent Systems and Control Devices</u>
<u>33-24-02-191</u>	<u>Alternative Standards for Valves in Gas or Vapor Service or in Light Liquid Service - Percentage of Valves Allowed to Leak</u>
<u>33-24-02-192</u>	<u>Alternative Standards for Valves in Gas or Vapor Service or in Light Liquid Service - Skip Period Leak Detection and Repair</u>
<u>33-24-02-193</u>	<u>Test Methods and Procedures</u>
<u>33-24-02-194</u>	<u>Recordkeeping Requirements</u>
<u>33-24-02-195</u>	<u>[Reserved]</u>
<u>33-24-02-196</u>	<u>[Reserved]</u>
<u>33-24-02-197</u>	<u>[Reserved]</u>
<u>33-24-02-198</u>	<u>[Reserved]</u>

<a href="#">33-24-02-199</a>	<a href="#">[Reserved]</a>
<a href="#">33-24-02-200</a>	<a href="#">Applicability of Air Emission Standards for Tanks and Containers</a>
<a href="#">33-24-02-201</a>	<a href="#">Definitions</a>
<a href="#">33-24-02-202</a>	<a href="#">Standards - General</a>
<a href="#">33-24-02-203</a>	<a href="#">Material Determination Procedures</a>
<a href="#">33-24-02-204</a>	<a href="#">Standards - Tanks</a>
<a href="#">33-24-02-205</a>	<a href="#">[Reserved]</a>
<a href="#">33-24-02-206</a>	<a href="#">Standards - Containers</a>
<a href="#">33-24-02-207</a>	<a href="#">Standards - Closed-Vent Systems and Control Devices</a>
<a href="#">33-24-02-208</a>	<a href="#">Inspection and Monitoring Requirements</a>
<a href="#">33-24-02-209</a>	<a href="#">Recordkeeping Requirements</a>
<a href="#">33-24-02-210</a>	<a href="#">[Reserved]</a>
<a href="#">33-24-02-211</a>	<a href="#">[Reserved]</a>
<a href="#">33-24-02-212</a>	<a href="#">[Reserved]</a>
<a href="#">33-24-02-213</a>	<a href="#">[Reserved]</a>
<a href="#">33-24-02-214</a>	<a href="#">[Reserved]</a>

### **33-24-02-01. Purpose and scope.**

1. This chapter identifies those solid wastes which are subject to regulation as hazardous wastes and which are subject to the notification requirements. In this chapter:
  - a. Sections 33-24-02-01 through 33-24-02-07 define the terms "solid waste" and "hazardous waste", identify those wastes which were excluded from regulation under chapters 33-24-03 through 33-24-07, and establish special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.
  - b. Sections 33-24-02-08 and 33-24-02-09 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous waste.
  - c. Sections 33-24-02-10 through 33-24-02-14 identify characteristics of hazardous waste.
  - d. Sections 33-24-02-15 through ~~33-24-02-18~~[33-24-02-19](#) list particular hazardous wastes.
2. The definition of solid waste contained in this chapter:
  - a. Applies only to wastes that also are hazardous for purposes of the rules implementing North Dakota Century Code chapter 23-20.3. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recyclable.
  - b. This chapter identifies only some of the materials which are solid wastes and hazardous wastes under North Dakota Century Code chapter 23-20.3. A material which is not defined as a solid waste in this chapter or is not a hazardous waste identified or listed in this chapter, is still a solid waste and a hazardous waste for purposes of these sections if:
    - (1) In the case of North Dakota Century Code section 23-20.3-06, the department has reason to believe that the material may be a hazardous waste within the meaning of subsection 5 of North Dakota Century Code section 23-20.3-02; or
    - (2) In the case of North Dakota Century Code section 23-20.3-08, the statutory elements are established.
3. For the purpose of sections 33-24-02-02 and 33-24-02-06:

- a. A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.
- b. "Sludge" has the same meaning used in section 33-24-01-04.
- c. A "byproduct" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residue, such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.
- d. A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of subdivisions x and y of subsection 1 of section 33-24-02-04, smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in subdivisions a through c of subsection 4 of section 33-24-05-525, and if the residuals meet the requirements specified in section 33-24-05-537.
- e. A material is "used or reused" if it is either:
  - (1) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal containing secondary materials); or
  - (2) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner or in wastewater treatment).
- f. "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.
- g. A material is "recycled" if it is used, reused, or reclaimed.
- h. A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year (commencing on January first) the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to each material of the same type (for example, slags from a single smelting process) that is recycled in the same way (for example, from which the same material is recovered or that is used in the same way). Material accumulating in units that would be exempt from regulation under subsection 3 of section 33-24-02-04 are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.)

Materials are no longer in this category once they are removed from accumulation for recycling, however.

- i. "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.
- j. "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.
- k. "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (for example, sorted), and fines, drosses, and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (subdivision n of subsection 1 of section 33-24-02-04)).
- l. "Prompt scrap metal" is scrap metal as generated by the metal working and fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap metal is also known as industrial or new scrap metal.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-02. Definition of solid waste.**

1. A solid waste is:
  - a. Any discarded material that is not excluded by subsection 1 of section 33-24-02-04 or that is not excluded by variance granted under sections 33-24-01-09 and 33-24-01-10 or that is not excluded by a nonwaste determination under sections 33-24-01-09 and 33-24-01-17.
  - b. A discarded material is any material which is:
    - (1) Abandoned, as explained in subsection 2;
    - (2) Recycled, as explained in subsection 3;
    - (3) Considered inherently wastelike, as explained in subsection 4; or
    - (4) A military munition identified as a solid waste in section 33-24-05-822.
2. Materials are solid wastes if they are abandoned by being:
  - a. Disposed of;
  - b. Burned or incinerated; ~~or~~
  - c. Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; ~~or~~ or
  - d. Sham recycled, as explained in subsection 7.

3. Materials are solid wastes if they are recycled or accumulated, stored, or treated before recycling as specified in subdivisions a through d.
  - a. Used in a manner constituting disposal.
    - (1) Materials noted with a "\*" in column 1 of table 1 are solid wastes when they are:
      - (a) Applied to or placed on the land in a manner that constitutes disposal; or
      - (b) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a solid waste).
    - (2) However, commercial chemical products listed in section 33-24-02-18 are not solid wastes if they are applied to the land and that is their ordinary manner of use.
  - b. Burning for energy recovery.
    - (1) Materials noted with a "\*" in column 2 of table 1 are solid wastes when they are:
      - (a) Burned to recover energy; or
      - (b) Used to produce a fuel or are otherwise contained in fuels (in which case the fuel itself remains a solid waste).
    - (2) However, commercial chemical products listed in section 33-24-02-18 are not solid wastes if they are themselves fuels.
  - c. Reclaimed. Materials noted with a "\*" in column 3 of table 1 are solid wastes when reclaimed (~~except as provided by~~ unless they meet the requirements of subdivision q, x, y, or z of subsection 1 of section 33-24-02-04). Materials noted with a "-" in column 3 of table 1 are not solid wastes when reclaimed.
  - d. Accumulated speculatively. Materials noted with a "\*" in column 4 of table 1 are solid wastes when accumulated speculatively.
4. Inherently wastelike materials. The following materials are solid wastes when they are recycled in any manner:
  - a. Hazardous waste numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.
  - b. Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in sections 33-24-02-10 through 33-24-02-19, except for brominated material that meets the following criteria:
    - (1) The material must contain a bromine concentration of at least forty-five percent;
    - (2) The material must contain less than a total of one percent of toxic organic compounds listed in appendix V ~~of chapter 33-24-02~~; and
    - (3) The material is processed continually onsite in the halogen acid furnace via direct conveyance (hard piping).
  - c. The department will use the following criteria to add wastes to that list:
    - (1) The materials:
      - (a) Are ordinarily disposed of, burned, or incinerated; or

- (b) Contain toxic constituents listed in appendix V ~~of chapter 33-24-02~~ and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
  - (2) The material may pose a substantial hazard to human health and the environment when recycled.
5. Materials that are not solid waste when recycled:
- a. Materials are not solid waste when they can be shown to be legitimately recycled as specified in section 33-24-01-19 by being:
    - (1) Used or reused as ingredients in an industrial process to make a product provided the materials are not being reclaimed;
    - (2) Used or reused as effective substitutes for commercial products; or
    - (3) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. If the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. If the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at subdivision q of subsection 1 of section 33-24-02-04 apply rather than this ~~paragraph~~subsection.
  - b. The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs 1 through 3 of subdivision a):
    - (1) Materials used in a manner constituting disposal, or used to produce products that are applied to the land;
    - (2) Materials burned for energy recovery, used to produce a fuel, or contained in fuels;
    - (3) Materials accumulated speculatively; or
    - (4) Materials listed in subdivisions a and b of subsection 4.
6. Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing North Dakota Century Code chapter 23-20.3 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from the regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.
7. Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in section 33-24-01-19.

TABLE 1				
	Use Constituting Disposal Subdivision a of Subsection 3 of Section	Energy Recovery/Fuel Subdivision b of Subsection 3 of	Reclamation Subdivision c of Subsection 3 of Section	Speculative Accumulation Subdivision d of

	33-24-02-02 (1)	Section 33-24-02-02 (2)	33-24-02-02 <sup>1</sup> (3)	Subsection 3 of Section 33-24-02-02 (4)
Spent materials	(*)	(*)	(*)	(*)
Sludges (listed in Section 33-24-02-16 or Section 33-24-02-17 of Chapter 33-24-02)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Byproducts (listed in Section 33-24-02-16 or Section 33-24-02-17 of Chapter 33-24-02)	(*)	(*)	(*)	(*)
Byproducts exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products (listed in Section 33-24-02-18 of Chapter 33-24-02)	(*)	(*)	-	-
<del>Scrap metal other than excluded scrap metal (see Subdivision i of Subsection 3 of Section 33-24-02-04)</del> <u>Scrap metal that is not excluded under subdivision m of subsection 1 of Section 33-24-02-04</u>	(*)	(*)	(*)	(*)
<sup>1</sup> Except as provided by Subdivision q, x, y, or z of Subsection 1 of Section 33-24-02-04 <del>for mineral processing secondary materials.</del> Note - The terms "spent materials", "sludges", "byproducts", "scrap metal", and "processed scrap metal" are defined in Section 33-24-02-01.				

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-02-03. Definition of hazardous waste.

1. A solid waste, as defined in section 33-24-02-02, is a hazardous waste if:
  - a. It is not excluded from regulation as a hazardous waste under subsection 2 of section 33-24-02-04; and
  - b. It meets any of the following criteria:
    - (1) It exhibits any of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under subdivision g of subsection 2 of section 33-24-02-04 and any other solid waste exhibiting a characteristic of hazardous waste under sections 33-24-02-10 through 33-24-02-14 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the nonexcluded

wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to section 33-24-02-14 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to the mixture.

- (2) It is listed in ~~this chapter~~ sections 33-24-02-15 through 33-24-02-19 and has not been excluded from the lists in ~~this chapter~~ sections 33-24-02-15 through 33-24-02-19 by petitioning the department under sections 33-24-01-06 and 33-24-01-08.
- (3) [Reserved]
- (4) It is a mixture of solid waste and one or more hazardous wastes listed in sections 33-24-02-15 through ~~33-24-05-22~~ 33-24-02-19 and has not been excluded from this subdivision under sections 33-24-01-06 and 33-24-01-08, or subsection 7 or 8; however, the following mixtures of solid wastes and hazardous wastes listed in sections 33-24-02-15 through ~~33-24-02-22~~ 33-24-02-19 are not hazardous wastes (except by application of paragraph 1 or 2 ~~of subdivision b~~) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under subsections 18 and 19, or subsection 25 of North Dakota Century Code section 61-28-04 (including wastewater at the facilities which have eliminated the discharge of wastewater) and:
  - (a) One or more of the following spent solvents listed in section 33-24-02-16 - benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed one part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of the facility's sampling and analysis plan with the department. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once the facility receives confirmation that the sampling and analysis plan has been received by the department. The department may reject the sampling and analysis plan if the department finds that, the sampling and analysis plan fails to include the above information, or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the sampling and analysis plan or if the department finds that the facility is not following the sampling and analysis plan, the department shall notify the facility

to cease the use of the direct monitoring option until such time as the basis for rejection are corrected;

- (b) One or more of the following spent solvents listed in section 33-24-02-16 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived from the combustion of these spent solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed twenty-five parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed twenty-five parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of the facility's sampling and analysis plan with the department. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once the facility receives confirmation that the sampling and analysis plan has been received by the department. The department may reject the sampling and analysis plan if the department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the sampling and analysis plan or if the department finds that the facility is not following the sampling and analysis plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the basis for rejection are corrected;
- (c) One of the following wastes listed in section 33-24-02-17, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry (hazardous waste number K050), crude oil storage tank sediment from petroleum refining operations (hazardous waste number K169), clarified slurry oil tank sediment or in-line filter/separation solids, or both, from petroleum refining operations (hazardous waste number K170), spent hydrotreating catalyst (hazardous waste number K171), and spent hydrotreating catalyst (hazardous waste number K172);
- (d) A discarded hazardous waste, chemical commercial product, or chemical intermediate listed in ~~section~~sections 33-24-02-16 through 33-24-02-18, arising from ~~de minimus~~de minimis losses of these materials ~~from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process.~~ For purposes of this subparagraph, "de minimus~~de minimis~~" losses include~~are~~ inadvertent releases to a wastewater treatment system, including those from normal material handling operations, (e.g., spills from the unloading or transfer of materials from bins or other containers ~~and~~, leaks from pipes, valves, or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers;

leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in sections 33-24-02-16 through 33-24-02-17, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in sections 33-24-02-15 through 33-24-02-19 must either have eliminated the discharge of wastewaters or have included in the facility's clean water act permit application or submission to the facility's pretreatment control authority the constituents for which each waste was listed (in chapter 33-24-02 appendix IV); and the constituents in the table "treatment standards for hazardous wastes" in section 33-24-05-280 for which each waste has a treatment standard (for example, land disposal restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the clean water permit application or the submission to the pretreatment control authority must be placed in the facility's onsite files;

- (e) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in sections 33-24-02-15 through 33-24-02-19, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation;
- (f) One or more of the following wastes listed in section 33-24-02-17 - wastewaters from the production of carbamates and carbamoyl oximes (hazardous waste number K157) - provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, ~~that is~~ for example, what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any ~~dilutions~~ dilution into the headworks of the facility's wastewater treatment system does not exceed a total of five parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed five parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file copy of the facility's sampling and analysis plan with the department. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once the facility receives confirmation that the sampling and analysis plan has been received by the department. The department may reject the sampling and analysis plan if the department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the

facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the sampling and analysis plan or if the department finds that the facility is not following the sampling and analysis plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the basis for rejection are corrected; or

- (g) Wastewaters derived from the treatment of one or more of the following wastes listed in section 33-24-02-17 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (hazardous waste number K156) - provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed five milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of the facility's sampling and analysis plan with the department. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once the facility receives confirmation that the sampling and analysis plan has been received by the department. The department may reject the sampling and analysis plan if the department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the sampling and analysis plan or if the department finds that the facility is not following the sampling and analysis plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the basis for rejection are corrected.

- (5) Rebuttable presumption for used oil. Used oil containing more than one thousand parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, ~~by using an analytical method from environmental protection agency publication SW-846, as referenced in section 33-24-01-05,~~ to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).

- (a) The rebuttable presumption does not apply to metalworking oils or fluids, or both, containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils or fluids, or both. The presumption does apply to metalworking oils or fluids, or both, if such oils or fluids, or both, are recycled in any other manner, or disposed.
- (b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption

does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.

2. A solid waste which is not excluded from regulation under subdivision a of subsection 1 becomes a hazardous waste when any of the following events occur:
  - a. In the case of a waste listed in this chapter, when the waste first meets the listing description set forth in ~~this chapter~~ [sections 33-24-02-15 through 33-24-02-19](#).
  - b. In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in ~~this chapter~~ [sections 33-24-02-15 through 33-24-02-19](#) is first added to the solid waste.
  - c. In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in ~~this chapter~~ [sections 33-24-02-10 through 33-24-02-14](#).
3. Unless and until it meets the criteria of subsection 4:
  - a. A hazardous waste will remain a hazardous waste.
  - b. Except as otherwise provided in paragraph 2:
    - (1) Except as otherwise provided in paragraph 2, or subsection 7 or 8, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)
    - (2) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:
      - (a) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (standard industrial codes 331 and 332).
      - (b) Wastes from burning any of the materials exempted from regulation by paragraphs 3 and 4 of subdivision c of subsection 1 of section 33-24-02-06.
      - (c) Nonwastewater residue.
        - [1] Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in the definition for "industrial furnace" in section 33-24-01-04), that are disposed in solid waste management units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly or when the process or operation generating the waste changes or both. Persons claiming this exclusion in an enforcement action will have the

burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for Any Single Composite Sample - Toxicity Characteristic Leaching Procedure (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater high temperature metals recovery residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater high temperature metals recovery residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

[2] A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062, or F006 high temperatures

metal recovery residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste management units. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes or if the solid waste management unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December thirty-first. The notification must include the following information: the name and address of the solid waste management unit receiving the waste shipments; the hazardous waste numbers and treatability groups at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

- (d) Biological treatment sludge from the treatment of one of the following wastes listed in section 33-24-02-17 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (hazardous waste number K156), and wastewaters from the production of carbamates and carbamoyl oximes (hazardous waste number K157).
  - (e) Catalyst inert support media separated from one of the following wastes listed in section 33-24-02-17, spent hydrotreating catalyst, hazardous waste number K171, and spent hydrorefining catalyst, hazardous waste number K172.
4. Any solid waste described in subsection 3 is not a hazardous waste if it meets the following criteria:
- a. In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of sections 33-24-05-250 through 33-24-05-299, even if they no longer exhibit a characteristic at the point of land disposal.); or
  - b. In the case of a waste which is a listed waste ~~under this chapter~~ in sections 33-24-02-15 through 33-24-02-19, contains a waste listed in ~~this chapter~~ sections 33-24-02-15 through 33-24-02-19 or is derived from a waste listed in ~~this chapter~~ sections 33-24-02-15 through 33-24-02-19, it also has been excluded from subsection 3 under sections 33-24-01-06 and 33-24-01-08.
5. Notwithstanding subsections 1 through 4 and provided the debris as defined in sections 33-24-05-250 through 33-24-05-299 does not exhibit a characteristic identified at sections ~~33-24-05-210~~ 33-24-02-10 through ~~33-24-05-214~~ 33-24-02-14, the following materials are not subject to regulation under ~~chapter~~ chapters 33-24-01, 33-24-02, 33-24-03, 33-24-04, 33-24-05, or through 33-24-04, 33-24-06, sections 33-254-05-01 through 33-24-05-559, or 33-24-05-800 through 33-24-05-929:
- a. Hazardous debris as defined in sections 33-24-05-250 through 33-24-05-299 that has been treated using one of the required extraction or destruction technologies specified in

table 1 of section 33-24-05-285; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

- b. Debris as defined in sections 33-24-05-250 through 33-24-05-299 that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.
6. [Reserved]
  7. A hazardous waste that is listed in sections 33-24-02-15 through ~~33-24-02-22~~33-24-02-19 solely because it exhibits one or more characteristics of ignitability as defined under section 33-24-02-11, corrosivity as defined under section 33-24-02-12, or reactivity as defined under section 33-24-02-13 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.
    - a. The exclusion described in this subsection also pertains to:
      - (1) Any mixture of a solid waste and a hazardous waste listed in sections 33-24-02-15 through ~~33-24-02-22~~33-24-02-19 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph 4 of subdivision b of subsection 1; and
      - (2) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in sections 33-24-02-15 through ~~33-24-02-22~~33-24-02-19 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph 1 of subdivision b of subsection 3.
    - b. Wastes excluded under this subsection are subject to the land disposal restrictions in sections 33-24-05-250 through 33-24-05-299, as applicable, even if the wastes no longer exhibit a characteristic at the point of land disposal.
    - c. Any mixture of a solid waste excluded from regulation under subdivision g of subsection 2 of section 33-24-02-04 and a hazardous waste listed in sections 33-24-02-15 through 33-24-02-19 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph 4 of subdivision b of subsection 1 is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14 for which the hazardous waste listed in sections 33-24-02-15 through 33-24-02-19 was listed.
  8. Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of sections 33-24-05-850 through ~~33-24-05-949~~33-24-05-929 "eligible radioactive mixed waste".
    - a. The exemption described in this subsection also pertains to:
      - (1) Any mixture of a solid waste and an eligible radioactive mixed waste; and
      - (2) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.
    - b. Waste exempted under this subsection must meet the eligibility criteria and specified conditions in sections 33-24-05-856 and 33-24-05-857, for storage and treatment, and in sections 33-24-05-890 and 33-24-05-895, for transportation and disposal. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-04. Exclusions.**

1. **Materials that are not solid wastes.** The following materials are not solid wastes for the purpose of this chapter:
  - a. Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.
  - b. Industrial wastewater discharges that are point source discharges subject to regulation under subsections 18 and 19 of North Dakota Century Code section 61-28-04. (Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)
  - c. Irrigation return flows.
  - d. Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].
  - e. Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.
  - f. Pulping liquors (for example, black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection 3 of section 33-24-02-01.
  - g. Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection 3 of section 33-24-02-01.
  - h. Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:
    - (1) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
    - (2) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
    - (3) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
    - (4) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.
  - i. Wood preserving:
    - (1) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

- (2) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.
- (3) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in paragraphs 1 and 2, so long as they meet all of the following conditions:
  - (a) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at waterborne plants in the production process for their original intended purpose;
  - (b) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;
  - (c) Any unit used to manage wastewaters and spent wood preserving solutions, or both, prior to reuse can be visually or otherwise determined to prevent such releases;
  - (d) Any drip pad used to manage the wastewaters and spent wood preserving solutions, or both, prior to reuse complies with the applicable standards in subsection 5 of section 33-24-06-16, regardless of whether the plant generates a total of less than one hundred kilograms per month of hazardous waste; and
  - (e) Prior to operating pursuant to this exclusion, the plant owner or operator ~~submits to the department~~prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language:

"I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation."

The plant must maintain a copy of that document in its onsite records ~~for a period of no less than three years from the date specified in the notice~~until closure of the facility. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

- j. Hazardous waste numbers K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the toxicity characteristic specified in section 33-24-02-14 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.
- k. Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.
- l. Materials considered:

- (1) Oil-bearing hazardous secondary materials (for example, sludges, byproducts, or spent materials) that are generated at a petroleum refinery (standard industrial code 2911) and are inserted into the petroleum refining process (standard industrial code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (for example, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the core product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph 2, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (for example, from sources other than petroleum refineries) are not excluded under this paragraph. Residuals generated from processing or recycling materials excluded under [this paragraph-4](#), where such materials as generated would have otherwise met a listing under sections 33-24-02-15 through ~~33-24-02-22~~[33-24-02-19](#), are designated as F037 listed wastes when disposed or intended for disposal.
  - (2) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph 1. Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (standard industrial codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in sections 33-24-02-15 through ~~33-24-02-22~~[33-24-02-19](#); however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in section 33-24-05-600.
- m. Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.
  - n. Shredded circuit boards being recycled provided that they are:
    - (1) Stored in containers sufficient to prevent a release to the environment prior to recovery; and
    - (2) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.
  - o. Condensates derived from the overhead gases from kraft mill stream strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.
  - p. ~~Comparable fuels or comparable syngas fuels (for example, comparable/syngas fuels) that meet the requirements of section 33-24-02-22.~~[\[Reserved\]](#)
  - q. Spent materials (as defined in section 33-24-02-01) (other than hazardous wastes listed in sections 33-24-02-15 through ~~33-24-02-22~~[33-24-02-19](#)) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing, or by beneficiation, provided that:
    - (1) The spent material is legitimately recycled to recover minerals, acids, cyanide, water, or other values;
    - (2) The spent material is not accumulated speculatively;

- (3) Except as provided in paragraph 4, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of nonearthen materials providing structural support (except smelter buildings may have partially earthen floors provided the spent material is stored on the nonearthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be freestanding, not be a surface impoundment (as defined in section 33-24-01-04), and be manufactured of a material suitable for containment of its contents; a container must be freestanding and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner or operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed, and operated to prevent significant releases to the environment of these materials.
- (4) The department may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decisionmaker must affirm that pads are designed, constructed, and operated to prevent significant releases of the spent material into the environment. Pads must provide the same degree of containment afforded by the ~~non-Resource Conservation and Recovery Act~~ hazardous waste tanks, containers, and buildings eligible for exclusion.
  - (a) The decisionmaker must also consider if storage on pads poses the potential for significant releases via ground water, surface water, and air exposure pathways. Factors to be considered for assessing the ground water, surface water, and air exposure pathways are the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway.
  - (b) Pads must meet the following minimum standards: be designed of nonearthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal; have run-on or runoff controls, or both; be operated in a manner which controls fugitive dust; and have integrity assurance through inspections and maintenance programs.
  - (c) Before making a determination under this paragraph, the department must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers or broadcasting notice over local radio stations.
- (5) The owner or operator provides notice to the department, providing the following information: the types of materials to be recycled, the type and location of the storage units and recycling processes, and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.
- (6) For purposes of subdivision g of subsection 2, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous

wastes. Listed hazardous wastes and characteristic hazardous wastes generated by nonmineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

- r. Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (standard industrial code 2911) along with normal petroleum refinery process streams, provided:
  - (1) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in section 33-24-02-11) or toxicity for benzene (as defined in section 33-24-02-14, hazardous waste code D018), or both; and
  - (2) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary standard industrial code is 2869, but where operations may also include standard industrial codes 2821, 2822, and 2865; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (for example, sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.
- s. Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in subsection 3 of section 33-24-02-01.
- t. Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:
  - (1) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in subdivision h of subsection 3 of section 33-24-02-01.
  - (2) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:
    - (a) Submit a one-time notice to the department, which contains the name, address, and identification number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this subdivision.
    - (b) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of nonearthen materials that provide structural support, and must have a floor, walls, and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

- [1] Have containment structures or systems sufficiently impervious to contain leaks, spills, and accumulated precipitation;
  - [2] Provide for effective drainage and removal of leaks, spills, and accumulated precipitation; and
  - [3] Prevent run-on into the containment system.
- (c) With each offsite shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this subdivision.
  - (d) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:
    - [1] Name of the transporter and date of the shipment;
    - [2] Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and
    - [3] Type and quantity of excluded secondary material in each shipment.
- (3) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:
    - (a) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in subparagraph b of paragraph 2 ~~of subdivision t.~~
    - (b) Submit a one-time notification to the department that, at a minimum, specifies the name, address, and identification number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this subdivision.
    - (c) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.
    - (d) Submit to the department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process or processes from which they were generated. The annual report shall be submitted by March first of every year.
  - (4) Nothing in this ~~section~~ subdivision preempts, overrides, or otherwise negates the provision in section 33-24-03-02, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.
  - (5) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice

described in subparagraph a of paragraph 2-~~of subdivision t~~, and that afterward will be used only to store hazardous secondary materials excluded under this ~~paragraph~~subdivision, are not subject to the closure requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through ~~33-24-05-894~~33-24-05-819 and the applicable requirements of subsection 5 of section 33-24-06-16.

u. Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under subdivision t, provided that:

(1) The fertilizers meet the following contaminant limits:

(a) For metal contaminants:

<b>Constituent</b>	<b>Maximum Allowable Total Concentration in Fertilizer, Per Unit (1 Percent) of Zinc (ppm)</b>
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(b) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(2) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product or products introduced into commerce.

(3) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph 2-~~of subdivision u~~. Such records must at a minimum include:

(a) The dates and times product samples were taken and the dates the samples were analyzed;

(b) The names and qualifications of the person taking the samples;

(c) A description of the methods and equipment used to take the samples;

(d) The name and address of the laboratory facility at which analyses of the samples were performed;

(e) A description of the analytical methods used, including any cleanup and sample preparation methods; and

- (f) All laboratory analytical results used to determine compliance with the contaminant limits specified in subdivision u.

v. Used cathode ray tubes:

- (1) Used, intact cathode ray tubes as defined in section 33-24-01-04 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in subdivision h of subsection 3 of section 33-24-02-01 by cathode ray tube collectors or glass processors.
- (2) Used, intact cathode ray tubes as defined in section 33-24-01-04 are not solid wastes when exported for recycling provided that they meet the requirements of section 33-24-02-26.
- (3) Used, broken cathode ray tubes as defined in section 33-24-01-04 are not solid wastes provided that they meet the requirements of section 33-24-02-25.
- (4) Glass removed from cathode ray tubes is not a solid waste provided that it meets the requirements of subsection 3 of section 33-24-02-25.

w. Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

- (1) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "excluded solvent-contaminated wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
- (2) The solvent-contaminated wipes may be accumulated by the generator for up to one hundred eighty days from the start date of accumulation for each container prior to being sent for cleaning;
- (3) At the point of being sent for cleaning onsite or at the point of being transported offsite for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in section 33-24-01-04.
- (4) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in chapters 33-24-01 through 33-24-04 and 33-24-06, and sections 33-24-05-01 through 33-24-05-559, 33-24-05-700 through 33-24-05-929, and 33-24-05-950 through 33-24-05-1149;
- (5) Generators must maintain at the facility the following documentation:
- (a) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;
- (b) Documentation that the 180-day accumulation time limit in paragraph 2 of subdivision w of subsection 1 of section 33-24-02-04 is being met;

(c) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned onsite or at the point of being transported offsite for laundering or dry cleaning;

(6) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

x. Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with:

(1) The hazardous secondary material:

(a) Is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(b) Is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in section 33-24-01-04, and if the generator provides one of the following certifications: "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this subparagraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in section 33-24-01-04 shall not be deemed to "control" such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmation); or

(c) Is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during

the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmations). For purposes of this subparagraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contact with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(2) The following requirements apply to hazardous secondary material managed under this exclusion:

(a) The hazardous secondary material is contained as defined in section 33-24-01-04. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(b) The hazardous secondary material is not speculatively accumulated, as defined in subdivision h of subsection 3 of section 33-24-02-01.

(c) Notice is provided as required by section 33-24-01-18.

(d) The material is not otherwise subject to material-specific management conditions under subsection 1 when reclaimed, and it is not a spent lead-acid battery (see sections 33-24-05-235 and 33-24-05-702).

(e) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination onsite. Documentation must be a written description of how the recycling meets all four factors in subsection 1 of section 33-24-01-19. Documentation must be maintained for three years after the recycling operation has ceased.

(f) The emergency preparedness and response requirements found in sections 33-24-02-120 through 33-24-02-129 are met.

y. Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(1) The material is not speculatively accumulated, as defined in subdivision h of subsection 3 of section 33-24-02-01;

(2) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten days at a transfer facility, as

defined in section 33-24-01-04, and is packaged according to applicable department of transportation regulations at 49 CFR Parts 173, 178, and 179 while in transport;

(3) The material is not otherwise subject to material-specific management conditions under subsection 1 when reclaimed, and it is not a spent lead-acid battery (see sections 33-24-05-235 and 33-24-05-702);

(4) The reclamation of the material is legitimate, as specified under section 33-24-01-19;

(5) The hazardous secondary material generator satisfied all of the following conditions:

(a) The material must be contained as defined in section 33-24-01-04. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(b) The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility or facilities in the United States. A verified reclamation facility is a facility that has been granted a variance under subsection 4 of section 33-24-01-10, or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under subsection 4 of section 33-24-01-10 or the management of the hazardous secondary materials at that facility must be addressed under a hazardous waste permit or interim status standards, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(c) The hazardous secondary material generator must maintain at the generating facility for no less than three years records of all offsite shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

[1] Name of the transporter and date of the shipment;

[2] Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

[3] The type and quantity of hazardous secondary material in the shipment.

(d) The hazardous secondary material generator must maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all offsite shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (for example, financial records, bills of

lading, copies of department of transportation shipping papers, or electronic confirmations of receipt);

(e) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in sections 33-24-02-120 through 33-24-02-129.

(6) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in section 33-24-01-04 satisfy all of the following conditions:

(a) The reclaimer and intermediate facility must maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent offsite from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

[1] Name of the transporter and date of the shipment;

[2] Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

[3] The type and quantity of hazardous secondary material in the shipment; and

[4] For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred offsite for further reclamation, the name and address of the subsequent reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(b) The intermediate facility must send the hazardous secondary material to the reclaimer or reclaimers designated by the hazardous secondary materials generator.

(c) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all offsite shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmations of receipt).

(d) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(e) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to sections 33-24-02-10

through 33-24-02-14, or if the residuals themselves are specifically listed in sections 33-24-02-15 through 33-24-02-19, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of chapters 33-24-01 through 33-24-04, sections 33-24-05-01 through 33-24-05-559, 33-24-05-800 through 33-24-05-929, 33-24-05-950 through 33-24-05-1149, subsection 5 of section 33-24-06-16 and chapter 33-24-06.

(f) The reclaimer and intermediate facility have financial assurance as required under sections 33-24-02-33 through 33-24-02-42.

(g) The reclaimer and intermediate facility have been granted a variance under subsection 4 of section 33-24-01-10 or have a hazardous waste permit or interim status standards that address the management of the hazardous secondary materials; and

(7) All persons claiming the exclusion under this subdivision provide notification as required under section 33-24-01-18.

z. Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(1) The hazardous secondary material consists of one or more of the following spent solvents: toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and methanol;

(2) The hazardous secondary material originated from using one or more of the solvents listed in paragraph 1, in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510).

(3) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in paragraph 1 to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), or the paints and coatings manufacturing sectors (NAICS 325510).

(4) After remanufacturing one or more of the solvents listed in paragraph 1, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the chemical data reporting rule of the Toxic Substances Control Act (40 CFR Parts 704, 710-711), including industrial function codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(5) After remanufacturing one or more of the solvents listed in paragraph 1, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. These

disallowed continuing uses correspond to chemical functional uses in industrial function code U029 under the chemical data reporting rule of the Toxic Substances Control Act; and

(6) Both the hazardous secondary material generator and the remanufacturer must:

(a) Notify the department and update the notification every two years per section 33-24-01-18;

(b) Develop and maintain an up-to-date remanufacturing plan which identifies:

[1] The name, address and identification number of the generator or generators and the remanufacturer or remanufacturers;

[2] The types and estimated annual volumes of spent solvents to be remanufactured;

[3] The processes and industry sectors that generate the spent solvents;

[4] The specific uses and industry sectors for the remanufactured solvents; and

[5] Certification from the remanufacturer stating "On behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent or solvents for the sole purpose of remanufacturing into commercial-grade solvent or solvents that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions), or for the use as product ingredient or ingredients. I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR Part 60, Part 61 or Part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in sections 33-24-02-170 through 33-24-02-179 (vents), sections 33-24-02-180 through 33-24-02-199 (equipment), and sections 33-24-02-200 through 33-24-02-214 (tank storage)";

(c) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(d) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in sections 33-24-02-50 through 33-24-02-59 and sections 33-24-02-60 through 33-24-02-74, with the tanks and containers being labeled or otherwise having an immediately available record of material being stored;

(e) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR Part 60, Part 61 or Part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by

the remanufacturing exclusion, are in compliance with the appropriate standards in sections 33-24-02-170 through 33-24-02-179 (vents), sections 33-24-02-180 through 33-24-02-199 (equipment), and sections 33-24-02-200 through 33-24-02-214 (tank storage); and

(f) Meet the requirements prohibiting speculative accumulation per subdivision h of subsection 3 of section 33-24-02-01.

2. **Solid wastes that are not hazardous wastes.** The following solid wastes are not hazardous wastes:

a. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, for example, refuse-derived fuel, or reused. "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, and motels), bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste may not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purpose of regulation under this article, if such facility:

(1) Receives and burns only:

(a) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(b) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(2) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

b. Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(1) The growing and harvesting of agricultural crops.

(2) The raising of animals, including animal manures.

c. Mining overburden returned to the minesite.

d. ~~Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by section 33-24-05-537 for facilities that burn or process hazardous waste.~~ Wastes generated primarily from the combustion or processes that support the combustion of coal or other fossil fuels:

(1) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by section 33-24-05-537 for facilities that burn or process hazardous waste.

(2) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are codisposed with the wastes in

paragraph 1, except as provided by section 33-24-05-537 for facilities that burn or process hazardous waste:

- (a) Coal pile runoff. For purposes of this subdivision, coal pile runoff means any precipitation that drains off coal piles.
  - (b) Boiler cleaning solutions. For purposes of this subdivision, boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.
  - (c) Boiler blowdown. For purposes of this subdivision, boiler blowdown means water purged from boilers used to generate steam.
  - (d) Process water treatment and demineralizer regeneration wastes. For purposes of this subdivision, process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.
  - (e) Cooling tower blowdown. For purposes of this subdivision, cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.
  - (f) Air heater and precipitator washes. For purposes of this subdivision, air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.
  - (g) Effluents from floor and yard drains and sumps. For purposes of this subdivision, effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.
  - (h) Wastewater treatment sludges. For purposes of this subdivision, wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in subparagraphs a through f.
- e. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.
- f. The following chromium-containing wastes:
- (1) Wastes that fail the test for the toxicity characteristic because chromium is present or are listed in this chapter due to the presence of chromium, which do not fail the test for toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:
    - (a) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium;
    - (b) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
    - (c) The waste is typically and frequently managed in nonoxidizing environments.

- (2) Specific wastes which meet the standard of paragraph 1 (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:
  - (a) Chrome (blue) trimmings, chrome (blue) shavings, sewer screenings, and wastewater treatment sludges, generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
  - (b) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; and through-the-blue.
  - (c) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.
  - (d) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.
  - (e) Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium-bearing ores by the chloride process.
- g. Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by section 33-24-05-537 for facilities that burn or process hazardous waste.
  - (1) For purposes of this subdivision, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water or carbon dioxide, or both; roasting, autoclaving, or chlorination, or a combination thereof, in preparation for leaching (except when the roasting, autoclaving, or chlorination or a combination thereof, and leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.
  - (2) For the purposes of this subdivision, solid waste from the processing of ores and minerals includes only the following wastes as generated:
    - (a) Slag from primary copper processing;
    - (b) Slag from primary lead processing;
    - (c) Red and brown muds from bauxite refining;
    - (d) Phosphogypsum from phosphoric acid production;
    - (e) Slag from elemental phosphorous production;
    - (f) Gasifier ash from coal gasification;
    - (g) Process wastewater from coal gasification;
    - (h) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

- (i) Slag tailings from primary copper processing;
  - (j) Fluorogypsum from hydrofluoric acid production;
  - (k) Process wastewater from hydrofluoric acid production;
  - (l) Air pollution control dust or sludge from iron blast furnaces;
  - (m) Iron blast furnace slag;
  - (n) Treated residue from roasting or leaching of chrome ore;
  - (o) Process wastewater from primary magnesium processing by the anhydrous process;
  - (p) Process wastewater from phosphoric acid production;
  - (q) Basic oxygen furnace and open hearth furnace air pollution control dust or sludge from carbon steel production;
  - (r) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
  - (s) Chloride process waste solids from titanium tetrachloride production; and
  - (t) Slag from primary zinc processing.
- (3) A residue derived from coprocessing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under this subsection if the owner or operator:
- (a) Processes at least fifty percent by weight normal beneficiation raw materials or with normal mineral processing raw materials; and
  - (b) Legitimately reclaims the secondary mineral processing materials.
- h. Cement kiln dust waste, except as provided by section 33-24-05-537 for facilities that burn or process hazardous waste.
- i. Solid waste that consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for hazardous waste codes D004 through D017 and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials intended end use.
- j. Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of section 33-24-02-14 (hazardous waste codes D018 through D043 only) and are subject to the corrective action regulations under chapter 33-24-08.
- k. Injected ground water that is hazardous only because it exhibits the toxicity characteristic (hazardous waste codes D018 through D043 only) in section 33-24-02-14 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For ground water returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving

injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

- (1) Operations are performed pursuant to a written state agreement that includes a provision to assess the ground water and the need for further remediation once the free phase recovery is completed; and
  - (2) A copy of the written agreement has been submitted to Characteristics Section (OS-333), United States Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.
- I. Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.
- m. Nonterne plated used oil filters that are not mixed with waste listed in sections 33-24-02-15 through 33-24-02-19 if these oil filters have been gravity hot-drained using one of the following methods:
- (1) Puncturing the filter antidrain back valve or the filter dome end and hot-draining;
  - (2) Hot-draining and crushing;
  - (3) Dismantling and hot-draining; or
  - (4) Any other equivalent hot-draining method that will remove used oil.
- n. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.
- o. Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:
- (1) The solid wastes disposed would meet one or more of the listing descriptions for hazardous wastes codes K169, K170, K171, K172, K174, K175, K176, K177, ~~and~~ K178, and K181 if these wastes had been generated after the effective date of the listing;
  - (2) The solid wastes described in paragraph 1 were disposed prior to the effective date of the listing;
  - (3) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;
  - (4) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a publicly owned treatment works by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act; ~~and~~ .
  - (5) As of February 13, 2001, leachate or gas condensate derived from K169 through K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. ~~After~~ As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 ~~will~~ is no longer ~~be~~ exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in

a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this subdivision paragraph after the emergency ends.

p. Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation, provided that:

(1) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "excluded solvent-contaminated wipes". The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(2) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(3) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in section 33-24-01-04.

(4) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in chapters 33-24-01 through 33-24-04 and 33-24-06, sections 33-24-05-01 through 33-24-05-559, 33-24-05-700 through 33-24-05-929, and 33-24-05-950 through 33-24-05-1149;

(5) Generators must maintain at the facility the following documentation:

(a) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(b) Documentation that the 180-day accumulation time limit in paragraph 2 of subdivision p of subsection 2 of section 33-24-02-04 is being met;

(c) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(6) The solvent-contaminated wipes are sent for disposal:

(a) To a municipal solid waste landfill regulated under article 33-20 including chapter 33-20-06.1, or to a hazardous waste landfill regulated under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819, or subsection 5 of section 33-24-06-16; or

(b) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16, or sections 33-24-05-525 through 33-24-05-549.

3. **Hazardous wastes that are exempted from certain regulations.** A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to regulation under chapters 33-24-03 through 33-24-07 or to the notification requirements until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

4. **Samples.**

a. Except as provided in subdivision b, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter or chapters 33-24-03 through 33-24-07 or to the notification requirements when:

- (1) The sample is being transported to a laboratory for the purpose of testing;
- (2) The sample is being transported back to the sample collector after testing;
- (3) The sample is being stored by the sample collector before transport to a laboratory for testing;
- (4) The sample is being stored in a laboratory before testing;
- (5) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
- (6) The sample is being stored temporarily in the laboratory after testing for a specific purpose, e.g., until conclusion of a court case or enforcement action if further testing of the sample may be necessary.

b. In order to qualify for the exemption in paragraphs 1 and 2 of subdivision a, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

- (1) Comply with the United States department of transportation, the United States postal service, or any other applicable shipping requirement; or
- (2) Comply with the following requirements if the sample collector determines that the United States department of transportation, the United States postal service, or other shipping requirements do not apply to the shipment of the sample:

(a) Assure that the following information accompanies the sample:

- [1] The sample collector's name, mailing address, and telephone number;
- [2] The laboratory's name, mailing address, and telephone number;
- [3] The quantity of the sample;

[4] The date of shipment; and

[5] A description of the sample.

(b) Package the sample so that it does not leak, spill, or vaporize from its packaging.

c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subdivision a.

**5. Treatability study samples.**

a. Except as provided in subdivision b, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 33-24-01-04 are not subject to any requirement of chapters 33-24-02 through 33-24-04 or to the notification requirements, nor are such samples included in the quantity determination of section 33-24-02-05 and subsection 4 of section 33-24-03-12 when:

- (1) The sample is being collected and prepared for transportation by the generator or sample collectors;
- (2) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
- (3) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

b. The exemption in subdivision a is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

- (1) The generator or sample collector uses, in "treatability studies", no more than ten thousand kilograms of media contaminated with nonacute hazardous waste, one thousand kilograms of nonacute hazardous waste other than contaminated media, one kilogram of acute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream.
- (2) The mass of each sample shipment does not exceed ten thousand kilograms; the ten thousand kilogram quantity may be all media contaminated with nonacute hazardous waste, or may include twenty-five hundred kilograms of media contaminated with acute hazardous waste, one thousand kilograms of hazardous waste, and one kilogram of acute hazardous waste.
- (3) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of subparagraph a or b are met.
  - (a) The transportation of each sample shipment complies with United States department of transportation, United States postal service, or any other applicable shipping requirements; or
  - (b) If the United States department of transportation, United States postal service, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

[1] The name, mailing address, and telephone number of the originator of the samples;

- [2] The name, address, and telephone number of the facility that will perform the treatability study;
  - [3] The quantity of the sample;
  - [4] The date of shipment; and
  - [5] A description of the sample, including its hazardous waste number.
- (4) The sample is shipped to a laboratory or testing facility which is exempt under subsection 6 of section 33-23-02-04 or has an appropriate hazardous waste permit or interim status.
- (5) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:
  - (a) Copies of the shipping document;
  - (b) A copy of the contract with the facility conducting the treatability study;
  - (c) Documentation showing:
    - [1] The amount of waste shipped under this exemption;
    - [2] The name, address, and identification number of the laboratory or testing facility that received the waste;
    - [3] The date the shipment was made; and
    - [4] Whether unused samples and residues were returned to the generator.
- (6) The generator reports the information required under subparagraph c of paragraph 5 in its biennial report.
- c. The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs 1 and 2 of subdivision b ~~of subsection 5~~ and subdivision d of subsection 6, for up to an additional five thousand kilograms of media contaminated with nonacute hazardous waste, five hundred kilograms of nonacute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste, and one kilogram of acute hazardous waste:
  - (1) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, for example, batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time and quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.
  - (2) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when there has been an equipment or mechanical failure during the conduct of the treatability study; there is a need to verify the results of a previous study; there is a need to study and analyze alternative techniques within a previously evaluated process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

- (3) The additional quantities and timeframes allowed in paragraphs 1 and 2 are subject to all the provisions in subdivision a and paragraphs 3 through 6 of subdivision b. The generator or sample collector must apply to the department and provide in writing the following information:
  - (a) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;
  - (b) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies, including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;
  - (c) A description of the technical modifications or change in specifications which will be evaluated and the expected results;
  - (d) If such further study is being required due to equipment of mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and
  - (e) Such other information that the department considers necessary.
6. **Samples undergoing treatability studies at laboratories and testing facilities.** Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to hazardous waste requirements, are not subject to any requirements of this article, or to the notification requirements provided that the conditions of subdivisions a through k are met. A mobile treatment unit may qualify as a testing facility subject to subdivisions a through k. Where a group of mobile treatment units are located at the same site, the limitations specified in subdivisions a through k apply to the entire group of mobile treatment units collectively as if the group were one mobile treatment unit.
  - a. No less than forty-five days before conducting treatability studies, the facility notifies the department in writing that it intends to conduct treatability studies under this subsection.
  - b. The laboratory or testing facility conducting the treatability study has an identification number.
  - c. No more than a total of ten thousand kilograms of "as received" media contaminated with nonacute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste, or two hundred fifty kilograms of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" wastes refers to the waste as received in the shipment from the generator or sample collector.
  - d. The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed ten thousand kilograms, the total of which can include ten thousand kilograms of media contaminated with nonacute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste, one thousand kilograms of nonacute hazardous waste other than contaminated media, and one kilogram of acute hazardous waste. This quantity limitation

does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

- e. No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date occurs first. Up to five hundred kilograms of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.
- f. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.
- g. The facility maintains records for three years following completion of each study that shows compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:
  - (1) The name, address, and identification number of the generator or sample collector of each waste sampled;
  - (2) The date the shipment was received;
  - (3) The quantity of waste accepted;
  - (4) The quantity of "as received" waste in storage each day;
  - (5) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
  - (6) The date the treatability study was concluded; and
  - (7) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the identification number.
- h. The facility keeps, onsite, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.
- i. The facility prepares and submits a report to the department by March fifteenth of each year that ~~estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and~~ includes the following information for the previous calendar year:
  - (1) The name, address, and identification number of the facility conducting the treatability study;
  - (2) The types, by process, of treatability studies conducted;
  - (3) The names and addresses of persons for whom studies have been conducted, including their identification numbers;
  - (4) The total quantity of waste in storage each day;
  - (5) The quantity and type of waste subjected to treatability studies;
  - (6) When each treatability study was conducted; and

- (7) The final disposition of residues and unused samples from each treatability study.
- j. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under section 33-24-02-03 and, if so, are subject to chapters 33-24-02 through 33-24-06, unless the residues and unused samples are returned to the sample originator under the subsection 5 of section 33-24-02-04 exemption.
- k. The facility notifies the department by letter when the facility is no longer planning to conduct any treatability studies at the site.
7. **Polychlorinated biphenyl wastes regulated under Toxic Substance Control Act.** The disposal of polychlorinated biphenyl-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the toxicity characteristic (hazardous waste codes D018 through D043 only) are exempt from regulation under this article, and the notification requirements.
8. **Dredged material that is not a hazardous waste.** Dredged material that is subject to the requirements of a permit that has been issued under section 404 of the Federal Water Pollution Control Act [33 U.S.C.1344] or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413] is not a hazardous waste. For this subsection, the following definitions apply:
- a. The term dredged material has the same meaning as defined in 40 CFR 232.2.
- b. The term permit means:
- (1) A permit issued by the United States army corps of engineers (corps) or an approved state under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344];
- (2) A permit issued by the corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413]; or
- (3) In the case of corps civil work projects, the administrative equivalent of the permits referred to in paragraphs 1 and 2, as provided for in corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).
9. Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for class VI underground injection control wells, including the requirements in 40 CFR parts 144 and 146 of the underground injection control program of the Safe Drinking Water Act, are not a hazardous waste, provided the following conditions are met:
- a. Transportation of the carbon dioxide stream must be in compliance with United States department of transportation requirements, including the pipeline safety laws (49 United States code 60101 and the following) and regulations (49 CFR parts 190-199) of the United States department of transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 United States code 60105, as applicable;
- b. Injection of the carbon dioxide stream must be in compliance with the applicable requirements for class VI underground injection control wells, including the applicable requirements in 40 CFR parts 144 and 146;

c. No hazardous wastes shall be mixed with, or otherwise coinjected with, the carbon dioxide stream; and

d. Certification statements:

(1) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under this subsection, must have an authorized representative (as defined in section 33-24-01-04) sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under subsection 9 of section 33-24-02-04 has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) department of transportation requirements, including the pipeline safety laws (49 United States code 60101 and the following) and regulations (49 CFR parts 190-199) of the United States department of transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 United States code 60105, as applicable, for injection into a well subject to the requirements for the class VI underground injection control program of the Safe Drinking Water Act.

(2) Any class VI underground injection control well owner or operator, who claims that a carbon dioxide stream is excluded under this subsection, must have an authorized representative (as defined in section 33-24-01-04) sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under subsection 9 of section 33-24-02-04 has not been mixed with, or otherwise coinjected with, hazardous waste at the underground injection control class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for underground injection class VI wells, including the applicable requirements in 40 CFR parts 144 and 146.

(3) The signed certification statement must be kept onsite for no less than three years, and must be made available within seventy-two hours of a written request from the administrator, regional administrator, or the department, or their designee. The signed certification statement must be renewed every year that the exclusion is claimed, by having an authorized representative (as defined in section 33-24-01-04) annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement must also be readily accessible on the facility's publicly available website (if such website exists) as a public notification with the title of "carbon dioxide stream certification" at the time the exclusion is claimed.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-10

**33-24-02-05. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.**

1. A generator is a conditionally exempt small quantity generator in a calendar month if the generator generates no more than one hundred kilograms of hazardous waste in that month.
2. Except for those wastes identified in subsections 5, 6, 7, and 10, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under chapters 33-24-03 through 33-24-07, and the notification requirements, provided the generator complies with the requirements of subsections 6, 7, and 10.

3. When making the quantity determinations, the generator must include all hazardous waste that it generates, except hazardous waste that:
  - a. Is exempt from regulation under subsections 3 through 7 of section 33-24-02-04, subdivision c of subsection 1 of section 33-24-02-06, or subsection 1 of section 33-24-02-07;
  - b. Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in section 33-24-01-04;
  - c. Is recycled, without prior storage or accumulation, only in an onsite process subject to regulation under subdivision b of subsection 3 of section 33-24-02-06;
  - d. Is used oil managed under the requirements of subdivision d of subsection 1 of section 33-24-02-06 and sections 33-24-05-600 through 33-24-05-689;
  - e. Is spent lead-acid batteries managed under sections 33-24-05-235 through 33-24-05-249; or
  - f. Is universal waste managed under subsection 5 of section 33-24-02-06 and sections ~~33-24-05-701~~33-24-05-700 through ~~33-24-05-765~~33-24-05-799.
  - g. Is a hazardous waste that is an unused commercial chemical product (listed in sections 33-24-02-15 through 33-24-02-19, or exhibiting one or more characteristics in sections 33-24-02-10 through 33-24-02-14) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to section 33-24-03-74. For purposes of this subdivision, the term eligible academic entity shall have the meaning as defined in section 33-24-03-61.
  
4. In determining the quantity of hazardous waste generated, a generator need not include:
  - a. Hazardous waste when it is removed from onsite storage;
  - b. Hazardous waste produced by onsite treatment, including reclamation, of their hazardous waste, so long as the hazardous waste that is treated was counted once; or
  - c. Spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been counted once.
  
5. If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under chapters 33-24-03 through 33-24-07, and the notification requirements.
  - a. A total of one kilogram of acute hazardous waste listed in section 33-24-02-16, ~~33-24-02-17~~, or subsection 5 of section 33-24-02-18.
  - b. A total of one hundred kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in ~~sections~~section 33-24-02-16, ~~33-24-02-17~~, or subsection 5 of section 33-24-02-18. [Comment: "Full regulation" means those regulations applicable to generators of ~~greater than~~ one thousand kilograms or greater of ~~nonacutely~~ hazardous waste in a calendar month.]
  
6. In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than set forth in ~~subdivision~~subdivisions a or b of subsection 5 to be

excluded from full regulation under this section, the generator shall comply with the following requirements:

- a. Section 33-24-03-02;
- b. The generator may accumulate acute hazardous waste onsite. If the generator accumulates at any time acute hazardous waste in quantities greater than those set forth in subdivision a or b of subsection 5, all of those accumulated wastes are subject to regulation under ~~section 33-24-03-07~~ chapters 33-24-03 through 33-24-07 and the applicable notification requirements. The time period of subsection 1 of section 33-24-03-12, for accumulation of wastes onsite, begins when the accumulated wastes exceed the applicable exclusion limit;
- c. A conditionally exempt small quantity generator may either treat or dispose of the generator's acute hazardous waste in an onsite facility or ensure delivery to an offsite storage, treatment, or disposal facility, either of which, if located in the United States, is:
  - (1) Permitted under chapter 33-24-06;
  - (2) In interim status under subsection 2 of section 33-20.3-05 of North Dakota Century Code chapter 33-20.3;
  - (3) Authorized to manage hazardous waste by a state;
  - (4) Permitted, licensed, or registered by a state to manage municipal solid waste, and if managed in a municipal solid waste landfill subject to article 33-20 or other regulation equivalent to 40 CFR part 258;
  - (5) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste landfill after January 1, 1998, is subject to article 33-20 or other regulation equivalent to sections 5 through 30 of 40 CFR part 257;
  - (6) A facility which:
    - (a) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
    - (b) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
  - (7) For universal waste managed under sections 33-24-05-700 through 33-24-05-799, a universal waste handler or destination facility subject to the requirements of sections 33-24-05-700 through 33-24-05-799.

[NOTE: Although provisions of this subsection exclude certain generators from full regulation under this section, all applicable provisions of article 33-20, North Dakota solid waste management rules apply.]

7. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of ~~less than~~ one hundred kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator shall comply with the following requirements:
  - a. Section 33-24-03-02.
  - b. The conditionally exempt small quantity generator may accumulate hazardous waste onsite. If the generator accumulates at any time ~~more than a total of~~ one thousand kilograms or greater of the generator's hazardous waste, all of those accumulated wastes

are subject to regulation under special provisions of chapter 33-24-03 applicable to generators of ~~between~~greater than one hundred kilograms and less than one thousand kilograms of hazardous waste in a calendar month as well as the requirements of chapters ~~33-24-04~~33-24-03 through 33-24-06 and the applicable notification requirements. The time period of subsection 4 of section 33-24-03-12 for accumulation of wastes onsite begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed one thousand kilograms;

c. A conditionally exempt small quantity generator may either treat or dispose of the generator's hazardous waste in an onsite facility, or ensure delivery to an offsite storage, treatment, or disposal facility, either of which, if located in the United States, is:

- (1) Permitted under chapter 33-24-06;
- (2) In interim status under subsection 2 of section 23-20.3-05 of North Dakota Century Code chapter 23-20.3;
- (3) Authorized to manage hazardous waste by a state;
- (4) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill subject to article 33-20 or other regulation equivalent to 40 CFR part 258;
- (5) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to article 33-20 or other regulation equivalent to sections 5 through 30 of 40 CFR part 257; or
- (6) A facility which:
  - (a) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
  - (b) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
- (7) For universal waste managed under sections 33-24-05-700 through 33-24-05-799, a universal waste handler or destination facility subject to the requirements of sections 33-24-05-700 through 33-24-05-799.

[NOTE: Although provisions of this subsection exclude certain generators from full regulation under this section, all applicable provisions of article 33-20, North Dakota solid waste management rules apply.]

8. Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.
9. If any person mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture is subject to full regulation.
10. If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to sections 33-24-05-600 through 33-24-05-689. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-06. Requirements for recyclable materials and universal waste.**

1. The following requirements for recyclable materials are:
  - a. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections 2 and 3, except for the materials listed in subdivisions b and c ~~of subsection 1~~. Hazardous wastes that are recycled will be known as "recyclable materials".
  - b. The following recyclable materials are not subject to the requirements of this section but are regulated under sections 33-24-05-201 through 33-24-05-209, 33-24-05-230 through 33-24-05-249, 33-24-05-525 through 33-24-05-549, ~~33-24-05-600~~[33-24-05-820](#) through ~~33-24-05-689~~[33-24-05-929](#) and all applicable provisions in [sections 33-24-05-250 through 33-24-05-299](#) and chapters 33-24-06 and 33-24-07:
    - (1) Recyclable materials used in a manner constituting disposal (sections 33-24-05-201 through ~~33-24-05-204~~[33-24-05-209](#)).
    - (2) Hazardous wastes burned ~~for energy recovery~~[\(as defined in subsection 1 of section 33-24-05-525\)](#) in boilers and industrial furnaces that are not regulated under sections 33-24-05-144 through 33-24-05-151 (sections 33-24-05-525 through ~~33-24-05-537~~[33-24-05-549](#)).
    - (3) Recyclable materials from which precious metals are reclaimed (~~section~~[sections 33-24-05-230 through 33-4-05-234](#)).
    - (4) Spent lead-acid batteries that are being reclaimed (~~section~~[sections 33-24-05-235 through 33-24-05-249](#)).
  - c. The following recyclable materials are not subject to regulation under chapters 33-24-03 through 33-24-07 and are not subject to notification requirements:
    - (1) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in section 33-24-03-25:
      - (a) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in section 33-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33-24-03-23, and section 33-24-03-24, export such materials only upon consent of the receiving country and in conformance with the environmental protection agency acknowledgment of consent as defined in sections ~~33-24-03-50~~[33-24-03-17](#) through ~~33-24-03-59~~[33-24-03-25](#), and provide a copy of the environmental protection agency acknowledgment of consent to the shipment to the transporter transporting the shipment for export.
      - (b) Transporters transporting a shipment for export may not accept a shipment if the transporter knows the shipment does not conform to the environmental protection agency acknowledgment of consent, shall ensure that a copy of the environmental protection agency acknowledgment of consent accompanies the shipment, and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

- (2) Scrap metal that is not excluded under subdivision m of subsection 1 of section 33-24-02-04.
  - (3) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility, if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, when such recovered oil is already excluded under subdivision l of subsection 1 of section 33-24-02-04).
  - (4) Subdivision c also applies to the following:
    - (a) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, when such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under section 33-24-05-611 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
    - (b) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, when such hazardous wastes are reintroduced into a refining process after a point in which contaminants are removed, so long as the fuel meets the used oil fuel specification under section 33-24-05-611; and
    - (c) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under section 33-24-05-611.
  - d. Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of chapters 33-24-01 through 33-24-04, and sections 33-24-05-01 through ~~33-24-05-190, sections 33-24-05-250 through 33-24-05-524, and sections 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-1149, and subsection 5 of section 33-24-06-16,~~ but is regulated under sections 33-24-05-600 through 33-24-05-689. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.
  - e. Hazardous waste that is exported to or imported from designated member countries of the organization for economic cooperation and development (as defined in subdivision a of subsection 1 of section 33-24-03-25) for purpose of recovery is subject to the requirements of sections 33-24-03-50 through 33-24-03-59, if it is subject to either the manifesting requirements of chapter 33-24-03 or to the universal waste requirements of sections 33-24-05-700 through 33-24-05-799.
2. Generators and transporters of recyclable materials are subject to the applicable requirements of chapters 33-24-03 and 33-24-04 and the notification requirements, except as provided in subsection 1.
  3. Owners or operators of facilities that:
    - a. Store recyclable materials before they are recycled are regulated under all applicable provisions of sections 33-24-05-01 through 33-24-05-143, sections 33-24-05-191 through

33-24-05-299, sections 33-24-05-400 through 33-24-05-474, ~~sections 33-24-05-191 through 33-24-05-299~~33-24-05-525 through 33-24-05-549, sections 33-24-05-820 through 33-24-05-1149, and chapters 33-24-06 and 33-24-07 and the notification requirements, under section ~~3010 of the Resource Conservation and Recovery Act~~33-24-03-03, except as provided in subsection 1. The recycling process itself is exempt from regulation except as provided in subsection 4 of section 33-24-02-06.

- b. Recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection 1:
  - (1) Notification requirements;
  - (2) Sections 33-24-05-38 and 33-24-05-39 (dealing with the use of the manifest and manifest discrepancies); and
  - (3) Subsection 4 of section 33-24-02-06.
4. Owners or operators of facilities subject to the hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of sections 33-24-05-400 through 33-24-05-449, subsection 5 of section 33-24-06-16, or sections 33-24-05-950 through 33-24-05-1149.
5. The wastes listed in this subsection are exempt from regulation under chapters 33-24-03 through 33-24-06 except as specified in sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 and, therefore are not fully regulated as hazardous waste. The wastes listed in this subsection are subject to regulation under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799:
  - a. Batteries as described in section 33-24-05-702;
  - b. Pesticides as described in section 33-24-05-703;
  - c. Mercury-containing ~~devices~~equipment as described in section 33-24-05-704; and
  - d. Lamps as described in 33-24-05-705.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-07. Residues of hazardous wastes in empty containers.**

1. Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsections 3, 4, and 5 of this section, is not subject to regulation under chapters 33-24-02 through 33-24-07 or to the notification requirements of section 33-24-03-03.
- ~~2.~~ Unless empty as defined in subsection 2, 3, or 4, anyAny hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsections 3, 4, and 5 of this section, is subject to regulation under chapters 33-24-02 through 33-24-07 and to the notification requirements of section 33-24-03-03.
- ~~2-3.~~ A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in section 33-24-02-16, ~~section 33-24-02-17,~~ or subsection 5 of section 33-24-02-18, is empty if:

- a. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating; and
- b. One of the following:
  - (1) No more than two and one-half centimeters [1 inch] of residue remain on the bottom of the container or inner liner;
  - (2) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to one hundred ~~ten~~nineteen gallons [~~416.40 liters~~] in size; or
  - (3) No more than three-tenths of one percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than one hundred ~~ten~~nineteen gallons [~~416.40 liters~~] in size.

~~3.4.~~ A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric ~~levels~~.

~~4.5.~~ A container or an inner liner removed from a container that has held ~~a~~an acute hazardous waste listed in section 33-24-02-16, ~~section 33-24-02-17,~~ or subsection 5 of section 33-24-02-18 is empty if:

- a. The container or inner liner has been triple-rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
- b. The container or inner liner has been cleaned by another method that has been shown in the scientific literature or by tests conducted by the generator, to achieve equivalent removal; or
- c. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

**History:** Effective January 1, 1984; amended effective October 1, 1986; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-11. Characteristic of ignitability.**

1. A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:
  - a. It is a liquid, other than an aqueous solution containing less than twenty-four percent alcohol by volume, and has a flashpoint less than sixty degrees Celsius [140 degrees Fahrenheit], as determined by a ~~Penske-Martins~~Pensky-Martins closed cup tester, using the test method specified in American Society for Testing and Material Standard ~~D-93-79~~D93-79 or ~~D-93-80~~D93-80 (incorporated by reference, see section 33-24-01-05), or a setaflash closed cup tester, using the test method specified in American Society for Testing and Material Standard ~~D-3278-78~~D3278-78 (incorporated by reference, see section 33-24-01-05), or a miniflash continuously closed cup tester, using the test method specified in American Society for Testing and Material ~~D-6450-99~~D6450-99 (incorporated by reference in section 33-24-01-05), ~~or as determined by an equivalent test method approved by the department under procedures set forth in sections 33-24-01-06 and 33-24-01-07.~~

- b. It is not a liquid and is capable, under standard temperature and pressure of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously that it creates a hazard.
- c. It is an ignitable compressed gas ~~as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the department.~~

(1) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding forty pounds per square inch at seventy degrees Fahrenheit or, regardless of the pressure at seventy degrees Fahrenheit, having an absolute pressure exceeding one hundred four pounds per square inch at one hundred thirty degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding forty pounds per square inch absolute at one hundred degrees Fahrenheit as determined by ASTM Test D323.

(2) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(a) Either a mixture of thirteen percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than twelve percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the bureau of explosives and approved by the director, pipeline and hazardous materials technology, United States department of transportation (see note 2).

(b) Using the bureau of explosives' flame projection apparatus (see note 1), the flame projects more than eighteen inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(c) Using the bureau of explosives' open drum apparatus (see note 1), there is any significant propagation of flame away from the ignition source.

(d) Using the bureau of explosives' closed drum apparatus (see note 1), there is any explosion of the vapor-air mixture in the drum.

- d. It is an oxidizer ~~as defined in 49 CFR 173.151.~~ An oxidizer for the purpose of this section is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see note 4).

(1) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(a) The material meets the definition of a division 1.1, 1.2, or 1.3 explosive, as defined in subdivision h of subsection 1 of section 33-24-02-13, in which case it must be classed as an explosive;

(b) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21;

(c) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide; or

(d) According to data on file with the pipeline and hazardous materials safety administration in the United States department of transportation (see note 3), it has been determined that the material does not present a hazard in transportation.

2. A solid waste that exhibits the characteristic of ignitability has the hazardous waste number of D001.

Note 1: A description of the bureau of explosives' flame projection apparatus, open drum apparatus, closed drum apparatus, and method of tests may be procured from the bureau of explosives.

Note 2: As part of a United States department of transportation reorganization, the office of hazardous materials technology, which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. Office of hazardous materials technology programs have moved to the pipeline and hazardous materials safety administration in the department of transportation.

Note 3: As part of a United States department of transportation reorganization, the research and special programs' administration, which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. Research and special programs' administration programs have moved to the pipeline and hazardous materials safety administration in the department of transportation.

Note 4: The department of transportation regulatory definition of an oxidizer was contained in section 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

**History:** Effective January 1, 1984; amended effective December 1, 1991; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-12. Characteristic of corrosivity.**

1. A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:
  - a. It is aqueous and has a pH less than or equal to two or greater than or equal to twelve and five-tenths, as determined by a pH meter, using method 90409040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05, ~~or an equivalent test method approved by the department; or~~
  - b. It is a liquid and corrodes steel (SAE 1020) at a rate greater than six and thirty-five-hundredths millimeters [0.250 inch] per year at a test temperature of fifty-five degrees Celsius [130 degrees Fahrenheit] as determined by the ~~test method specified in National Association of Corrosion Engineers (NACE) Standard TM-01-69 as standardized~~1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, and as incorporated by reference in section 33-24-01-05, ~~or an equivalent test method approved by the department.~~
2. A solid waste that exhibits the characteristic of corrosivity has the hazardous waste number of D002.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03  
**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-13. Characteristic of reactivity.**

1. A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:
  - a. It is normally unstable and readily undergoes violent change without detonating.
  - b. It reacts violently with water.
  - c. It forms potentially explosive mixtures with water.
  - d. When mixed with water, it generates toxic gases, vapors, or fumes in a quantity sufficient to present a danger to human health or the environment.
  - e. It is a cyanide-bearing or sulfide-bearing waste which, when exposed to pH conditions between two and twelve and five-tenths, can generate toxic gases, vapors, or fumes in a quantity sufficient to present a danger to human health or the environment.
  - f. It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.
  - g. It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.
  - h. It is a forbidden explosive as defined in 49 CFR ~~173.51~~173.54, or ~~a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88~~is a division 1.1, 1.2, or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.
2. A solid waste that exhibits the characteristic of reactivity has the hazardous waste number of D003.

**History:** Effective January 1, 1984; amended effective December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03  
**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-15. Lists of hazardous wastes.**

1. A solid waste is a hazardous waste if it is listed in sections 33-24-02-15 through ~~33-24-02-18~~33-24-02-19, unless it has been excluded from these lists under section 33-24-01-06 or 33-24-01-08.
2. The department will indicate its basis for listing the classes or types of wastes listed in ~~this chapter~~sections 33-24-02-15 through 33-24-02-19 by employing one or more of the following hazard codes:

Waste Type	Waste Hazard Code
Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
Toxicity Characteristic Waste	(E)

Acute Hazardous Waste (H)

Toxic Waste (T)

Appendix IV identifies the constituent which caused the waste to be listed as a toxicity characteristic waste (E) or toxic wastes (T) in sections 33-24-02-16 and 33-24-02-17.

3. Each hazardous waste listed in ~~this chapter~~ [sections 33-24-02-15 through 33-24-02-19](#) is assigned a hazardous waste number which precedes the name of the waste. The number must be used in complying with the notification requirements and certain recordkeeping and reporting requirements under chapters 33-24-03 through 33-24-06.
4. The following hazardous wastes listed in ~~sections~~ [section 33-24-02-16 and 33-24-02-17](#) are subject to the exclusion limits for acutely hazardous wastes established in section 33-24-02-05: hazardous waste numbers F020, F021, [F022](#), F023, F026, and F027.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-02-16. Hazardous waste from nonspecific sources.

1. The following solid wastes are listed hazardous wastes from nonspecific sources unless they are excluded under sections 33-24-01-06 and 33-24-01-08 and listed in appendix VI.

Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F003	The following spent nonhalogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all	(I)*

spent solvent mixtures/blends containing, before use, one or more of the above nonhalogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

- F004 The following spent nonhalogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)
- F005 The following spent nonhalogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I, T)
- F006 Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T)
- F007 Spent cyanide plating bath solutions from electroplating operations. (R, T)
- F008 Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process. (R, T)
- F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process. (R, T)
- F010 Quenching bath residue from oil baths from metal heat treating operations where cyanides are used in the process. (R, T)
- F011 Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations. (R, T)
- F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process. (T)
- F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: (T)

disposed in a subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the department; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in 40 CFR 258.40, section 33-24-05-177, or subsection 5 of section 33-24-06-16. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph 1 of subdivision d of subsection 2, and paragraph 2 of subdivision d of subsection 2, describes the recordkeeping requirements for motor vehicle manufacturing facilities.

- F020 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) or tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F021 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives. (H)
- F022 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. (H)
- F023 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F024 Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in section 33-24-02-16 or 33-24-02-17. (T)
- F025 Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (T)
- F026 Wastes (except wastewater and spent carbon from hydrogen (H)

chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.

- F027 Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component). (H)
- F028 Residues resulting from the incineration or thermal treatment of soil contaminated with environmental protection agency hazardous waste numbers F020, F021, F022, F023, F026, and F027. (T)
- \*F032 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with section 33-24-02-19 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes, for example, F034 or F035, and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol, or both. (T)
- \*F034 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol, or both. (T)
- \*F035 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote or pentachlorophenol, or both. (T)
- F037 Petroleum refinery primary oil/water/solids separation sludge - Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units (T)

receiving dry weather flow, sludge generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in subdivision b of subsection 2 of section 33-24-02-16 (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under paragraph 1 of subdivision 4 of subsection 1 of section ~~33-02-04~~33-24-02-04, if those residuals are to be disposed of.

- F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge - Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in dissolved air flotation (DAF) units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in subdivision b of subsection 2 (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing. (T)
- F039 Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under sections 33-24-02-15 through 33-24-02-19. (Leachate resulting from the disposal of one or more of the following hazardous wastes and no other hazardous wastes retains its hazardous waste numbers: F020, F021, F022, F026, F027, and/or F028.) (T)

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**FOOTNOTE:**\*(I,T) should be used to specify mixtures ~~containing~~that are ignitable and contain toxic constituents.

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2. Listing specific definitions:

- a. For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil, water, or solids or any combination of them.
- b. Aggressive biological treatment units are:
  - (1) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate

aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity; and

- (a) The unit employs a minimum of six horsepower per million gallons of treatment volume; and either
  - (b) The hydraulic retention time of the unit is no longer than five days; or
  - (c) The hydraulic retention time is no longer than thirty days and the unit does not generate a sludge that is a hazardous waste by the toxicity characteristic.
- (2) Generators and treatment, storage, and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage, and disposal facilities must maintain, in their operating or other onsite records, documents, and data sufficient to prove that:
- (a) The unit is an aggressive biological treatment unit as defined in this subsection; and
  - (b) The sludges sought to be exempted from the definitions of F037 or F038, or both, were actually generated in the aggressive biological treatment unit.

c. Sludges are:

- (1) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.
- (2) For the purposes of the F038 listing:
  - (a) Sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement; and
  - (b) Floats are considered to be generated at the moment they are formed in the top of the unit.

d. For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

- (1) Motor vehicle manufacturing is defined to include the manufacture of automobiles, light trucks, and utility vehicles (including light duty vans, pickup trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.
- (2) Generators must maintain in their onsite records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of offsite, documentation showing when the waste volumes were generated and sent offsite, the name and address of the receiving facility, and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents onsite for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the department.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-17. Hazardous waste from specific sources.**

1. The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under sections 33-24-01-06 and 33-24-01-08 and listed in appendix VI.

Industry and Hazardous Waste No.	Hazardous Waste	Hazard Code
<b>Wood Preservation:</b>		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
<b>Inorganic Pigments:</b>		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)
<b>Organic Chemicals:</b>		
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R, T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R, T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)

Industry and Hazardous Waste No.	Hazardous Waste	Hazard Code
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K026	Stripping still tails from the production of methyl ethyl pyridines.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R, T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)
K083	Distillation bottoms from aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(C,T)
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(I,T)
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	(T)
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K112	Reaction byproduct water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)

Industry and Hazardous Waste No.	Hazardous Waste	Hazard Code
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, (this waste does not include still bottoms from the distillation of benzyl chloride).	(T)
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	(T)
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	(T)
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)	(T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)	(T)
K158	Baghouse dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)	(T)
K159	Organics from the treatment of thiocarbamate wastes.	(T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)	(R, T)
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (1) the wastes are disposed of in a hazardous waste or nonhazardous waste landfill licensed or permitted by the state or federal government; (2) the wastes are not otherwise placed on the land prior to final disposal; and (3) the generator maintains documentation demonstrating that the waste was either disposed of in an onsite landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an offsite landfill. Respondents in any action brought to enforce the requirements of article 33-24 must, upon a showing by the department that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that the respondent meet the terms of the exclusion set forth above. In doing so, the respondents must provide appropriate documentation (for example, contracts between the generator and the landfill owner or operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met.	(T)

Industry and Hazardous Waste No.	Hazardous Waste	Hazard Code
K175	Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.	(T)
<u>K181</u>	<u>Nonwastewaters from the production of dyes or pigment, or both, (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in subsection 3 that are equal to or greater than the corresponding subsection 3 levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (1) disposed in a nonhazardous waste landfill unit subject to the design criteria in section 33-20-06.1-02, (2) disposed in a hazardous waste landfill unit subject to either section 33-24-05-177 or subsection 5 of section 33-24-06-16, (3) disposed in other nonhazardous waste landfill units that meet the design criteria in section 33-20-06.1-02, section 33-24-05-177, or subsection 5 of section 33-24-06-16, or (4) treated in a combustion unit that is permitted under the hazardous waste management rules, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes or pigment, or both, production is defined in subdivision a of subsection 2. Subsection 4 describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under sections 33-24-02-11 through 33-24-02-14 and sections 33-24-02-16 through 33-24-02-18 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.</u>	(T)
<b>Inorganic Chemicals:</b>		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (for example, antimony metal or crude antimony oxide).	(E)
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (for example, antimony metal or crude antimony oxide).	(T)
K178	Residues from manufacturing and manufacturing-site storage of ferricchloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	(T)
<b>Pesticides:</b>		
K031	Byproduct salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)

Industry and Hazardous Waste No.	Hazardous Waste	Hazard Code
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production 2,4-D.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C, T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	(C, T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	(T)
<b>Explosives:</b>		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
K047	Pink/red water from TNT operations.	(R)
<b>Petroleum Refining:</b>		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)
K169	Crude oil storage tank sediment from petroleum refining operations.	(T)
K170	Clarified slurry oil tank sediment or in-line filter/separation solids, or both, from petroleum refining operations.	(T)
K171	Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	(I, T)
K172	Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	(I, T)

Industry and Hazardous Waste No.	Hazardous Waste	Hazard Code
<b>Iron and Steel:</b> K061 K062	Emission control dust/sludge from the primary production of steel in electric furnaces. Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(T) (C, T)
<b>Primary Aluminum:</b> K088 <b>Secondary Lead:</b> K069 K100	Spent potliners from primary aluminum reduction. Emission control dust/sludge from secondary lead smelting. (Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register). Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T) (T) (T)
<b>Veterinary Pharmaceuticals:</b> K084 K101 K102	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds. Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T) (T) (T)
<b>Ink Formulation:</b> K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
<b>Coking:</b> K060 K087 K141 K142 K143 K144 K145 K147 K148	Ammonia still lime sludge from coking operations. Decanter tank tar sludge from coking operations. Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke byproducts produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations). Tar storage tank residues from the production of coke from coal or from the recovery of coke byproducts produced from coal. Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke byproducts produced from coal. Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke byproducts produced from coal. Residues from naphthalene collection and recovery operations from the recovery of coke byproducts produced from coal. Tar storage tank residues from coal tar refining. Residues from coal tar distillation, including but not limited to, still bottoms.	(T) (T) (T) (T) (T) (T) (T) (T) (T)

## 2. Listing Specific Definitions:

- a. For the purposes of the K181 listing, dyes or pigment, or both, production is defined to include manufacture of the following product classes: dyes, pigments, or food and drug administration certified colors that are classified as azo, triarylmethane, perylene, or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes or pigment, or both, manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes or pigment, or both, are not included in the K181 listing.
- b. [Reserved]

## 3. K181 Listing Levels.

Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

<u>Constituent</u>	<u>Chemical Abstracts No.</u>	<u>Mass Levels (Kilograms per Year)</u>
<u>Aniline</u>	<u>62-53-3</u>	<u>9300</u>
<u>o-Anisidine</u>	<u>90-04-0</u>	<u>110</u>
<u>4-Chloroaniline</u>	<u>106-47-8</u>	<u>4800</u>
<u>p-Cresidine</u>	<u>120-71-8</u>	<u>660</u>
<u>2,4-Dimethylaniline</u>	<u>95-68-1</u>	<u>100</u>
<u>1,2-Phenylenediamine</u>	<u>95-54-5</u>	<u>710</u>
<u>1,3-Phenylenediamine</u>	<u>108-45-2</u>	<u>1200</u>

4. Procedures for demonstrating that dyes or pigment, or both, nonwastewaters are not K181. The procedures described in subdivisions a through c and e of this subsection establish when nonwastewaters from the production of dyes or pigment, or both, would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in subsection 1). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in subsection 1, then the nonwastewaters are not hazardous. In order to demonstrate that the generator is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in subdivision d of this subsection.
- a. Determination based on no K181 constituents. Generators that have knowledge (for example, knowledge of constituents in wastes based on prior sampling and analysis data or information about raw materials used, prior sampling and analysis data and information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (see subsection 3) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.
- b. Determination for generated quantities of one thousand metric tons per year or less for wastes that contain K181 constituents. If the total annual quantity of dyes or pigment, or both, nonwastewaters generated is one thousand metric tons or less, the generator can use knowledge of the wastes (for example, knowledge of constituents in wastes based

on prior analytical data or information about raw materials used, prior analytical data and information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the subsection 3 listing levels. To make this determination, the generator must:

- (1) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than one thousand metric tons.
- (2) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds one thousand metric tons, the generator must comply with the requirements of subdivision c of this subsection for the remainder of the year.
- (3) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.
- (4) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:
  - (a) The quantity of dyes or pigment, or both, nonwastewaters generated.
  - (b) The relevant process information used.
  - (c) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

c. Determination for generated quantities greater than one thousand metric tons per year for wastes that contain K181 constituents. If the total annual quantity of dyes or pigment, or both, nonwastewaters generated is greater than one thousand metric tons, the generator must perform all of the steps described in paragraphs 1 through 11 in order to make a determination that the generators waste is not K181.

- (1) Determine which K181 constituents (see subsection 3) are reasonably expected to be present in the wastes based on knowledge of the wastes (for example, based on prior sampling and analysis data or information about raw materials used, prior sampling and analysis data and information about raw materials used, production processes used, and reaction and degradation products formed).
- (2) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in subdivision b and keep the records described in paragraph 4 of subdivision b. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this section.
- (3) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:
  - (a) A discussion of the number of samples needed to characterize the wastes fully;
  - (b) The planned sample collection method to obtain representative waste samples;

- (c) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.
  - (d) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.
- (4) Collect and analyze samples in accordance with the waste sampling and analysis plan.
  - (a) The sampling and analysis must be unbiased, precise, and representative of the wastes.
  - (b) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the subsection 3 listing levels.
- (5) Record the analytical results.
- (6) Record the waste quantity represented by the sampling and analysis results.
- (7) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).
- (8) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.
- (9) Determine whether the mass of any of the K181 constituents listed in subsection 3 of this section generated between January 1 and December 31 of any year is below the K181 listing levels.
- (10) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:
  - (a) The sampling and analysis plan.
  - (b) The sampling and analysis results (including quality assurance and quality control data).
  - (c) The quantity of dyes or pigment, or both, nonwastewaters generated.
  - (d) The calculations performed to determine annual mass loadings.
- (11) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.
  - (a) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.
  - (b) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.
  - (c) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

d. Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain onsite for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

e. Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the hazardous waste management rules requirements during the interim period, the generator could be subject to an enforcement action for improper management.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-18. Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.**

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in paragraph 1 of subdivision b of subsection 1 of section 33-24-02-02, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

1. Any commercial chemical product, manufacturing chemical intermediate, or any mixture of the chemicals having the generic name listed in subsection 5 or 6.
2. Any off-specification commercial chemical product, manufacturing chemical intermediate, or any mixture of the chemicals which, if it met specifications, would have the generic name listed in subsection 5 or 6.
3. Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product, manufacturing chemical intermediate, or any mixture of the chemicals having the generic name listed in subsection 5 or 6, unless the container is empty as defined in ~~subsection 2~~subsections 3, 4, and 5 of section 33-24-02-07.

(NOTE: Unless the residue is being beneficially used or legitimately recycled or reclaimed; or being accumulated, stored, transported, or treated prior to such use, reuse, recycling, or reclamation, the department considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate reuse of the residue would be when the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be when the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.)

4. Any residue or contaminated soil, water, or other debris, resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product, manufacturing chemical intermediate, or mixture of the chemicals having the generic name listed in subsection 5 or 6, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical product, manufacturing chemical

intermediate, or mixture of the chemicals, which, if it met specifications would have the generic name listed in subsection 5 or 6. (Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, which consists of the commercially pure grade of the chemical, any technical grades of the chemical, that are produced or marketed, and all formulations containing one or more of the chemicals having the generic name listed in subsection 5 or 6 as active ingredients. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in subsection 5 or 6. Where a manufacturing process is deemed to be a hazardous waste because it contains a substance listed in subsection 5 or 6, such wastes will be listed in either section 33-24-02-16 or 33-24-02-17 or will be identified as a hazardous waste by the ~~characteristic~~characteristics set forth in ~~this chapter~~sections 33-24-02-10 through 33-24-02-14.)

5. The commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products or manufacturing chemical intermediates, or mixtures of the chemicals referred to in subsections 1 through 4, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in subsection 5 of section 33-24-02-05. [Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (toxicity), and R (reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by hazardous waste number.]

These wastes and their corresponding hazardous waste numbers are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P203	1646-88-4	Aldicarb sulfone
P070	116-06-3	Aldicarb
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R, T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate (1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H <sub>3</sub> AsO <sub>4</sub>
P012	1327-53-3	Arsenic oxide As <sub>2</sub> O <sub>3</sub>
P011	1303-28-2	Arsenic oxide As <sub>2</sub> O <sub>5</sub>
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide

Hazardous Waste No.	Chemical Abstracts No.	Substance
P038	692-42-2	Arsine, diethyl
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-,(R)-
P046	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl-
P014	108-98-5	Benzenethiol
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3a <i>S</i> -cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3- <i>b</i> ]indol -5-yl methylcarbamate ester (1:1)
P001	181-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium powder
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-[methylamino]carbonyl] oxime
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN) <sub>2</sub>
P189	55285-14-8	Carbamic acid, [(dibutylamino)-thio]methyl-,2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P191	644-64-4	Carbamic acid, dimethyl-,1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P127	1563-66-2	Carbofuran
P022	75-15-0	Carbon disulfide
P095	75-44-5	Carbonic dichloride
P189	55285-14-8	Carbosulfan
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P202	64-00-6	m-Cumenyl methylcarbamate
P030	.....	Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen

Hazardous Waste No.	Chemical Abstracts No.	Substance
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta, 5alpha,8alpha,8abeta)-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha,2beta,2alpha,3beta,6beta,6alpha,7beta,7alpha)-
P051	172-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7alpha)-, & metabolites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha, alpha-Dimethylphenthylamine
P191	644-64-4	Dimetilan
P047	1534-52-1	4,6-Dinitro-o-cresol and salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramidate, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton
P049	541-53-7	Dithiobiuret
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P042	51-43-4	Epinephrine
P031	460-19-5	Ethanedinitrile
P066	16752-77-5	Ethanimidothioic acid, N-[[[(methylamino)carbonyl]oxy]-, <del>methylester</del> <u>methyl ester</u>
P194	23135-22-0	<del>Ethanimidothioic</del> <u>Ethanimidothioic</u> acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, <del>methylester</del> <u>N-[[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester</u>
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine

Hazardous Waste No.	Chemical Abstracts No.	Substance
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P198	23422-53-9	Formetanate hydrochloride
P197	17702-57-7	Formparanate
P065	628-86-4	Fulminic acid, mercury(2+)salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide
P060	465-73-6	Isodrin
P192	119-38-0	Isolan
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis[chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[[methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[methylamino)carbonyl]oxy]phenyl]-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P199	2032-65-7	Methiocarb
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methylactonitrile
P071	298-00-0	Methyl parathion
P190	1129-41-5	Metolcarb
P128	315-18-4	Mexacarbamate

Hazardous Waste No.	Chemical Abstracts No.	Substance
P072	86-88-4	alpha-Naphthylthiourea
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO) <sub>4</sub> , (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN) <sub>2</sub>
P075	154-11-5	Nicotine and salts
P076	10102-43-9	Nitric oxide
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO <sub>2</sub>
P081	55-63-0	Nitroglycerine (R)
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramidate
P087	20816-12-0	Osmium oxide OsO <sub>4</sub> , (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P194	23135-22-0	Oxamyl
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate(ester)
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-), methylcarbamate
P048	51-28-5	Phenol, 2,4-dinitro-
P047	1534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl]ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester

<b>Hazardous Waste No.</b>	<b>Chemical Abstracts No.</b>	<b>Substance</b>
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethylester
P071	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl)ester
P204	57-47-6	Physostigmine
P188	57-64-7	Physostigmine salicylate
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P201	2631-37-0	Promecarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-,O-[(methylamino)carbonyl] oxime
P101	107-12-0	Propanenitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	Pyridianamine
P075	154-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S), & salts
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol,1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-methylcarbamate (ester), (3aS-cis)-
P114	12039-52-0	Selenious acid, dithallium(+1) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	157-24-9	Strychnidin-10-one, and salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	157-24-9	Strychnine and salts
P115	7446-18-6	Sulfuric acid, dithallium(1+)salt
P109	3689-24-5	Tetraethyldithiopyrophosphate
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester

Hazardous Waste No.	Chemical Abstracts No.	Substance
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide $Tl_2O_3$
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P185	26419-73-8	Tirpate
P123	80201-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide $V_2O_5$
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P001	181-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide $Zn(CN)_2$
P122	1314-84-7	Zinc phosphide $Zn_3P_2$ , when present at concentrations greater than 10% (R,T)
P205	137-30-4	Ziram.
<a href="#">P001</a>	<a href="#">181-81-2</a>	<a href="#">2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, &amp; salts, when present at concentrations greater than 0.3%</a>
<a href="#">P001</a>	<a href="#">181-81-2</a>	<a href="#">Warfarin, &amp; salts, when present at concentrations greater than 0.3%</a>
<a href="#">P002</a>	<a href="#">591-08-2</a>	<a href="#">Acetamide, (aminothioxomethyl)-</a>
<a href="#">P002</a>	<a href="#">591-08-2</a>	<a href="#">1-Acetyl-2-thiourea</a>
<a href="#">P003</a>	<a href="#">107-02-8</a>	<a href="#">Acrolein</a>
<a href="#">P003</a>	<a href="#">107-02-8</a>	<a href="#">2-Propenal</a>
<a href="#">P004</a>	<a href="#">309-00-2</a>	<a href="#">Aldrin</a>
<a href="#">P004</a>	<a href="#">309-00-2</a>	<a href="#">1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-</a>
<a href="#">P005</a>	<a href="#">107-18-6</a>	<a href="#">Allyl alcohol</a>
<a href="#">P005</a>	<a href="#">107-18-6</a>	<a href="#">2-Propen-1-ol</a>
<a href="#">P006</a>	<a href="#">20859-73-8</a>	<a href="#">Aluminum phosphide (R,T)</a>
<a href="#">P007</a>	<a href="#">2763-96-4</a>	<a href="#">5-(Aminomethyl)-3-isoxazolol</a>
<a href="#">P007</a>	<a href="#">2763-96-4</a>	<a href="#">3(2H)-Isoxazolone,5-(aminomethyl)-</a>
<a href="#">P008</a>	<a href="#">504-24-5</a>	<a href="#">4-Aminopyridine</a>

<b>Hazardous Waste No.</b>	<b>Chemical Abstracts No.</b>	<b>Substance</b>
P008	504-24-5	4-Pyridinamine
P009	131-74-8	Ammonium picrate (R)
P009	131-74-8	Phenol,2,4,6-trinitro-, ammonium salt (R)
P010	7778-39-4	Arsenic acid H <sub>3</sub> AsO <sub>4</sub>
P011	1303-28-2	Arsenic oxide As <sub>2</sub> O <sub>5</sub>
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic oxide As <sub>2</sub> O <sub>3</sub>
P012	1327-53-3	Arsenic trioxide
P013	542-62-1	Barium cyanide
P014	108-98-5	Benzenethiol
P014	108-98-5	Thiophenol
P015	7440-41-7	Beryllium powder
P016	542-88-1	Dichloromethyl ether
P016	542-88-1	Methane, oxybis[chloro-
P017	598-31-2	Bromoacetone
P017	598-31-2	2-Propanone, 1-bromo-
P018	357-57-3	Brucine
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P020	88-85-7	Dinoseb
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN) <sub>2</sub>
P022	75-15-0	Carbon disulfide
P023	107-20-0	Acetaldehyde, chloro-
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	Benzenamine, 4-chloro-
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P026	5344-82-1	Thiourea, (2-chlorophenyl)
P027	542-76-7	3-Chloropropionitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P028	100-44-7	Benzene, (chloromethyl)-
P028	100-44-7	Benzyl chloride
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P030	.....	Cyanides (soluble cyanide salts),not otherwise specified
P031	460-19-5	Cyanogen
P031	460-19-5	Ethanedinitrile
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride(CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol

Hazardous Waste No.	Chemical Abstracts No.	Substance
P034	131-89-5	Phenol,2-cyclohexyl-4,6-dinitro-
P036	696-28-6	Arsonous dichloride, phenyl-
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-
P038	692-42-2	Arsine, diethyl-
P038	692-42-2	Diethylarsine
P039	298-04-4	Disulfoton
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P040	297-97-2	O,O-DiethylO-pyrazinyl phosphorothioate
P040	297-97-2	Phosphorothioic acid,O,O-diethyl O-pyrazinylester
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P041	311-45-5	Phosphoric acid, diethyl4- nitrophenyl ester
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P042	51-43-4	Epinephrine
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P044	60-51-5	Dimethoate
P044	60-51-5	Phosphorodithioic acid,O,O- dimethyl S-[2-(methylamino) -2-oxoethyl] ester
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1- (methylthio)-, O-[(methylamino)carbonyl] oxime
P045	39196-18-4	Thiofanox
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P046	122-09-8	alpha,alpha- Dimethylphenethylamine
P047	1534-52-1	4,6-Dinitro-o-cresol, & salts
P047	1534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P048	51-28-5	2,4-Dinitrophenol
P048	51-28-5	Phenol,2,4-dinitro-
P049	541-53-7	Dithiobiuret
P049	541-53-7	Thioimidodicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> NH
P050	115-29-7	Endosulfan
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P051	172-20-08	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-, & metabolites
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P054	151-56-4	Aziridine
P054	151-56-4	Ethyleneimine
P056	7782-41-4	Fluorine
P057	640-19-7	Acetamide, 2-fluoro-

<b>Hazardous Waste No.</b>	<b>Chemical Abstracts No.</b>	<b>Substance</b>
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P058	62-74-8	Fluoroacetic acid, sodium salt
P059	76-44-8	Heptachlor
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P060	465-73-6	Isodrin
P062	757-58-4	Hexaethyl tetraphosphate
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P064	624-83-9	Methane, isocyanato-
P064	624-83-9	Methyl isocyanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P065	628-86-4	Mercury fulminate (R,T)
P066	16752-77-5	Ethanimidothioic acid ,[[[(methylamino)carbonyl]oxy]-, methyl ester
P066	16752-77-5	Methomyl
P067	75-55-8	Aziridine, 2-methyl-
P067	75-55-8	1,2-Propylenimine
P068	60-34-4	Hydrazine, methyl-
P068	60-34-4	Methyl hydrazine
P069	75-86-5	2-Methylactonitrile
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P070	116-06-3	Aldicarb
P070	116-06-3	Propanal, 2-methyl-2- (methylthio)-, O-[(methylamino)carbonyl]oxime
P071	298-00-0	Methyl parathion
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P072	86-88-4	alpha-Naphthylthiourea
P072	86-88-4	Thiourea, 1-naphthalenyl-
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO) <sub>4</sub> ,(T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN) <sub>2</sub>
P075	154-11-5	Nicotine, & salts
P075	154-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-,(S)-, & salts
P076	10102-43-9	Nitric oxide
P076	10102-43-9	Nitrogen oxide NO
P077	100-01-6	Benzenamine, 4-nitro-
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide

<b>Hazardous Waste No.</b>	<b>Chemical Abstracts No.</b>	<b>Substance</b>
P078	<a href="#">10102-44-0</a>	<a href="#">Nitrogen oxide NO<sub>2</sub></a>
P081	<a href="#">55-63-0</a>	<a href="#">Nitroglycerine (R)</a>
P081	<a href="#">55-63-0</a>	<a href="#">1,2,3-Propanetriol, trinitrate (R)</a>
P082	<a href="#">62-75-9</a>	<a href="#">Methanamine, -methyl-N- nitroso-</a>
P082	<a href="#">62-75-9</a>	<a href="#">N-Nitrosodimethylamine</a>
P084	<a href="#">4549-40-0</a>	<a href="#">N-Nitrosomethylvinylamine</a>
P084	<a href="#">4549-40-0</a>	<a href="#">Vinylamine, -methyl-N-nitroso-</a>
P085	<a href="#">152-16-9</a>	<a href="#">Diphosphoramidate, octamethyl-</a>
P085	<a href="#">152-16-9</a>	<a href="#">Octamethylpyrophosphoramidate</a>
P087	<a href="#">20816-12-0</a>	<a href="#">Osmium oxide OsO<sub>4</sub>(T-4)-</a>
P087	<a href="#">20816-12-0</a>	<a href="#">Osmium tetroxide</a>
P088	<a href="#">145-73-3</a>	<a href="#">Endothall</a>
P088	<a href="#">145-73-3</a>	<a href="#">7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid</a>
P089	<a href="#">56-38-2</a>	<a href="#">Parathion</a>
P089	<a href="#">56-38-2</a>	<a href="#">Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester</a>
P092	<a href="#">62-38-4</a>	<a href="#">Mercury, (acetato-O)phenyl-</a>
P092	<a href="#">62-38-4</a>	<a href="#">Phenylmercury acetate</a>
P093	<a href="#">103-85-5</a>	<a href="#">Phenylthiourea</a>
P093	<a href="#">103-85-5</a>	<a href="#">Thiourea, phenyl-</a>
P094	<a href="#">298-02-2</a>	<a href="#">Phorate</a>
P094	<a href="#">298-02-2</a>	<a href="#">Phosphorodithioic acid, O,O- diethylS-[(ethylthio)methyl] ester</a>
P095	<a href="#">75-44-5</a>	<a href="#">Carbonic dichloride</a>
P095	<a href="#">75-44-5</a>	<a href="#">Phosgene</a>
P096	<a href="#">7803-51-2</a>	<a href="#">Hydrogen phosphide</a>
P096	<a href="#">7803-51-2</a>	<a href="#">Phosphine</a>
P097	<a href="#">52-85-7</a>	<a href="#">Famphur</a>
P097	<a href="#">52-85-7</a>	<a href="#">Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester</a>
P098	<a href="#">151-50-8</a>	<a href="#">Potassium cyanide</a>
P098	<a href="#">151-50-8</a>	<a href="#">Potassium cyanide K(CN)</a>
P099	<a href="#">506-61-6</a>	<a href="#">Argentate(1-), bis(cyano-C)-, potassium</a>
P099	<a href="#">506-61-6</a>	<a href="#">Potassium silver cyanide</a>
P101	<a href="#">107-12-0</a>	<a href="#">Ethyl cyanide</a>
P101	<a href="#">107-12-0</a>	<a href="#">Propanenitrile</a>
P102	<a href="#">107-19-7</a>	<a href="#">Propargyl alcohol</a>
P102	<a href="#">107-19-7</a>	<a href="#">2-Propyn-1-ol</a>
P103	<a href="#">630-10-4</a>	<a href="#">Selenourea</a>
P104	<a href="#">506-64-9</a>	<a href="#">Silver cyanide</a>
P104	<a href="#">506-64-9</a>	<a href="#">Silver cyanide Ag(CN)</a>
P105	<a href="#">26628-22-8</a>	<a href="#">Sodium azide</a>
P106	<a href="#">143-33-9</a>	<a href="#">Sodium cyanide</a>
P106	<a href="#">143-33-9</a>	<a href="#">Sodium cyanide Na(CN)</a>

Hazardous Waste No.	Chemical Abstracts No.	Substance
P108	<a href="#">1157-24-9</a>	<a href="#">Strychnidin-10-one, &amp; salts</a>
P108	<a href="#">1157-24-9</a>	<a href="#">Strychnine, &amp; salts</a>
P109	<a href="#">3689-24-5</a>	<a href="#">Tetraethyldithiopyrophosphate</a>
P109	<a href="#">3689-24-5</a>	<a href="#">Thiodiphosphoric acid, tetraethyl ester</a>
P110	<a href="#">78-00-2</a>	<a href="#">Plumbane, tetraethyl-</a>
P110	<a href="#">78-00-2</a>	<a href="#">Tetraethyl lead</a>
P111	<a href="#">107-49-3</a>	<a href="#">Diphosphoric acid, tetraethyl ester</a>
P111	<a href="#">107-49-3</a>	<a href="#">Tetraethyl pyrophosphate</a>
P112	<a href="#">509-14-8</a>	<a href="#">Methane, tetranitro-(R)</a>
P112	<a href="#">509-14-8</a>	<a href="#">Tetranitromethane (R)</a>
P113	<a href="#">1314-32-5</a>	<a href="#">Thallic oxide</a>
P113	<a href="#">1314-32-5</a>	<a href="#">Thallium oxide <math>Tl_2O_3</math></a>
P114	<a href="#">12039-52-0</a>	<a href="#">Selenious acid, dithallium(1+) salt</a>
P114	<a href="#">12039-52-0</a>	<a href="#">Tetraethyldithiopyrophosphate</a>
P115	<a href="#">7446-18-6</a>	<a href="#">Thiodiphosphoric acid, tetraethyl ester</a>
P115	<a href="#">7446-18-6</a>	<a href="#">Plumbane, tetraethyl-</a>
P116	<a href="#">79-19-6</a>	<a href="#">Tetraethyl lead</a>
P116	<a href="#">79-19-6</a>	<a href="#">Thiosemicarbazide</a>
P118	<a href="#">75-70-7</a>	<a href="#">Methanethiol, trichloro-</a>
P118	<a href="#">75-70-7</a>	<a href="#">Trichloromethanethiol</a>
P119	<a href="#">7803-55-6</a>	<a href="#">Ammonium vanadate</a>
P119	<a href="#">7803-55-6</a>	<a href="#">Vanadic acid, ammonium salt</a>
P120	<a href="#">1314-62-1</a>	<a href="#">Vanadium oxide <math>V_2O_5</math></a>
P120	<a href="#">1314-62-1</a>	<a href="#">Vanadium pentoxide</a>
P121	<a href="#">557-21-1</a>	<a href="#">Zinc cyanide</a>
P121	<a href="#">557-21-1</a>	<a href="#">Zinc cyanide <math>Zn(CN)_2</math></a>
P122	<a href="#">1314-84-7</a>	<a href="#">Zinc phosphide <math>Zn_3P_2</math>, when present at concentrations greater than 10% (R,T)</a>
P123	<a href="#">8001-35-2</a>	<a href="#">Toxaphene</a>
P127	<a href="#">1563-66-2</a>	<a href="#">7-Benzofuranol, 2,3-dihydro-2, 2-dimethyl-, methylcarbamate.</a>
P127	<a href="#">1563-66-2</a>	<a href="#">Carbofuran</a>
P128	<a href="#">315-8-4</a>	<a href="#">Mexacarbate</a>
P128	<a href="#">315-18-4</a>	<a href="#">Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</a>
P185	<a href="#">26419-73-8</a>	<a href="#">1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl] oxime</a>
P185	<a href="#">26419-73-8</a>	<a href="#">Tirpate</a>
P188	<a href="#">57-64-7</a>	<a href="#">Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)</a>
P188	<a href="#">57-64-7</a>	<a href="#">Physostigmine salicylate</a>
P189	<a href="#">55285-14-8</a>	<a href="#">Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester</a>
P189	<a href="#">55285-14-8</a>	<a href="#">Carbosulfan</a>
P190	<a href="#">1129-41-5</a>	<a href="#">Carbamic acid, methyl-, 3- methylphenyl ester</a>

Hazardous Waste No.	Chemical Abstracts No.	Substance
P190	1129-41-5	Metolcarb
P191	644-64-4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester
P191	644-64-4	Dimetilan
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119-38-0	Isolan
P194	23135-22-0	Ethanimidthioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester
P194	23135-22-0	Oxamyl
P196	15339-36-3	Manganese, bis(dimethylcarbamo-dithioato-S,S')-
P196	15339-36-3	Manganese dimethyldithiocarbamate
P197	17702-57-7	Formparanate
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[[(methylamino)carbonyl]oxy] phenyl]-
P198	23422-53-9	Formetanate hydrochloride
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)-carbonyl]oxy]phenyl]-monohydrochloride
P199	2032-65-7	Methiocarb
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate
P201	2631-37-0	Promecarb
P202	64-00-6	m-Cumenyl methylcarbamate
P202	64-00-6	3-Isopropylphenyl ' methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P203	1646-88-4	Aldicarb sulfone
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime
P204	57-47-6	Physostigmine
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate(ester), (3aS-cis)-
P205	137-30-4	Zinc, bis(dimethylcarbamo-dithioato-S,S')-
P205	137-30-4	Ziram

<sup>1</sup>CAS number given for parent compound only.

6. The commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products, or mixtures of the chemicals referred to in subsections 1 through 4, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in subsections 1 and 7 of section 33-24-02-05.

{[Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (toxicity), R (reactivity), I (ignitability), and C (corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.} Wastes are first listed in alphabetical order by substance and then listed again in numerical order by hazardous waste number.]

These wastes and their corresponding hazardous waste numbers are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
U394	30558-43-1	A2213
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl
U240	194-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U112	141-78-6	Acetic acid, ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium (1+) salt
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-[1aS-(1aalpha, 8beta, 8aalpha, 8balpha)]]-
U280	101-27-9	Barban
U278	22781-23-3	Bendiocarb
U364	22961-82-6	Bendiocarb phenol
U271	17804-35-2	Benomyl
U157	56-49-5	Benz[j][aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U018	56-55-3	Benz[a]anthracene
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-
U353	106-49-0	Benzenamine, 4-methyl-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (T)(L)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)-(I)
U169	98-95-3	Benzene, nitro-
U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-
U021	92-87-5	Benzidine
U202	<del>81-07-2</del>	<del>1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, &amp; salts</del>
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.

Hazardous Waste No.	Chemical Abstracts No.	Substance
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U064	189-55-9	Benzo[rs]pentaphene
U248	181-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo[a]pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester,[1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-,methyl ester
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester.
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)]bis-,dimethyl ester
U097	79-44-7	Carbamic chloride, dimethyl-
U114	111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts and esters
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester

Hazardous Waste No.	Chemical Abstracts No.	Substance
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U279	63-25-2	Carbaryl
U372	10605-21-7	Carbendazim
U367	1563-38-8	Carbofuran phenol
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U033	353-50-4	Carbon difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gamma isomers
U026	494-03-1	Chlornaphazine
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	4-Chloro-m-cresol
U042	110-75-82	Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-34	Chloro-o-toluidine, hydrochloride
U032	13765-19-0	Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt
U050	218-01-9	Chrysene
U051	.....	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-42,5	Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)
U057	108-94-1	Cyclohexanone (I)
U130	77-47-41,3	Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U058	50-18-0	Cyclophosphamide
U240	194-75-72,4-D,	salts and esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-81,2	Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-13,3'	Dichlorobenzidine
U074	764-41-01,4	Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-41,1	Dichloroethylene
U079	156-60-51,2	Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether

Hazardous Waste No.	Chemical Abstracts No.	Substance
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-22	4-Dichlorophenol
U082	87-65-02	6-Dichlorophenol
U084	542-75-61	3-Dichloropropene
U085	1464-53-51	2:3,4-Diepoxybutane (I,T)
U395	5952-26-1	Diethylene glycol, dicarbamate
U108	123-91-11	4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-DiethylS-methyl-dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-43	3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7p	Dimethylaminoazobenzene
U094	57-97-67	12-Dimethylbenz[a]anthracene
U095	119-93-73	3'-Dimethylbenzidine
U096	80-15-9a	alpha,alpha-Dimethylbenzhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-71	1-Dimethylhydrazine
U099	540-73-81	2-Dimethylhydrazine
U101	105-67-92	4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-22	4-Dinitrotoluene
U106	606-20-22	6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-11	4-Dioxane
U109	122-66-71	2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U404	121-44-8	Ethanamine, N,N-diethyl-
U155	91-80-51	2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis- (I)
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
U410	59669-26-0	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate.
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-12	Furancarboxaldehyde (I)
U147	108-31-62,5	Furandione
U213	109-99-9	Furan, tetrahydro- (I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2(3-methyl-3-nitroso-ureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino)-carbonyl]amino]-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H <sub>2</sub> S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-72	Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U190	85-44-91,3	Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-3	Methane, bromo-
U045	74-87-3	Methane, chloro- (I,T)
U046	107-30-2	Methane, chloromethoxy-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I, T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-94,7	Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-01,3,4	Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-91	Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I, T)
U156	79-22-1	Methyl chlorocarbonate (I, T)
U226	71-55-6	Methyl chloroform
U157	56-49-53	Methylcholanthrene
U158	101-14-44,4'	Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I, T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R, T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I, T)
U161	108-10-14	Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C
U059	20830-81-35,12	Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-71	Naphthalenamine
U168	91-59-82	Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-41,4	Naphthalenedione
U236	72-57-12,7	Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
U279	63-25-21	Naphthalenol, methylcarbamate
U166	130-15-41,4	Naphthoquinone
U167	134-2-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium(1+) salt
U169	98-95-3	Nitrobenzene (I, T)
U170	100-02-7	p-Nitrophenol
U171	79-46-92	Nitropropane (I, T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-85	Nitro-o-toluidine

Hazardous Waste No.	Chemical Abstracts No.	Substance
U193	1120-71-41,2-Oxathiolane, 2,2-dioxide	
U058	50-18-02H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	
U115	75-21-8Oxirane (I,T)	
U126	765-34-4Oxiranecarboxyaldehyde	
U041	106-89-8Oxirane, (chloromethyl)-	
U182	123-63-7Paraldehyde	
U183	608-93-5Pentachlorobenzene	
U184	76-01-7Pentachloroethane	
U185	82-68-8Pentachloronitrobenzene (PCNB)	
See F027	87-86-5Pentachlorophenol	
U161	108-10-1Pentanol, 4-methyl-	
U186	504-60-91,3-Pentadiene (I)	
U187	62-44-2Phenacetin	
U188	108-95-2Phenol	
U048	95-57-8Phenol, 2-chloro-	
U039	59-50-7Phenol, 4-chloro-3-methyl-	
U081	120-83-2Phenol, 2,4-dichloro-	
U082	87-65-0Phenol, 2,6-dichloro-	
U089	56-53-1Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)-	
U101	105-67-9Phenol, 2,4-dimethyl-	
U052	1319-77-3Phenol, methyl-	
U132	70-30-4Phenol, 2,2'-methylenebis[3,4,6-trichloro-	
U411	114-26-1Phenol, 2-(1-methylethoxy)-, methylcarbamate	
U170	100-02-7Phenol, 4-nitro-	
See F027	87-86-5Phenol, pentachloro-	
See F027	58-90-2Phenol, 2,3,4,6-tetrachloro-	
See F027	95-95-4Phenol, 2,4,5-trichloro-	
See F027	88-06-2Phenol, 2,4,6-trichloro-	
U150	148-82-3L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	
U145	7446-27-7Phosphoric acid, lead(2+) salt (2:3)	
U087	3288-58-2Phosphorodithioic acid, 0,0-diethyl S-methyl ester	
U189	1314-80-3Phosphorus sulfide (R)	
U190	85-44-9Phthalic anhydride	
U191	109-06-82-Picoline	
U179	100-75-4Piperidine, 1-nitroso-	
U192	23950-58-5Pronamide	
U194	107-10-81-Propanamine (I,T)	
U111	621-64-71-Propanamine, N-nitroso-N-propyl-	
U110	142-84-71-Propanamine, N-propyl- (I)	
U066	96-12-8Propane, 1,2-dibromo-3-chloro-	
U083	78-87-5Propane, 1,2-dichloro-	
U149	109-77-3Propanedinitrile	
U171	79-46-9Propane, 2-nitro- (I,T)	
U027	108-60-1Propane, 2,2'-oxybis[2-chloro-	
U193	1120-71-41,3-Propane sultone	
See F027	93-72-1Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	
U235	126-72-71-Propanol, 2,3-dibromo-, phosphate (3:1)	
U140	78-83-11-Propanol, 2-methyl- (I,T)	
U002	67-64-12-Propanone (I)	
U007	79-06-12-Propenamide	
U084	542-75-61-Propene, 1,3-dichloro-	
U243	1888-71-71-Propene, 1,1,2,3,3,3-hexachloro-	
U009	107-13-12-Propenenitrile	
U152	126-98-72-Propenenitrile, 2-methyl- (I,T)	
U008	79-10-72-Propenoic acid (I)	
U113	140-88-52-Propenoic acid, ethyl ester (I)	
U118	97-63-22-Propenoic acid, 2-methyl-, ethyl ester	
U162	80-62-62-Propenoic acid, 2-methyl-, methyl ester (I,T)	
U373	122-42-9Propham	
U411	114-26-1Propoxur	
U194	107-10-8n-Propylamine (I,T)	
U083	78-87-5Propylene dichloride	
U387	52888-80-9Prosulfocarb	
U148	123-33-13,6-Pyridazinedione, 1,2-dihydro-	

Hazardous Waste No.	Chemical Abstracts No.	Substance
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-12,4(1H,3H)-	Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U164	56-04-24-(1H)-	Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U202	<del>81-07-2</del>	<del>Saccharin, and salts</del>
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS <sub>2</sub> (R,T)
U015	115-02-6L-	Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-52,4,5-T	
U207	95-94-31,2,4,5-	Tetrachlorobenzene
U208	630-20-61,1,1,2-	Tetrachloroethane
U209	79-34-51,1,2,2-	Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-22,3,4,6-	Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TICl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide
U410	59669-26-0	Thiodicarb
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl-
U409	23564-05-8	Thiophanate-methyl
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4o-	Toluidine
U353	106-49-0p-	Toluidine
U222	636-21-5o-	Toluidine hydrochloride
U389	2303-17-5	Triallate
U011	61-82-51H-1,2,4-	Triazol-3-amine
U408	118-79-62,4,6-	Tribromophenol
U226	71-55-61,1,1-	Trichloroethane
U227	79-00-51,1,2-	Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-42,4,5-	Trichlorophenol
See F027	88-06-22,4,6-	Trichlorophenol
U404	121-44-8	Triethylamine
U234	99-35-41,3,5-	Trinitrobenzene (R,T)
U182	123-63-71,3,5-	Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris (2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil mustard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid,

Hazardous Waste No.	Chemical Abstracts No.	Substance
		11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-,methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U249	1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations of 10% or less
U001	75-07-0	Acetaldehyde (l)
U001	75-07-0	Ethanal (l)
U002	67-64-1	Acetone (l)
U002	67-64-12	Propanone (l)
U003	75-05-8	Acetonitrile (l,T)
U004	98-86-2	Acetophenone
U004	98-86-2	Ethanone,1-phenyl-
U005	53-96-3	Acetamide, -9H-fluoren-2-yl-
U005	53-96-32	Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U007	79-06-12	Propenamide
U008	79-10-7	Acrylic acid (l)
U008	79-10-72	Propenoic acid (l)
U009	107-13-1	Acrylonitrile
U009	107-13-12	Propenenitrile
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1alpha,8beta,8alpha,8balpha)]-
U010	50-07-7	Mitomycin C
U011	61-82-5	Amitrole
U011	61-82-51	H-1,2,4-Triazol-3-amine
U012	62-53-3	Aniline (l,T)
U012	62-53-3	Benzenamine (l,T)
U014	492-80-8	Auramine
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,` dimethyl-
U015	115-02-6	Azaserine
U015	115-02-6L	-Serine, diazoacetate (ester)
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzalchloride
U017	98-87-3	Benzene, (dichloromethyl)-
U018	56-55-3	Benz[a]anthracene
U019	71-43-2	Benzene (l,T)
U020	98-09-9	Benzenesulfonic acidchloride (C,R)
U020	98-09-9	Benzenesulfonylchloride (C,R)
U021	92-87-5	Benzidine
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U022	50-32-8	Benzo[a]pyrene
U023	98-07-7	Benzene, (trichloromethyl)-
U023	98-07-7	Benzotrichloride (C,R,T)
U024	111-91-1	Dichloromethoxyethane
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U025	111-44-4	Dichloroethy lether
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U026	494-03-1	Chlornaphazin
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U027	108-60-1	Dichloroisopropyl ether
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
U028	117-81-71,2	Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U028	117-81-7	Diethylhexyl phthalate
U029	74-83-9	Methane, bromo-
U029	74-83-9	Methyl bromide
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U030	101-55-34	Bromophenyl phenyl ether
U031	71-36-31	Butanol (l)
U031	71-36-3n	Butyl alcohol (l)
U032	13765-19-0	Calcium chromate
U032	13765-19-0	Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt
U033	353-50-4	Carbonic difluoride
U033	353-50-4	Carbon oxyfluoride (R,T)
U034	75-87-6	Acetaldehyde, trichloro-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U034	75-87-6	Chloral
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gamma isomers
U036	57-74-94.7	Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U037	108-90-7	Benzene, chloro-
U037	108-90-7	Chlorobenzene
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U038	510-15-6	Chlorobenzilate
U039	59-50-7p	Chloro-m-cresol
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U041	106-89-8	Epichlorohydrin
U041	106-89-8	Oxirane, (chloromethyl)-
U042	110-75-82	Chloroethyl vinyl ether
U042	110-75-8	Ethene, (2-chloroethoxy)-
U043	75-01-4	Ethene, chloro-
U043	75-01-4	Vinyl chloride
U044	67-66-3	Chloroform
U044	67-66-3	Methane, trichloro-
U045	74-87-3	Methane, chloro- (l,t)
U045	74-87-3	Methylchloride (l,t)
U046	107-30-2	Chloromethyl methyl ether
U046	107-30-2	Methane, chloromethoxy-
U047	91-58-7	beta-Chloronaphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U048	95-57-8o	Chlorophenol
U048	95-57-8	Phenol, 2-chloro-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U049	3165-93-34	Chloro-o-toluidine, hydrochloride
U050	218-01-9	Chrysene
U051	.....	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U052	1319-77-3	Phenol, methyl-
U053	4170-30-32	Butenal
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Benzene, (1-methylethyl)- (l)
U055	98-82-8	Cumene (l)
U056	110-82-7	Benzene, hexahydro- (l)
U056	110-82-7	Cyclohexane (l)
U057	108-94-1	Cyclohexanone (l)
U058	50-18-0	Cyclophosphamide
U058	50-18-02H-1,3,2	Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U059	20830-81-3	Daunomycin
U059	20830-81-35.12	Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U060	72-54-8	Benzene, 1, 1'-(2,2-dichloroethylidene)bis[4-chloro-
U060	72-54-8	DDD
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U061	50-29-3	DDT
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Benzo[rs]pentaphene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-81,2	Dibromo-3-chloropropane
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U067	106-93-4	Ethane, 1,2-dibromo-
U067	106-93-4	Ethylene dibromide
U068	74-95-3	Methane, dibromo-
U068	74-95-3	Methylene bromide
U069	84-74-21,2	Benzenedicarboxylic acid, dibutyl ester
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	Benzene, 1,2-dichloro-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U070	95-50-1o-Dichlorobenzene	
U071	541-73-1Benzene, 1,3-dichloro-	
U071	541-73-1m-Dichlorobenzene	
U072	106-46-7Benzene, 1,4-dichloro-	
U072	106-46-7p-Dichlorobenzene	
U073	91-94-1[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	
U073	91-94-13,3'-Dichlorobenzidine	
U074	764-41-02-Butene, 1,4-dichloro- (I,T)	
U074	764-41-01,4-Dichloro-2-butene (I,T)	
U075	75-71-8Dichlorodifluoromethane	
U075	75-71-8Methane, dichlorodifluoro-	
U076	75-34-3Ethane, 1,1-dichloro-	
U076	75-34-3Ethylidene dichloride	
U077	107-06-2Ethane, 1,2-dichloro-	
U077	107-06-2Ethylene dichloride	
U078	75-35-41,1-Dichloroethylene	
U078	75-35-4Ethene, 1,1-dichloro-	
U079	156-60-51,2-Dichloroethylene	
U079	156-60-5Ethene, 1,2-dichloro-, (E)-	
U080	75-09-2Methane, dichloro-	
U080	75-09-2Methylene chloride	
U081	120-83-22,4-Dichlorophenol	
U081	120-83-2Phenol, 2,4-dichloro-	
U082	87-65-02,6-Dichlorophenol	
U082	87-65-0Phenol, 2,6-dichloro-	
U083	78-87-5Propane, 1,2-dichloro-	
U083	78-87-5Propylene dichloride	
U084	542-75-61,3-Dichloropropene	
U084	542-75-61-Propene, 1,3-dichloro-	
U085	1464-53-52,2'-Bioxirane	
U085	1464-53-51,2:3,4-Diepoxybutane (I,T)	
U086	1615-80-1N,N'-Diethylhydrazine	
U086	1615-80-1Hydrazine, 1,2-diethyl-	
U087	3288-58-2O,O-Diethyl S-methyl dithiophosphate	
U087	3288-58-2Phosphorodithioic acid, O,O-diethyl S-methyl ester	
U088	84-66-21,2-Benzenedicarboxylic acid, diethyl ester	
U088	84-66-2Diethyl phthalate	
U089	56-53-1Diethylstilbesterol	
U089	56-53-1Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-	
U090	94-58-61,3-Benzodioxole, 5-propyl-	
U090	94-58-6Dihydrosafrole	
U091	119-90-4[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	
U091	119-90-43,3'-Dimethoxybenzidine	
U092	124-40-3Dimethylamine (I)	
U092	124-40-3Methanamine, -methyl- (I)	
U093	60-11-7Benzenamine, N,N-dimethyl-4-(phenylazo)-	
U093	60-11-7p-Dimethylaminoazobenzene	
U094	57-97-6Benz[a]anthracene, 7,12-dimethyl-	
U094	57-97-67,12-Dimethylbenz[a]anthracene	
U095	119-93-7[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	
U095	119-93-73,3'-Dimethylbenzidine	
U096	80-15-9alpha, alpha- Dimethylbenzylhydroperoxide (R)	
U096	80-15-9Hydroperoxide, 1-methyl-1-phenylethyl-(R)	
U097	79-44-7Carbamic chloride, dimethyl-	
U097	79-44-7Dimethylcarbamoyl chloride	
U098	57-14-71,1-Dimethylhydrazine	
U098	57-14-7Hydrazine, 1,1-dimethyl-	
U099	540-73-81,2-Dimethylhydrazine	
U099	540-73-8Hydrazine, 1,2-dimethyl-	
U101	105-67-92,4-Dimethylphenol	
U101	105-67-9Phenol, 2,4-dimethyl-	
U102	131-11-31,2-Benzenedicarboxylic acid, dimethyl ester	
U102	131-11-3Dimethyl phthalate	
U103	77-78-1Dimethyl sulfate	

Hazardous Waste No.	Chemical Abstracts No.	Substance
U103	77-78-1	Sulfuric acid, dimethyl ester
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U105	121-14-22	4-Dinitrotoluene
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U106	606-20-22	6-Dinitrotoluene
U107	117-84-01	2-Benzenedicarboxylic acid, dioctyl ester
U107	117-84-0	Di-n-octylphthalate
U108	123-91-11	4-Diethyleneoxide
U108	123-91-11	4-Dioxane
U109	122-66-71	2-Diphenylhydrazine
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U110	142-84-7	Dipropylamine (l)
U110	142-84-71	Propanamine, N-propyl- (l)
U111	621-64-7	Di-n-propylnitrosamine
U111	621-64-71	Propanamine, N-nitroso— propyl-
U112	141-78-6	Acetic acidethyl ester (l)
U112	141-78-6	Ethyl acetate (l)
U113	140-88-5	Ethyl acrylate (l)
U113	140-88-52	Propenoic acid, ethyl ester (l)
U114	111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts & esters
U114	111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U115	75-21-8	Ethylene oxide (l,T)
U115	75-21-8	Oxirane (l,T)
U116	96-45-7	Ethylenethiourea
U116	96-45-72	Imidazolidinethione
U117	60-29-7	Ethane, 1,1'-oxybis- (l)
U117	60-29-7	Ethyl ether (l)
U118	97-63-2	Ethyl methacrylate
U118	97-63-22	Propenoic acid, 2-methyl-, ethyl ester
U119	62-50-0	Ethyl methanesulfonate
U119	62-50-0	Methanesulfonic acid, ethyl ester
U120	206-44-0	Fluoranthene
U121	75-69-4	Methane, trichlorofluoro-
U121	75-69-4	Trichloromonofluoromethane
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (l)
U124	110-00-9	Furfuran (l)
U125	98-01-12	Furancarboxaldehyde (l)
U125	98-01-1	Furfural (l)
U126	765-34-4	Glycidylaldehyde
U126	765-34-4	Oxiranecarboxyaldehyde
U127	118-74-1	Benzene, hexachloro-
U127	118-74-1	Hexachlorobenzene
U128	87-68-31	3-Butadiene, 1,1,2,3,4,4-hexachloro-
U128	87-68-3	Hexachlorobutadiene
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U129	58-89-9	Lindane
U130	77-47-41	3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Ethane, hexachloro
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U133	302-01-2	Hydrazine (R,T)
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H <sub>2</sub> S
U136	75-60-5	Arsinic acid, dimethyl-
U136	75-60-5	Cacodylic acid
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U138	74-88-4	Methane, iodo-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U138	74-88-4	Methyl iodide
U140	78-83-1	Isobutyl alcohol (I,T)
U140	78-83-11	Propanol, 2-methyl- (I,T)
U141	120-58-11	3-Benzodioxole, 5-(1-propenyl)-
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U142	143-50-01	3,4-Metheno-2H- cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-
U143	303-34-42	Butenoic acid,2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-ylester,[1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U143	303-34-4	Lasiocarpine
U144	301-04-2	Acetic acid, lead(2+) salt
U144	301-04-2	Lead acetate
U145	7446-27-7	Lead phosphate
U145	7446-27-7	Phosphoric acid, lead (2+) salt (2:3)
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U146	1335-32-6	Lead subacetate
U147	108-31-62	5-Furandione
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U148	123-33-13	6-Pyridazinedione, 1,2-dihydro-
U149	109-77-3	Malononitrile
U149	109-77-3	Propanedinitrile
U150	148-82-3	Melphalan
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U152	126-98-72	Propenenitrile, 2-methyl- (I,T)
U153	74-93-1	Methanethiol (I,T)
U153	74-93-1	Thiomethanol (I,T)
U154	67-56-1	Methanol (I)
U154	67-56-1	Methyl alcohol (I)
U155	91-80-51	2-Ethanediamine, N,' dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U155	91-80-5	Methapyrilene
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U157	56-49-53	Methylcholanthrene
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U158	101-14-44	4'-Methylenebis(2-chloroaniline)
U159	78-93-32	Butanone (I,T)
U159	78-93-3	Methylethylketone(MEK) (I,T)
U160	1338-23-42	Butanone, peroxide (R,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U161	108-10-1	Methyl isobutyl ketone (I)
U161	108-10-14	Methyl-2-pentanone (I)
U161	108-10-1	Pentanol, 4-methyl-
U162	80-62-6	Methyl methacrylate (I,T)
U162	80-62-62	Propenoic acid, 2-methyl-, methyl ester (I,T)
U163	70-25-7	Guanidine, -methyl-N'-nitro-- nitroso-
U163	70-25-7	MNNG
U164	56-04-2	Methylthiouracil
U164	56-04-24	(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U165	91-20-3	Naphthalene
U166	130-15-41	4-Naphthalenedione
U166	130-15-41	4-Naphthoquinone
U167	134-32-71	Naphthalenamine
U167	134-32-7	alpha-Naphthylamine
U168	91-59-82	Naphthalenamine
U168	91-59-8	beta-Naphthylamine
U169	98-95-3	Benzene, nitro-
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol

Hazardous Waste No.	Chemical Abstracts No.	Substance
U170	100-02-7	Phenol, 4-nitro-
U171	79-46-92	Nitropropane (I,T)
U171	79-46-9	Propane, 2-nitro- (I,T)
U172	924-16-31	Butanamine, N-butyl--nitroso-
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	Ethanamine, -ethyl-N-nitroso-
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	N-Nitroso-N-methylurea
U177	684-93-5	Urea, N-methyl-N-nitroso-
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U179	100-75-4	Piperidine, 1-nitroso-
U180	930-55-2	N-Nitrosopyrrolidine
U180	930-55-2	Pyrrolidine, 1-nitroso-
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U181	99-55-8	Nitro-o-toluidine
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U182	123-63-7	Paraldehyde
U183	608-93-5	Benzene, pentachloro-
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Ethane, pentachloro-
U184	76-01-7	Pentachloroethane
U185	82-68-8	Benzene, pentachloronitro-
U185	82-68-8	Pentachloronitrobenzene(PCNB)
U186	504-60-91	Methylbutadiene (I)
U186	504-60-91	3-Pentadiene (I)
U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U189	1314-80-3	Phosphorus sulfide (R)
U189	1314-80-3	Sulfur phosphide (R)
U190	85-44-9	1,3-Isobenzofurandione
U190	85-44-9	Phthalic anhydride
U191	109-06-8	Picoline
U191	109-06-8	Pyridine, 2-methyl-
U192	23950-58-5	Benzamide, 3,5-dichloro-- (1,1-dimethyl-2-propynyl)-
U192	23950-58-5	Pronamide
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U193	1120-71-4	3-Propane sulfone
U194	107-10-8	1-Propanamine (I,T)
U194	107-10-8	n-Propylamine (I,T)
U196	110-86-1	Pyridine
U197	106-51-4	p-Benzoquinone
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U200	50-55-5	Reserpine
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U201	108-46-3	1,3-Benzenediol
U201	108-46-3	Resorcinol
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS <sub>2</sub> (R,T)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2- [(methylnitrosoamino)-carbonyl]amino]-
U206	18883-66-4	Streptozotocin

Hazardous Waste No.	Chemical Abstracts No.	Substance
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U207	95-94-31	2,4,5-Tetrachlorobenzene
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U208	630-20-61	1,1,2-Tetrachloroethane
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U209	79-34-51	1,2,2-Tetrachloroethane
U210	127-18-4	Ethene, tetrachloro-
U210	127-18-4	Tetrachloroethylene
U211	56-23-5	Carbon tetrachloride
U211	56-23-5	Methane, tetrachloro-
U213	109-99-9	Furan, tetrahydro- (I)
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Acetic acid, thallium(1+) salt
U214	563-68-8	Thallium (I)acetate
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U215	6533-73-9	Thallium (I) carbonate
U216	7791-12-0	Thallium (I) chloride
U216	7791-12-0	Thallium chloride TICl
U217	10102-45-1	Nitric acid, thallium(1+) salt
U217	10102-45-1	Thallium (I) nitrate
U218	62-55-5	Ethanethioamide
U218	62-55-5	Thioacetamide
U219	62-56-6	Thiourea
U220	108-88-3	Benzene, methyl-
U220	108-88-3	Toluene
U221	25376-45-8	Benzenediamine, ar-methyl-
U221	25376-45-8	Toluenediamine
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U222	636-21-5o	Toluidinehydrochloride
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U223	26471-62-5	Toluene diisocyanate (R,T)
U225	75-25-2	Bromoform
U225	75-25-2	Methane, tribromo-
U226	71-55-6	Ethane, 1,1,1-trichloro-
U226	71-55-6	Methyl chloroform
U226	71-55-61	1,1,1-Trichloroethane
U227	79-00-5	Ethane, 1,1,2-trichloro-
U227	79-00-51	1,2-Trichloroethane
U228	79-01-6	Ethene, trichloro-
U228	79-01-6	Trichloroethylene
U234	99-35-4	Benzene, 1,3,5-trinitro-
U234	99-35-41	3,5-Trinitrobenzene (R,T)
U235	126-72-71	Propanol, 2,3-dibromo-,phosphate(3:1)
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-12	7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
U236	72-57-1	Trypan blue
U237	66-75-12	4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U237	66-75-1	Uracil mustard
U238	51-79-6	Carbamic acid, ethyl ester
U238	51-79-6	Ethyl carbamate (urethane)
U239	1330-20-7	Benzene, dimethyl- (I,T)
U239	1330-20-7	Xylene (I)
U240	194-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U240	194-75-72	4-D, salts & esters
U243	1888-71-7	Hexachloropropene
U243	1888-71-71	Propene, 1,1,2,3,3,3-hexachloro-
U244	137-26-8	Thioperoxydicarbonic diamide[(H2N)C(S)]2S2, tetramethyl-
U244	137-26-8	Thiram
U246	506-68-3	Cyanogen bromide (CN)Br
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U247	72-43-5	Methoxychlor
U248	181-81-22	H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when

Hazardous Waste No.	Chemical Abstracts No.	Substance
		present at concentrations of 0.3% or less
U248	181-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U249	1314-84-7	Zinc phosphide $Zn_3P_2$ , when present at concentrations of 10% or less
U271	17804-35-2	Benomyl
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester
U278	22781-23-3	Bendiocarb
U278	22781-23-31,3	Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U279	63-25-2	Carbaryl
U279	63-25-21	Naphthalenol, methylcarbamate
U280	101-27-9	Barban
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95-53-4	Benzenamine, 2-methyl-
U328	95-53-4o	Toluidine
U353	106-49-0	Benzenamine, 4-methyl-
U353	106-49-0p	Toluidine
U359	110-80-5	Ethanol, 2-ethoxy-
U359	110-80-5	Ethylene glycol monoethyl ether
U364	22961-82-6	Bendiocarb phenol
U364	22961-82-61,3	Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563-38-87	Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563-38-8	Carbofuran phenol
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U372	10605-21-7	Carbendazim
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122-42-9	Propham
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U387	52888-80-9	Prosulfocarb
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U389	2303-17-5	Triallate
U394	30558-43-1A	2213
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952-26-1	Diethylene glycol, dicarbamate
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U404	121-44-8	Ethanamine, N,N-diethyl-
U404	121-44-8	Triethylamine
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis (Iminocarbonothioyl)]bis-, dimethyl ester
U409	23564-05-8	Thiophanate-methyl
U410	59669-26-0	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U410	59669-26-0	Thiodicarb
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114-26-1	Propoxur
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
See F027	87-86-5	Pentachlorophenol
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93-72-1	Silvex (2,4,5-TP)
See F027	93-76-52,4,5-T	
See F027	58-90-22,3,4,6	Tetrachlorophenol
See F027	95-95-42,4,5	Trichlorophenol
See F027	88-06-22,4,6	Trichlorophenol

<sup>1</sup>CAS number given for parent compound only.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-19. Deletion of certain hazardous waste codes following equipment cleaning and replacement.**

1. Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all the requirements of subsections 2 and 3. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.
2. Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, forklifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.
  - a. Generators shall do one of the following:
    - (1) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;
    - (2) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or
    - (3) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservatives.
  - b. Cleaning requirements.
    - (1) Prepare and sign a written equipment cleaning plan that describes:
      - (a) The equipment to be cleaned;
      - (b) How the equipment will be cleaned;
      - (c) The solvent to be used in cleaning;
      - (d) How solvent rinses will be tested; and
      - (e) How cleaning residues will be disposed.
    - (2) Equipment must be cleaned as follows:
      - (a) Remove all visible residues from process equipment;
      - (b) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.
    - (3) Analytical requirements.
      - (a) Rinses must be tested ~~in accordance with environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05, method 8290~~ by using an appropriate method.
      - (b) "Not detected" means at or below the ~~lower method calibration limit (MCL) in method 8290, table 1~~ following lower method calibration limits (MCLs). The 2,3,7,8-TCDD-based MCL—0.01 parts per trillion, sample weight of 1000 grams IS spiking level of 1 parts per trillion, final extraction volume of 10–50

micro liter. For other congeners, multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

- (4) The generator must manage all residues from the cleaning process as F032 waste.
  - c. Replacement requirements.
    - (1) Prepare and sign a written equipment replacement plan that describes:
      - (a) The equipment to be replaced;
      - (b) How the equipment will be replaced; and
      - (c) How the equipment will be disposed.
    - (2) The generator must manage the discarded equipment as F032 waste.
  - d. Documentation requirements.
    - (1) Document that previous equipment cleaning or replacement, or both, was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.
    - (2) [Reserved]
3. The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:
- a. The name and address of the facility;
  - b. Formulations previously used and the date on which their use ceased in each process at the plant;
  - c. Formulations currently used in each process at the plant;
  - d. The equipment cleaning or replacement plan;
  - e. The name and address of any persons who conducted the cleaning and replacement;
  - f. The dates on which cleaning and replacement were accomplished;
  - g. The dates of sampling and testing;
  - h. A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;
  - i. A description of the tests performed, the date the tests were performed, and the results of the tests;
  - j. The name and model numbers of the instruments used in performing the tests;
  - k. QA/QC documentation; and
  - l. The following statement signed by the generator or the generator's authorized representative: I certify under penalty of law that all process equipment required to be cleaned or replaced under section 33-24-02-19 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am

aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

**History:** Effective January 1, 1994; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.4-04

**33-24-02-22. Comparable/syngas fuel exclusion.** [\[Reserved\]](#)

~~Wastes that meet the following comparable/syngas fuel requirements are not solid wastes:~~

~~1. Comparable fuel specifications.~~

~~a. Physical specifications.~~

~~(1) Heating value. The heating value must exceed five thousand British thermal units per pound (eleven thousand five hundred Joules per gram).~~

~~(2) Viscosity. The viscosity must not exceed fifty centistokes, as fired.~~

~~b. Constituent specifications. For compounds listed in table 1, the specification levels and, when nondetect is the specification, minimum required detection limits are shown in table 1.~~

<b>Chemical Name</b>	<b>CAS No.</b>	<b>Composite Value (mg/kg)</b>	<b>Heating Value (BTU/lb)</b>	<b>Concentration Limit (mg/kg at 10,000 BTU/lb)</b>	<b>Minimum Required Detection Limit (mg/kg)</b>
Total Nitrogen as N	NA	9,000	18,400	4,900	.....
Total Halogens as Cl	NA	1,000	18,400	540	.....
Total Organic Halogens as Cl	NA	.....	.....	( <sup>1</sup> )	.....
Polychlorinated biphenyls, total [Aroclors, total]	1336-36-3	ND	.....	ND	1.4
Cyanide, total	57-12-5	ND	.....	ND	1.0
<b>Metals:</b>					
Antimony, total	7440-36-0	ND	.....	12	.....
Arsenic, total	7440-38-2	ND	.....	0.23	.....
Barium, total	7440-39-3	ND	.....	23	.....
Beryllium, total	7440-41-7	ND	.....	1.2	.....
Cadmium, total	7440-43-9	.....	ND	.....	1.2
Chromium, total	7440-47-3	ND	.....	2.3	.....
Cobalt	7440-48-4	ND	.....	4.6	.....
Lead, total	7439-92-1	57	18,100	31	.....
Manganese	7439-96-5	ND	.....	1.2	.....
Mercury, total	7439-97-6	ND	.....	0.25	.....
Nickel, total	7440-02-0	106	18,400	58	.....
Selenium, total	7782-49-2	ND	.....	0.23	.....
Silver, total	7440-22-4	ND	.....	2.3	.....
Thallium, total	7440-28-0	ND	.....	23	.....
<b>Hydrocarbons:</b>					
Benzo[a]anthracene	56-55-3	ND	.....	2,400	.....

**Table 1: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS No.	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 BTU/lb)	Minimum Required Detection Limit (mg/kg)
Benzene	71-43-2	8,000	19,600	4,100	....
Benzo[b]fluoranthene	205-99-2	ND	....	2,400	....
Benzo[k]fluoranthene	207-08-9	ND	....	2,400	....
Benzo[a]pyrene	50-32-8	ND	....	2,400	....
Chrysene	218-01-9	ND	....	2,400	....
Dibenzo[a,h]anthracene	53-70-3	ND	....	2,400	....
7,12-Dimethylbenz[a]anthracene	57-97-6	ND	....	2,400	....
Fluoranthene	206-44-0	ND	....	2,400	....
Indeno (1,2,3-cd)pyrene	193-39-5	ND	....	2,400	....
3-Methylcholanthrene	56-49-5	ND	....	2,400	....
Naphthalene	91-20-3	6,200	19,400	3,200	....
Toluene	108-88-3	69,000	19,400	36,000	....
<b>Oxygenates:</b>					
Acetophenone	98-86-2	ND	....	2,400	....
Acrolein	107-02-8	ND	....	39	....
Allyl alcohol	107-18-6	ND	....	30	....
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexylphthalate]	117-81-7	ND	....	2,400	....
Butyl benzyl phthalate	85-68-7	ND	....	2,400	....
o-Cresol [2-Methyl phenol]	95-48-7	ND	....	2,400	....
m-Cresol [3-Methyl phenol]	108-39-4	ND	....	2,400	....
p-Cresol [4-Methyl phenol]	106-44-5	ND	....	2,400	....
Di-n-butyl phthalate	84-74-2	ND	....	2,400	....
Diethyl phthalate	84-66-2	ND	....	2,400	....
2,4-Dimethylphenol	105-67-9	ND	....	2,400	....
Dimethyl phthalate	131-11-3	ND	....	2,400	....
Di-n-octyl phthalate	117-84-0	ND	....	2,400	....
Endothall	145-73-3	ND	....	100	....
Ethyl methacrylate	97-63-2	ND	....	39	....
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	ND	....	100	....
Isobutyl alcohol	78-83-1	ND	....	39	....
Isofarole	120-58-1	ND	....	2,400	....
Methyl ethyl ketone [2-Butanone]	78-93-3	ND	....	39	....
Methyl methacrylate	80-62-6	ND	....	39	....
1,4-Naphthoquinone	130-15-4	ND	....	2,400	....
Phenol	108-95-2	ND	....	2,400	....
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	ND	....	30	....
Safrole	94-59-7	ND	....	2,400	....
<b>Sulfonated Organics:</b>					
Carbon disulfide	75-15-0	ND	....	ND	39
Disulfoton	298-04-4	ND	....	ND	2,400

**Table 1: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS No.	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 BTU/lb)	Minimum Required Detection Limit (mg/kg)
Ethyl methanesulfonate	62-50-0	ND	....	ND	2,400
Methyl methanesulfonate	66-27-3	ND	....	ND	2,400
Phorate	298-02-2	ND	....	ND	2,400
1,3-Propane sultone	1120-71-4	ND	....	ND	100
Tetraethyldithiopyro phosphate [Sulfotepp]	3689-24-5	ND	....	ND	2,400
Thiophenol [Benzenethiol]	108-98-5	ND	....	ND	30
O,O,O-Triethyl phosphorthioate	126-68-1	ND	....	ND	2,400
<b>Nitrogenated Organics:</b>					
Acetonitrile [Methyl cyanide]	75-05-8	ND	....	ND	39
2-Acetylaminofluorene [2-AAF]	53-96-3	ND	....	ND	2,400
Acrylonitrile	107-13-1	ND	....	ND	39
4-Aminobiphenyl	92-67-1	ND	....	ND	2,400
4-Aminopyridine	504-24-5	ND	....	ND	100
Aniline	62-53-3	ND	....	ND	2,400
Benzidine	92-87-5	ND	....	ND	2,400
Dibenz[a,j]acridine	224-42-0	ND	....	ND	2,400
O,O-Diethyl O-pyrazinyl phosphorothioate [Thionazin]	297-97-2	ND	....	ND	2,400
Dimethoate	60-51-5	ND	....	ND	2,400
P-(Dimethylamino) azobenzene [4-Dimethylaminoazobenzene]	60-11-7	ND	....	ND	2,400
3,3'-Dimethylbenzidine	119-93-7	ND	....	ND	2,400
a,a-Dimethylphenethylamine	122-09-8	ND	....	ND	2,400
3,3'-Dimenthoxybenzidine	119-90-4	ND	....	ND	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	ND	....	ND	2,400
4,6-Dinitro-o-cresol	534-52-1	ND	....	ND	2,400
2,4-Dinitrophenol	51-28-5	ND	....	ND	2,400
2,4-Dinitrotoluene	121-14-2	ND	....	ND	2,400
2,6-Dinitrotoluene	606-20-2	ND	....	ND	2,400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	ND	....	ND	2,400
Diphenylamine	122-39-4	ND	....	ND	2,400
Ethyl carbamate [Urethane]	51-79-6	ND	....	ND	100
Ethylenethiourea [2-Imidazolidinethione]	96-45-7	ND	....	ND	110
Famphur	52-85-7	ND	....	ND	2,400
Methacrylonitrile	126-98-7	ND	....	ND	39
Methapyrilene	91-80-5	ND	....	ND	2,400
Methomyl	16752-77-5	ND	....	ND	57
2-Methylactonitrile, [Acetone-cyanohydrin]	75-86-5	ND	....	ND	100
Methyl parathion	298-00-0	ND	....	ND	2,400

**Table 1: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS No.	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 BTU/lb)	Minimum Required Detection Limit (mg/kg)
MNNG [N-Methyl-N-nitroso-N'-nitroguanidine]	70-25-7	ND	.....	ND	110
1-Naphthylamine, [a-Naphthylamine]	134-32-7	ND	.....	ND	2,400
2-Naphthylamine [b-Naphthylamine]	91-59-8	ND	.....	ND	2,400
Nicotine	54-11-5	ND	.....	ND	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	ND	.....	ND	2,400
Nitrobenzene	98-95-3	ND	.....	ND	2,400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	ND	.....	ND	2,400
5-nitro-o-toluidine	99-55-8	ND	.....	ND	2,400
N-Nitrosodi-n-butylamine	924-16-3	ND	.....	ND	2,400
N-Nitrosodiethylamine	55-18-5	ND	.....	ND	2,400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	ND	.....	ND	2,400
N-Nitroso-N-methyl ethylamine	10595-95-6	ND	.....	ND	2,400
N-Nitrososmorpholine	59-89-2	ND	.....	ND	2,400
N-Nitrosopiperidine	100-75-4	ND	.....	ND	2,400
N-Nitrosopyrrolidine	930-55-2	ND	.....	ND	2,400
2-Nitropropane	79-46-9	ND	.....	ND	30
Parathion	56-38-2	ND	.....	ND	2,400
Phenacetin	62-44-2	ND	.....	ND	2,400
1,4-Phenylene diamine, [p-Phenylenediamine]	106-50-3	ND	.....	ND	2,400
N-Phenylthiourea	103-85-5	ND	.....	ND	57
2-Picoline [alpha-Picoline]	109-06-8	ND	.....	ND	2,400
Propylthiouracil, [6-Propyl-2-thiouracil]	51-52-5	ND	.....	ND	100
Pyradine	110-86-1	ND	.....	ND	2,400
Strychnine	57-24-9	ND	.....	ND	100
Thioacetamide	62-55-5	ND	.....	ND	57
Thiofanox	39196-18-4	ND	.....	ND	100
Thiourea	62-56-6	ND	.....	ND	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	ND	.....	ND	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	ND	.....	ND	57
o-Toluidine	95-53-4	ND	.....	ND	2,400
p-Toluidine	106-49-0	ND	.....	ND	100
1,3,5-Trinitrobenzene, [sym-Trinitrobenzene]	99-35-4	ND	.....	ND	2,400
Halogenated Organics:					
Allyl chloride	107-05-1	ND	.....	ND	39
Aramite	140-57-8	ND	.....	ND	2,400
Benzal chloride [Dichloromethyl-	98-87-3	ND	.....	ND	100

**Table 1: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS No.	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 BTU/lb)	Minimum Required Detection Limit (mg/kg)
benzene]					
Benzyl chloride	100-44-7	ND	....	ND	100
bis(2-Chloroethyl)ether- [Dichloroethyl ether]	111-44-4	ND	....	ND	2,400
Bromoform [Tribromomethane]	75-25-2	ND	....	ND	39
Bromomethane [Methyl bromide]	74-83-9	ND	....	ND	39
4-Bromophenyl phenyl ether- [p-Bromo diphenyl ether]	101-55-3	ND	....	ND	2,400
Carbon tetrachloride	56-23-5	ND	....	ND	39
Chlordane	57-74-9	ND	....	ND	14
p-Chloroaniline	106-47-8	ND	....	ND	2,400
Chlorobenzene	108-90-7	ND	....	ND	39
Chlorobenzilate	510-15-6	ND	....	ND	2,400
p-Chloro-m-cresol	59-50-7	ND	....	ND	2,400
2-Chloroethyl vinyl ether	110-75-8	ND	....	ND	39
Chloroform	67-66-3	ND	....	ND	39
Chloromethane [Methyl chloride]	74-87-3	ND	....	ND	39
2-Chloronaphthalene- [beta-Chloronaphthalene]	91-58-7	ND	....	ND	2,400
2-Chlorophenol [o-Chlorophenol]	95-57-8	ND	....	ND	2,400
Chloroprene- [2-Chloro-1,3-butadiene]	1126-99-8	ND	....	ND	39
2,4-D [2,4-Dichlorophenoxy acetic acid]	94-75-7	ND	....	ND	7.0
Diallate	2303-16-4	ND	....	ND	2,400
1-2-Dibromo-3-chloropropane	96-12-8	ND	....	ND	39
1,2-Dichlorobenzene- [o-Dichlorobenzene]	95-50-1	ND	....	ND	2,400
1,3-Dichlorobenzene- [m-Dichlorobenzene]	541-73-1	ND	....	ND	2,400
1,4-Dichlorobenzene- [p-Dichlorobenzene]	106-46-7	ND	....	ND	2,400
3,3'-Dichlorobenzidine	91-94-1	ND	....	ND	2,400
Dichlorodifluoromethane- [CFG-12]	75-71-8	ND	....	ND	39
1,2-Dichloroethane [Ethylene- dichloride]	107-06-2			ND	39
1,1-Dichloroethylene [Vinylidene- chloride]	75-35-4	ND	....	ND	39
Dichloromethoxy ethane- [Bis(2-chloroethoxy)methane]	111-91-1	ND	....	ND	2,400
2,4-Dichlorophenol	120-83-2	ND	....	ND	2,400
2,6-Dichlorophenol	87-65-0	ND	....	ND	2,400
1,2-Dichloropropane [Propylene- dichloride]	78-87-5	ND	....	ND	39
cis-1,3-Dichloropropylene	10061-01-5	ND	....	ND	39
trans-1,3-Dichloropropylene	10061-02-6	ND	....	ND	39

**Table 1: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS No.	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 BTU/lb)	Minimum Required Detection Limit (mg/kg)
1,3-Dichloro-2-propanol	96-23-1	ND	.....	ND	30
Endosulfan-I	959-98-8	ND	.....	ND	1.4
Endosulfan-II	33213-65-9	ND	.....	ND	1.4
Endrin	72-20-8	ND	.....	ND	1.4
Endrin-aldehyde	7421-93-4	ND	.....	ND	1.4
Endrin-ketone	53494-70-5	ND	.....	ND	1.4
Epichlorohydrin- [1-Chloro-2,3-epoxy propane]	106-89-8	ND	.....	ND	30
Ethylidene dichloride- [1,1-Dichloroethane]	75-34-3	ND	.....	ND	39
2-Fluoroacetamide	640-19-7	ND	.....	ND	100
Heptachlor	76-44-8	ND	.....	ND	1.4
Heptachlor-epoxide	1024-57-3	ND	.....	ND	2.8
Hexachlorobenzene	118-74-1	ND	.....	ND	2,400
Hexachloro-1,3-butadiene- [Hexachlorobutadiene]	87-68-3	ND	.....	ND	2,400
Hexachlorocyclopentadiene	77-47-4	ND	.....	ND	2,400
Hexachloroethane	67-72-1	ND	.....	ND	2,400
Hexachloroprophene	70-30-4	ND	.....	ND	59,000
Hexachloropropene- [Hexachloropropylene]	1888-71-7	ND	.....	ND	2,400
Isodrin	465-73-6	ND	.....	ND	2,400
Kepone [Chlordecane]	143-50-0	ND	.....	ND	4,700
Lindane [gamma-BHC][gamma- Hexachlorocyclohexane]	58-89-9	ND	.....	ND	1.4
Methylene chloride- [Dichloromethane]	75-09-2	ND	.....	ND	39
4,4'-Methylene-bis(2-chloro aniline)	101-14-4	ND	.....	ND	100
Methyl-iodide [Iodomethane]	74-88-4	ND	.....	ND	39
Pentachlorobenzene	608-93-5	ND	.....	ND	2,400
Pentachloroethane	76-01-7	ND	.....	ND	39
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82-68-8	ND	.....	ND	2,400
Pentachlorophenol	87-86-5	ND	.....	ND	2,400
Pronamide	23950-58-5	ND	.....	ND	2,400
Silvex [2,4,5-Trichlorophenoxy propionic acid]	93-72-1	ND	.....	ND	7.0
2,3,7,8-Tetrachlorodibenzo- p-dioxin [2,3,7,8-TCDD]	1746-01-6	ND	.....	ND	30
1,2,4,5-Tetrachlorobenzene	95-94-3	ND	.....	ND	2,400
1,1,2,2-Tetrachloroethane	79-34-5	ND	.....	ND	39
Tetrachloroethylene- [Perchloroethylene]	127-18-4	ND	.....	ND	39
2,3,4,6-Tetrachlorophenol	58-90-2	ND	.....	ND	2,400
1,2,4-Trichlorobenzene	120-82-1	ND	.....	ND	2,400

**Table 1: Detection and Detection Limit Values for Comparable Fuel Specification**

Chemical Name	CAS No.	Composite Value (mg/kg)	Heating Value (BTU/lb)	Concentration Limit (mg/kg at 10,000 BTU/lb)	Minimum Required Detection Limit (mg/kg)
1,1,1-Trichloroethane [Methylchloroform]	71-55-6	ND	....	ND	39
1,1,2-Trichloroethane [Vinyltrichloride]	79-00-5	ND	....	ND	39
Trichloroethylene	79-01-6	ND	....	ND	39
Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	ND	....	ND	39
2,4,5-Trichlorophenol	95-95-4	ND	....	ND	2,400
2,4,6-Trichlorophenol	88-06-2	ND	....	ND	2400
1,2,3-Trichloropropane	96-18-4	ND	....	ND	39
Vinyl-chloride	75-01-4	ND	....	ND	39

**Notes:**

NA— Not applicable.

ND— Nondetect.

<sup>1</sup>—25 or individual halogenated organics listed below.

~~2. **Synthesis gas fuel specification.** Synthesis gas fuel (for example, syngas fuel) that is generated from hazardous waste must:~~

- ~~a. Have a minimum British thermal unit value of one hundred British thermal units/standard cubic foot;~~
- ~~b. Contain less than one part per million volume of total halogen;~~
- ~~c. Contain less than three hundred parts per million volume of total nitrogen other than diatomic nitrogen (N<sub>2</sub>);~~
- ~~d. Contain less than two hundred parts per million volume of hydrogen sulfide; and~~
- ~~e. Contain less than one part per million volume of each hazardous constituent in the target list of chapter 33-24-02, appendix V constituents.~~

~~3. **Implementation.** Waste that meets the comparable or syngas fuel specifications provided by subsections 1 and 2 (these constituent levels must be achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in subdivision c or d) is excluded from the definition of solid waste provided that the following requirements are met:~~

- ~~a. Notices. For purposes of section 33-24-02-22, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the comparable fuel or syngas fuel must claim and certify to the exclusion.~~

~~(1) Regulatory notice.~~

- ~~(a) The generator must submit a one-time notice to the department, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned, certifying compliance with the conditions of the exclusion and providing documentation as required by subparagraph c;~~

~~(b) If the generator is a company that generates comparable/syngas fuel at more than one facility, the generator shall specify at which sites the comparable/syngas fuel will be generated; and~~

~~(c) A comparable/syngas fuel generator's notification to the department must contain the following items:~~

~~[1] The name, address, and identification number of the person or facility claiming the exclusion;~~

~~[2] The applicable hazardous waste codes for the hazardous waste;~~

~~[3] Name and address of the units, meeting the requirements of subdivision b, that will burn the comparable/syngas fuel; and~~

~~[4] The following statement is signed and submitted by the person claiming the exclusion or that person's authorized representative:~~

~~Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of section 33-24-02-22 have been met for all waste identified in this notification. Copies of the records and information required at subdivision j of subsection 3 of section 33-24-02-22 are available at the comparable/syngas fuel generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.~~

~~(2) Public notice. Prior to burning an excluded comparable/syngas fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Comparable/Syngas Fuel Excluded Under the Resource Conservation and Recovery Act" containing the following information:~~

~~(a) Name, address, and identification number of the generating facility;~~

~~(b) Name and address of the unit or units that will burn the comparable/syngas fuel;~~

~~(c) A brief, general description of the manufacturing, treatment, or other process generating the comparable/syngas fuel;~~

~~(d) An estimate of the average and maximum monthly and annual quantity of the waste claimed to be excluded; and~~

~~(e) Name and mailing address of the department to which the claim was submitted.~~

~~b. Burning. The comparable/syngas fuel exclusion for fuels meeting the requirements of subsection 1 or 2 and subdivision a applies only if the fuel is burned in the following units that also shall be subject to any combination of federal, state, and local air emission requirements, including all applicable Clean Air Act maximum achievable control technology requirements:~~

~~(1) Industrial furnaces as defined in section 33-24-01-04.~~

~~(2) Boilers, as defined in section 33-24-01-04, that are further defined as follows:-~~

~~(a) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes; or~~

~~(b) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.~~

~~(3) Hazardous waste incinerators subject to regulation under sections 33-24-05-144 through 33-24-05-159 or applicable Clean Air Act maximum achievable control technology standards.~~

~~(4) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.~~

~~c. Blending to meet the viscosity specification. A hazardous waste blended to meet the viscosity specification shall:~~

~~(1) As generated and prior to any blending, manipulation, or processing meet the constituent and heating value specifications of paragraph 1 of subdivision a of subsection 1 and subdivision b of subsection 1;~~

~~(2) Be blended at a facility that is subject to the applicable requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-800 through 33-24-05-819, and the applicable requirements of subsection 5 of section 33-24-06-16, or section 33-24-03-12; and~~

~~(3) Not violate the dilution prohibition of subdivision f.~~

~~d. Treatment to meet the comparable fuel exclusion specifications.~~

~~(1) A hazardous waste may be treated to meet the exclusion specifications of subdivisions a and b of subsection 1 provided the treatment:-~~

~~(a) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying hazardous constituents or materials;~~

~~(b) Is performed at a facility that is subject to the applicable requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-800 through 33-24-05-819, and the applicable requirements of subsection 5 of section 33-24-06-16, or section 33-24-03-12; and~~

~~(c) Does not violate the dilution prohibition of subdivision f.-~~

~~(2) Residuals resulting from the treatment of a hazardous waste listed in sections 33-24-02-15 through 33-24-02-19 to generate a comparable fuel remain a hazardous waste.~~

~~e. Generation of a syngas fuel.~~

~~(1) A syngas fuel can be generated from the processing of hazardous wastes to meet the exclusion specifications of subsection 2 provided the processing:-~~

~~(a) Destroys or removes the constituent listed in the specification or raises the heating value by removing or destroying constituents or materials;~~

~~(b) Is performed at a facility that is subject to the applicable requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-800 through 33-24-05-819, and the applicable requirements of subsection 5 of section 33-24-06-16; or section 33-24-03-12, or is an exempt recycling unit pursuant to subsection 3 of section 33-24-02-06; and~~

~~(c) Does not violate the dilution prohibition of subdivision f.~~

~~(2) Residuals resulting from the treatment of a hazardous waste listed in sections 33-24-02-15 through 33-24-02-19 to generate a syngas fuel remain a hazardous waste.~~

~~f. Dilution prohibition for comparable and syngas fuels. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the exclusion specifications of paragraph 1 of subdivision a of subsection 1 or subdivision b of subsection 1 or subsection 2.~~

~~g. Waste analysis plans. The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan shall be developed in accordance with the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846). The plan shall be followed and retained at the facility excluding the waste.~~

~~(1) At a minimum, the plan must specify:~~

~~(a) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of those parameters;~~

~~(b) The test methods which will be used to test for these parameters;~~

~~(c) The sampling method which will be used to obtain a representative sample of the waste to be analyzed;~~

~~(d) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and~~

~~(e) If process knowledge is used in the waste determination, any information prepared by the generator in making such determination.~~

~~(2) The waste analysis plan shall also contain records of the following:~~

~~(a) The dates and times waste samples were obtained, and the dates the samples were analyzed;~~

~~(b) The names and qualifications of the person or persons who obtained the samples;~~

~~(c) A description of the temporal and spatial locations of the samples;~~

~~(d) The name and address of the laboratory facility at which analyses of the samples were performed;~~

~~(e) A description of the analytical methods used, including any cleanup and sample preparation methods;~~

~~(f) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.); laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;~~

~~(g) All laboratory results demonstrating that the exclusion specifications have been met for the waste; and~~

~~(h) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in subdivision k and also provides for the availability of the documentation to the claimant upon request.~~

~~(3) Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of a syngas fuel as an excluded waste, a waste analysis plan containing the elements of paragraph 1 to the appropriate regulatory authority. The approval of waste analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the waste analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.~~

~~h. Comparable fuel sampling and analysis.~~

~~(1) General. For each waste for which an exclusion is claimed, the generator of the hazardous waste must test for all the constituents on chapter 33-24-02, appendix V, except those that the generator determines, based on testing or knowledge, should not be present in the waste. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents should not be present:~~

~~(a) A constituent that triggered the toxicity characteristic for the waste constituents that were the basis of the listing of the waste stream or constituents for which there is a treatment standard for the waste code in section 33-24-05-280;~~

~~(b) A constituent detected in previous analysis of the waste;~~

~~(c) Constituents introduced into the process that generates the waste; or~~

~~(d) Constituents that are byproducts or side reactions to the process that generates the waste.~~

~~Note to subdivision h: Any claim under this section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the waste above the exclusion specifications.~~

~~(2) For each waste for which the exclusion is claimed when the generator of the comparable/syngas fuel is not the original generator of the hazardous waste, the generator of the comparable/syngas fuel may not use process knowledge pursuant to paragraph 1 and must test to determine that all of the constituent specifications of subdivision b of subsection 1 and subsection 2 have been met.~~

~~(3) The comparable/syngas fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the~~

~~sampling and analysis are unbiased, precise, and representative of the waste. For the waste to be eligible for exclusion, a generator must demonstrate that:~~

~~(a) Each constituent of concern is not present in the waste above the specification level at the ninety-five percent upper confidence limit around the mean; and~~

~~(b) The analysis could have detected the presence of the constituent at or below the specification level at the ninety-five percent upper confidence limit around the mean.~~

~~(4) Nothing in this subdivision preempts, overrides, or otherwise negates the provision in section 33-24-03-02, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.~~

~~(5) In an enforcement action, the burden of proof to establish conformance with the exclusion specification shall be on the generator claiming the exclusion.~~

~~(6) The generator must conduct sampling and analysis in accordance with its waste analysis plan developed under subdivision g.~~

~~(7) Syngas fuel and comparable fuel that has not been blended in order to meet the kinematic viscosity specifications shall be analyzed as generated.~~

~~(8) If a comparable fuel is blended in order to meet the kinematic viscosity specifications, the generator shall:~~

~~(a) Analyze the fuel as generated to ensure that it meets the constituent and heating value specifications; and~~

~~(b) After blending, analyze the fuel again to ensure that the blended fuel continues to meet all comparable/syngas fuel specifications.~~

~~(9) Excluded comparable/syngas fuel must be retested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties of the waste.~~

~~i. Speculative accumulation. Any persons handling a comparable/syngas fuel are subject to the speculative accumulation test under subdivision d of subsection 3 of section 33-24-02-02.~~

~~j. Records. The generator must maintain records of the following information onsite:~~

~~(1) All information required to be submitted to the implementing authority as part of the notification of the claim:~~

~~(a) The owner/operator name, address, and facility identification number of the person claiming the exclusion;~~

~~(b) The applicable hazardous waste codes for each hazardous waste excluded as a fuel; and~~

~~(c) The certification signed by the person claiming the exclusion or that person's authorized representative.~~

~~(2) A brief description of the process that generated the hazardous waste and process that generated the excluded fuel, if not the same;~~

- ~~(3) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be excluded;~~
- ~~(4) Documentation for any claim that a constituent is not present in the hazardous waste as required under paragraph 1;~~
- ~~(5) The results of all analyses and all detection limits achieved as required under subdivision h;~~
- ~~(6) If the excluded waste was generated through treatment or blending, documentation as required under subdivision c or d;~~
- ~~(7) If the waste is to be shipped offsite, a certification from the burner as required under subdivision l;~~
- ~~(8) A waste analysis plan and the results of the sampling and analysis that includes the following:
  - ~~(a) The dates and times waste samples were obtained and the dates the samples were analyzed;~~
  - ~~(b) The names and qualifications of the person or persons who obtained the samples;~~
  - ~~(c) A description of the temporal and spatial locations of the samples;~~
  - ~~(d) The name and address of the laboratory facility at which analyses of the samples were performed;~~
  - ~~(e) A description of the analytical methods used, including any cleanup and sample preparation methods;~~
  - ~~(f) All quantitation limits achieved and all other quality control results for the analysis (including method blanks, duplicate analyses, matrix spikes, etc.), laboratory quality assurance data, and description of any deviations from analytical methods written in the plan or from any other activity written in the plan which occurred;~~
  - ~~(g) All laboratory analytical results demonstrating that the exclusion specifications have been met for the waste; and~~
  - ~~(h) All laboratory documentation that supports the analytical results, unless a contract between the claimant and the laboratory provides for the documentation to be maintained by the laboratory for the period specified in subdivision k and also provides for the availability of the documentation to the claimant upon request; and~~~~
- ~~(9) If the generator ships comparable/syngas fuel offsite for burning, the generator must retain for each shipment the following information onsite:
  - ~~(a) The name and address of the facility receiving the comparable/syngas fuel for burning;~~
  - ~~(b) The quantity of comparable/syngas fuel shipped and delivered;~~
  - ~~(c) The date of shipment or delivery;~~~~

~~(d) A cross-reference to the record of comparable/syngas fuel analysis or other information used to make the determination that the comparable/syngas fuel meets the specifications as required under subdivision h; and~~

~~(e) A one-time certification by the burner as required under subdivision l.~~

~~k. Records retention. Records must be maintained for the period of three years. A generator must maintain a current waste analysis plan during that three-year period.~~

~~l. Burner certification. Prior to submitting a notification to the department, a comparable/syngas fuel generator who intends to ship its fuel offsite for burning must obtain a one-time written, signed statement from the burner:~~

~~(1) Certifying that the comparable/syngas fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under subdivision b;~~

~~(2) Identifying the name and address of the units that will burn the comparable/syngas fuel; and~~

~~(3) Certifying that the state in which the burner is located is authorized to exclude wastes as comparable/syngas fuel under the provisions of this section.~~

~~m. Ineligible waste codes. Wastes that are listed because of presence of dioxins or furans, as set out in chapter 33-24-02, appendix IV, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full hazardous waste management requirements.~~

**History:** Effective December 1, 2003.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-23. [Reserved].

33-24-02-24. [Reserved].

33-24-02-25. Conditional exclusion for used, broken cathode ray tubes and processed cathode ray tube glass undergoing recycling.

Used, broken cathode ray tubes are not solid wastes if they meet the following conditions:

1. Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

a. Storage. The broken cathode ray tubes must be either:

(1) Stored in a building with a roof, floor, and walls; or

(2) Placed in a container (for example, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of cathode ray tube glass (including fine solid materials).

- b. Labeling. Each container in which the used, broken cathode ray tube is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tubes-contains leaded glass" or "Leaded glass from televisions or computers." The container must also be labeled: "Do not mix with other glass materials".
- c. Transportation. The used, broken cathode ray tubes must be transported in a container meeting the requirements of paragraph 2 of subdivision a and subdivision b.
- d. Speculative accumulation and use constituting disposal. The used, broken cathode ray tubes are subject to the limitations on speculative accumulation as defined in subdivision h of subsection 3 of section 33-24-02-01. If they are used in a manner constituting disposal, they must comply with the applicable requirements of sections 33-24-05-201 through 33-24-05-209 instead of the requirements of this section.
- e. Exports. In addition to the applicable conditions specified in subdivisions a through d, exporters of used, broken cathode ray tubes must comply with the following requirements:
- (1) Notify the environmental protection agency and the department of an intended export before the cathode ray tubes are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped offsite. This notification may cover export activities extending over a twelve month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:
    - (a) Name, mailing address, telephone number and identification number (if applicable) of the exporter of the cathode ray tubes.
    - (b) The estimated frequency or rate at which the cathode ray tubes are to be exported and the period of time over which the cathode ray tubes are to be exported.
    - (c) The estimated total quantity of cathode ray tubes specified in kilograms.
    - (d) All points of entry to and departure from each foreign country through which the cathode ray tubes will pass.
    - (e) A description of the means by which each shipment of the cathode ray tubes will be transported (for example, mode of transportation vehicle (air, highway, rail, water), types of containers (drums, boxes, tanks)).
    - (f) The name and address of the recycler or recyclers and the estimated quantity of used cathode ray tubes to be sent to each facility, as well as the names of any alternate recyclers.
    - (g) A description of the manner in which the cathode ray tubes will be recycled in the foreign country that will be receiving the cathode ray tubes.
    - (h) The name of any transit country through which the cathode ray tubes will be sent and a description of the approximate length of time the cathode ray tubes will remain in such country and the nature of their handling while there.
  - (2) Notifications submitted by mail should be sent to the department and to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of

Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Building, Room 6144, 1200 Pennsylvania Avenue, NW, Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export Cathode Ray Tubes".

- (3) Upon request by the department or the environmental protection agency, the exporter shall furnish to the department and the environmental protection agency any additional information which a receiving country requests in order to respond to a notification.
- (4) The environmental protection agency will provide a complete notification to the receiving country and any transit countries. A notification is complete when the environmental protection agency receives a notification which the environmental protection agency determines satisfies the requirements of paragraph 1. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph 1, the environmental protection agency may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.
- (5) The export of cathode ray tubes is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the cathode ray tubes, the environmental protection agency will forward an acknowledgment of consent to export cathode ray tubes to the exporter. Where the receiving country objects to receipt of the cathode ray tubes or withdraws a prior consent, the environmental protection agency will notify the exporter in writing. The environmental protection agency will also notify the exporter of any responses from transit countries.
- (6) When the conditions specified on the original notification change, the exporter must provide the department and the environmental protection agency with a written renotification of the change, except for changes to the telephone number in subparagraph a of paragraph 1 and decreases in the quantity indicated pursuant to subparagraph c of paragraph 1. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to subparagraphs d and h of paragraph 1) and the exporter of cathode ray tubes receives from the environmental protection agency a copy of the acknowledgment of consent to export cathode ray tubes reflecting the receiving country's consent to the changes.
- (7) A copy of the acknowledgment of consent to export cathode ray tubes must accompany the shipment of cathode ray tubes. The shipment must conform to the terms of the acknowledgment.
- (8) If a shipment of cathode ray tubes cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of cathode ray tubes must renotify the department and the environmental protection agency of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph 6 and obtain another acknowledgment of consent to export cathode ray tubes.
- (9) Exporters must keep copies of notifications and acknowledgments of consent to export cathode ray tubes for a period of three years following receipt of the acknowledgment.

(10) Cathode ray tube exporters must file with the environmental protection agency and the department no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destinations (for example, the facility or facilities where the recycling occurs) of all used cathode ray tubes exported during the previous calendar year. Such reports must also include the following:

(a) The name, environmental protection agency identification number (if applicable), and mailing and site address of the exporter;

(b) The calendar year covered by the report;

(c) A certification signed by the cathode ray tube exporter which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment".

(11) Annual reports must be submitted to the department and the office specified in paragraph 2. Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.

2. Requirements for used cathode ray tube processing: Used, broken cathode ray tubes undergoing cathode ray tube processing as defined in section 33-24-01-04 are not solid wastes if they meet the following requirements:

a. Storage. Used, broken cathode ray tubes undergoing processing are subject to the requirement of subdivision d of subsection 1.

b. Processing.

(1) All activities specified in subdivisions b and c of the definition of "cathode ray tube processing" in section 33-24-01-04 must be performed within a building with a roof, floor, and walls; and

(2) No activities may be performed which use temperatures high enough to volatilize lead from cathode ray tubes.

3. Processed cathode ray tube glass sent to cathode ray tube glass making or lead smelting: Glass from used cathode ray tubes which is destined for recycling at a cathode ray tube glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in subdivision h of subsection 3 of section 33-24-02-01.

4. Use constituting disposal: Glass from used cathode ray tubes which is used in a manner constituting disposal must comply with the requirements of sections 33-24-05-201 through 33-24-05-209 instead of the requirements of this section.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-26. Conditional exclusion for used, intact cathode ray tubes exported for recycling.**

Used, intact cathode ray tubes exported for recycling are not solid wastes if they meet the notice and consent conditions of subdivision e of subsection 1 of section 33-24-02-25, and if they are not speculatively accumulated as defined in subdivision h of subsection 3 of section 33-24-02-01.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-27. Notification and recordkeeping for used, intact cathode ray tubes exported for reuse.**

1. Cathode ray tube exporters who export used, intact cathode ray tubes for reuse shall send a notification to the department and the environmental protection agency. This notification may cover export activities extending over a twelve month or lesser period.

a. The notification must be in writing, signed by the exporter, and include the following information:

(1) Name, mailing address, telephone number, and identification number (if applicable) of the exporter of the used, intact cathode ray tubes;

(2) The estimated frequency or rate at which the used, intact cathode ray tubes are to be exported for reuse and the period of time over which cathode ray tubes are to be exported;

(3) The estimated total quantity of used, intact cathode ray tubes specified in kilograms;

(4) All points of entry to and departure from each transit country through which the used, intact cathode ray tubes will pass, a description of the approximate length of time the used, intact cathode ray tubes will remain in such country, and the nature of cathode ray tubes handling while there;

(5) A description of the means by which each shipment of the used, intact cathode ray tubes will be transported (for example, mode of transportation vehicle (air, highway, rail, water), type of container (for example, drums, boxes, tanks));

(6) The name and address of the ultimate destination facility or facilities where the used, intact cathode ray tubes will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact cathode ray tubes to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(7) A description of the manner in which the used, intact cathode ray tubes will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact cathode ray tubes; and

(8) A certification signed by the cathode ray tube exporter which states:

"I certify under penalty of law that the cathode ray tubes described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used cathode ray tubes will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware

that there are significant penalties for submitting false information, including the possibility of fine and imprisonment".

b. Notifications submitted by mail should be sent to the department and to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC 20004. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export Cathode Ray Tubes".

2. Cathode ray tube exporters of used, intact cathode ray tubes sent for reuse shall keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact cathode ray tubes will be reused. This documentation must be retained for a period of at least three years from the date the cathode ray tubes were exported. If the documents are written in a language other than English, cathode ray tube exporters of used, intact cathode ray tubes sent for reuse shall provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within thirty days upon request by the department or the environmental protection agency.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-28. [Reserved].

33-24-02-29. [Reserved].

33-24-02-30. [Reserved].

33-24-02-31. [Reserved].

33-24-02-32. [Reserved].

**33-24-02-33. Applicability of financial requirements for management of excluded hazardous secondary materials.**

1. The requirements of sections 33-24-02-33 through 33-24-02-42 apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded

under subdivision y of subsection 1 of section 33-24-02-04, except as provided otherwise in this section.

2. Federal agencies and agencies of the government of the state of North Dakota are exempt from the financial assurance requirements of sections 33-24-02-33 through 33-24-02-42.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-34. Definitions of terms as used in sections 33-24-02-33 through 33-24-02-42.**

The terms defined in subsections 4, 6, 7, and 8 of section 33-24-05-75 have the same meaning in sections 33-24-02-33 through 33-24-02-42.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-35. Cost estimate for closure.**

1. The cost estimates for closure.

- a. The owner or operator shall have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

- (1) The estimate must equal the cost of conducting the activities described in subsection 1 at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

- (2) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in subsection 4 of section 33-24-05-75.) The owner or operator may use costs for onsite disposal in accordance with applicable requirements if the owner or operator can demonstrate that onsite disposal capacity will exist at all times over the life of the facility.

- (3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or nonhazardous wastes, facility structures or equipment, land, or other assets associated with the facility.

- (4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or nonhazardous wastes that might have economic value.

- b. During the active life of the facility, the owner or operator shall adjust the cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instruments used to comply with section 33-24-02-36. For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before submission of updated information to the department as specified in subdivision c of subsection 5 of section 33-24-02-36. The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the United States department of commerce in its survey of current business, as specified in paragraphs 1 and 2. The

inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

c. During the active life of the facility, the owner or operator shall revise the cost estimate no later than thirty days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in subdivision a, or no later than sixty days after an unexpected event which increases the cost of conducting the activities described in subdivision a. The revised cost estimate must be adjusted for inflation as specified in subdivision b.

d. The owner or operator shall keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with subdivisions a and c and, when this estimate has been adjusted in accordance with subdivision b, the latest adjusted cost estimate.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-36. Financial assurance condition.**

In accordance with subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04, an owner or operator of a reclamation or intermediate facility shall have financial assurance as a condition of the exclusion as required under subdivision y of subsection 1 of section 33-24-02-04. The owner or operator shall choose from the options as specified in subsections 1 through 5.

#### 1. Trust fund.

a. An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the department. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or by the state department of financial institutions.

b. The wording of the trust agreement must be identical to the wording specified in subdivision a of subsection 1 of section 33-24-02-42 and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see subdivision b of subsection 1 of section 33-24-02-42). Schedule A of the trust agreement must be updated within sixty days after a change in the amount of the current cost estimate covered by the agreement.

c. The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this subsection.

d. Whenever the current cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty days after the change in the cost estimate, either shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost

estimate, or obtain other financial assurance as specified in this section to cover the difference.

e. If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the department for release of the amount in excess of the current cost estimate.

f. If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the department for release of the amount in excess of the current cost estimate covered by the trust fund.

g. Within sixty days after receiving a request from the owner or operator for release of funds as specified in subdivisions e or f, the department will instruct the trustee to release to the owner or operator such funds as the department specifies in writing. If the owner or operator begins final closure under sections 33-24-05-59 through 33-24-05-69 or subsection 5 of section 33-24-06-16, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than sixty days after receiving bills for partial or final closure activities, the department will instruct the trustee to make reimbursements in those amounts as the department specifies in writing, if the department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the department has reason to believe the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the department may withhold reimbursements of such amounts as the department deems prudent until the department determines, in accordance with subsection 9, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the department does not instruct the trustee to make such reimbursements, the department will provide to the owner or operator a detailed written statement of reasons.

h. The department will agree to termination of the trust when:

(1) An owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.

## 2. Surety bond guaranteeing payment into a trust fund.

a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting the bond to the department. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in circular 570 of the United States department of the treasury.

b. The wording of the surety bond must be identical to the wording specified in subsection 2 of section 33-24-02-42.

c. The owner or operator who uses a surety bond to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in

accordance with instructions from the department. This standby trust fund must meet the requirements specified in subsection 1, except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the department with the surety bond; and

(2) Until the standby trust fund is funded pursuant to the requirements of this subsection, the following are not required by this chapter:

(a) Payments into the trust fund as specified in subsection 1;

(b) Updating of schedule A of the trust agreement (see subsection 1 of section 33-24-02-42) to show current cost estimates;

(c) Annual valuations as required by the trust agreement; and

(d) Notices of nonpayment as required by the trust agreement.

d. The bond must guarantee that the owner or operator will:

(1) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under subdivision y of subsection 1 of section 33-24-02-04;

(2) Fund the standby trust fund in an amount equal to the penal sum within fifteen days after an order to begin closure is issued by the department, or within fifteen days after an order to begin closure is issued by a United States district court or other court of competent jurisdiction; or

(3) Provide alternate financial assurance as specified in this section, and obtain the department's written approval of the assurance provided, within ninety days after receipt by both the owner or operator and the department of a notice of cancellation of the bond from the surety.

e. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

f. The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in subsection 6.

g. Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty days after the increase, either shall cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the department.

h. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

i. The owner or operator may cancel the bond if the department has given prior written consent based on the department's receipt of evidence of alternate financial assurance as specified in this section.

3. Letter of credit.

- a. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal agency or by the state department of financial institutions.
- b. The wording of the letter of credit must be identical to the wording specified in subsection 3 of section 33-24-02-42.
- c. An owner or operator who uses a letter of credit to satisfy the requirements of this section also shall establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department. This standby trust fund must meet the requirements of the trust fund specified in subsection 1, except that:
  - (1) An originally signed duplicate of the trust agreement must be submitted to the department with the letter of credit; and
  - (2) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this chapter:
    - (a) Payments into the trust fund as specified in subsection 1;
    - (b) Updating of schedule A of the trust agreement (see subsection 1 of section 33-24-02-42) to show current cost estimates;
    - (c) Annual valuations as required by the trust agreement; and
    - (d) Notices of nonpayment as required by the trust agreement.
- d. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The identification number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.
- e. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the owner or operator and the department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the owner or operator and the department have received the notice, as evidenced by the return receipts.
- f. The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in subsection 6.
- g. Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty days after the increase, either shall cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the department.

- h. Following a determination by the department that the hazardous secondary materials do not meet the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04, the department may draw on the letter of credit.
- i. If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the department within ninety days after receipt by both the owner or operator and the department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department will draw on the letter of credit. The department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty days of any such extension the department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the department.
- j. The department will return the letter of credit to the issuing institution for termination when:
  - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.

#### 4. Insurance.

- a. A owner or operator may satisfy the requirements of this section by obtaining insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the department. At a minimum, the insurer must be licensed to transact the business of insurance in this state or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
- b. The wording of the certificate of insurance must be identical to the wording specified in subsection 4 of section 33-24-02-42.
- c. The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in subsection 6. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- d. The insurance policy must guarantee funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under section 33-24-05-59 through 33-24-05-69 or subsection 5 of section 33-24-06-16, as applicable, for the facilities covered by this policy. The policy also must guarantee once funds are needed, the insurer is responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the department, to such party or parties as the department specifies.
- e. After beginning partial or final closure under sections 33-24-05-59 through 33-24-05-69 or subsection 5 of section 33-24-06-16, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the department. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty days after receiving bills

for closure activities, the department will instruct the insurer to make reimbursements in such amounts as the department specifies in writing if the department determines that the expenditures are in accordance with the approved plan or otherwise justified. If the department has reason to believe the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, the department may withhold reimbursement of such amounts as the department deems prudent until the department determines, in accordance with subsection 8, the owner or operator is no longer required to maintain financial assurance for the particular facility. If the department does not instruct the insurer to make such reimbursements, the department will provide to the owner or operator a detailed written statement of reasons.

- f. The owner or operator shall maintain the policy in full force and effect until the department consents to termination of the policy by the owner or operator as specified in subdivision j of subsection 9. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, constitutes a significant violation of this chapter warranting such remedy as the department deems necessary. Such violation is deemed to begin upon receipt by the department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- g. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.
- h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the department. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of the notice by both the department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if on or before the date of expiration:
  - (1) The department deems the facility abandoned;
  - (2) Conditional exclusion or interim status is lost, terminated, or revoked;
  - (3) Closure is ordered by the department or a state court or other court of competent jurisdiction;
  - (4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under United States Code title 11 (bankruptcy); or
  - (5) The premium due is paid.
- i. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the department.

j. The department will give written consent to the owner or operator that the department may terminate the insurance policy when:

(1) An owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.

5. Financial test and corporate guarantee.

a. An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test the owner or operator must meet the criteria of either paragraphs 1 or 2:

(1) The owner or operator shall have:

(a) Two of the following three ratios: A ratio of total liabilities to net worth less than two; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth; and a ratio of current assets to current liabilities greater than one and five-tenths;

(b) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates;

(c) Tangible net worth of at least ten million dollars; and

(d) Assets located in the United States amounting to at least ninety percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The owner or operator shall have:

(a) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(b) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates;

(c) Tangible net worth of at least ten million dollars; and

(d) Assets located in the United States amounting to at least ninety percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

b. The phrase "current cost estimates" as used in subdivision a refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (subsection 5 of section 33-24-02-42). The phrase "current plugging and abandonment cost estimates" as used in subdivision a refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)).

c. To demonstrate the owner or operator meets this test, the owner or operator shall submit the following items to the department:

(1) A letter signed by the owner's or operator's chief financial officer and worded as specified in subsection 5 of section 33-24-02-42;

(2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(3) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing the owner or operator satisfies paragraph 1 of subdivision a which is different from the data in the audited financial statements referred to in paragraph 2 or any other audited financial statement or data filed with the United States securities and exchange commission, a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

d. The owner or operator may obtain an extension of the time allowed for submission of the documents specified in subdivision c if the fiscal year of the owner or operator ends during the ninety days prior to the effective date of this section and if the year end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of this section, a letter to the department. This letter from the chief financial officer must:

(1) Request the extension;

(2) Certify that the owner or operator has grounds to believe that the owner or operator meets the criteria of the financial test;

(3) Specify for each facility to be covered by the test the identification number (if any issued), name, address, and current cost estimates to be covered by the test;

(4) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of this section;

(5) Specify the date, no later than ninety days after the end of such fiscal year, when the owner or operator will submit the documents specified in subdivision c; and

(6) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

e. After the initial submission of items specified in subdivision c, the owner or operator shall send updated information to the department within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in subdivision c.

f. If the owner or operator no longer meets the requirements of subdivision a, the owner or operator shall send notice to the department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within one hundred twenty days after the end of such fiscal year.

g. The department, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision a, may require reports of financial condition at any

time from the owner or operator in addition to those specified in subdivision c. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision a, the owner or operator shall provide alternate financial assurance as specified in this section within thirty days after notification of such a finding.

h. The department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the independent certified public accountant's report on examination of the owner's or operator's financial statements (see paragraph 2 of subdivision c). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within thirty days after notification of the disallowance.

i. The owner or operator is no longer required to submit the items specified in subdivision c if:

(1) An owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.

j. An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivisions a through h of subsection 5 and shall comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in subdivision a of subsection 7 of section 33-24-02-42. A certified copy of the guarantee must accompany the items sent to the department as specified in subdivision c. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(1) Following a determination by the department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04, the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in sections 33-24-05-59 through 33-24-05-69 or subsection 5 of section 33-24-06-16, as applicable, or establish a trust fund as specified in subsection 1 in the name of the owner or operator in the amount of the current cost estimate.

(2) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the

department within ninety days after receipt by both the owner or operator and the department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

6. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in subsections 1 through 4, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for the facility.

7. Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the identification number (if any issued), name, address, and the amount of funds assured by the mechanism. If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance must be submitted to and maintained with the department and other state's agencies that regulate reclamation and intermediate facilities managing hazardous secondary materials of all such states. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

8. Removal and decontamination plan for release.

a. An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from the owner's or operator's financial assurance obligations under subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04 shall submit a plan for removing all hazardous secondary material residues to the department at least one hundred eighty days prior to the date on which the owner or operator expects to cease to operate under the exclusion.

b. The plan must include, at least:

(1) For each hazardous secondary materials storage unit subject to financial assurance requirements under subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04, a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (such as liners), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment;

(2) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment;

- (3) A detailed description of any other activities necessary to protect human health and the environment during this time frame, including, leachate collection, run-on and runoff control; and
- (4) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04 and the time required for intervening activities which will allow tracking of the progress of decontamination.

c. The department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than thirty days from the date of the notice. The department will also, in response to a request or at the department's discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The department will give public notice of the hearing at least thirty days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The department will approve, modify, or disapprove the plan within ninety days of its receipt. If the department does not approve the plan, the department shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within thirty days after receiving such written statement. The department will approve or modify this plan in writing within sixty days. If the department modifies the plan, this modified plan becomes the approved plan. The department shall assure the approved plan is consistent with this subsection. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

d. Within sixty days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator shall submit to the department, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified professional engineer. Documentation supporting the professional engineer's certification must be furnished to the department, upon request, until the department releases the owner or operator from the financial assurance requirements for subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04.

9. Release of the owner or operator from the requirements of this section. Within sixty days after receiving certifications from the owner or operator and a qualified professional engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per subsection 8, the department will notify the owner or operator in writing that the owner or operator is no longer required under subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04 to maintain financial assurance for that facility or a unit at the facility, unless the department has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The department shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03  
**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-37. [Reserved].**

**33-24-02-38. [Reserved].**

**33-24-02-39. [Reserved].**

**33-24-02-40. Liability requirements.**

1. Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subdivision a, b, c, d, e, or f:

a. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision.

(1) Each insurance policy must be amended by attachment of the hazardous secondary material facility liability endorsement, or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in subsection 8 of section 33-24-02-42. The wording of the certificate of insurance must be identical to the wording specified in subsection 9 of section 33-24-02-42. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the department, and other state's agencies that regulate reclamation and intermediate facilities if the facilities are located in more than one state. If requested by the department, the owner or operator shall provide a signed duplicate original of the insurance policy.

(2) Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

b. An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections 6 and 7.

c. An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection 8.

d. An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection 9.

e. An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection 10.

f. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subdivision, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

g. An owner or operator shall notify the department in writing within thirty days whenever:

(1) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions a through f;

(2) A certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under subdivision a through f; or

(3) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivision a through f.

2. Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with landbased units, as defined in section 33-24-01-04, which are used to manage hazardous secondary materials excluded under subdivision y of subsection 1 of section 33-24-02-04 or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars per occurrence with an annual aggregate of at least six million dollars, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least four million dollars per occurrence and eight million dollars annual aggregate. This liability coverage may be demonstrated as specified in subdivision a, b, c, d, e, or f:

a. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subsection.

(1) Each insurance policy must be amended by attachment of the hazardous secondary material facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in subsection 8 of section 33-24-02-42. The wording of the certificate of

insurance must be identical to the wording specified in subsection 9 of section 33-24-02-42. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the department, and other state's agencies that regulate reclamation and intermediate facilities if the facilities are located in more than one state. If requested by a department, the owner or operator shall provide a signed duplicate original of the insurance policy.

(2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

b. An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in subsections 6 and 7.

c. An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection 8.

d. An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection 9.

e. An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection 10.

f. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subdivision, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

g. An owner or operator shall notify the department in writing within thirty days whenever:

(1) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions a through f;

(2) A certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under subdivisions a through f; or

(3) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous secondary material treatment or storage facility, or both, is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivisions a through f.

3. Request for variance. If an owner or operator can demonstrate to the satisfaction of the department that the levels of financial responsibility required by subsection 1 or 2 are not consistent with the degree and duration of risk associated with treatment or storage, or both, at the facility or group of facilities, the owner or operator may obtain a variance from the department. The request for a variance must be submitted in writing to the department. If granted, the variance will take the form of an adjusted level of required liability coverage, such

level to be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the department to determine a level of financial responsibility other than that required by subsection 1 or 2.

4. Adjustments by the department. If the department determines the levels of financial responsibility required by subsection 1 or 2 are not consistent with the degree and duration of risk associated with treatment or storage, or both, at the facility or group of facilities, the department may adjust the level of financial responsibility required under subsection 1 or 2 as may be necessary to protect human health and the environment. This adjusted level will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, the department may require an owner or operator of the facility to comply with subsection 2. An owner or operator shall furnish to the department, within a reasonable time, any information the department requests to determine whether cause exists for such adjustments of level or type of coverage.

5. Period of coverage. Within sixty days after receiving certifications from the owner or operator and a qualified professional engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per subsection 8 of section 33-24-02-36, the department will notify the owner or operator in writing that the owner or operator is no longer required under subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04 to maintain liability coverage for that facility or a unit at the facility, unless the department has reason to believe all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

6. Financial test for liability coverage.

a. An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this subsection. To pass this test the owner or operator shall meet the criteria of paragraph 1 or 2:

(1) The owner or operator shall have:

(a) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test;

(b) Tangible net worth of at least ten million dollars; and

(c) Assets in the United States amounting to either:

[1] At least ninety percent of the owner's or operator's total assets; or

[2] At least six times the amount of liability coverage to be demonstrated by this test.

(2) The owner or operator shall have:

(a) A current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's;

(b) Tangible net worth of at least ten million dollars;

(c) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(d) Assets in the United States amounting to either:

[1] At least ninety percent of the owner's or operator's total assets; or

[2] At least six times the amount of liability coverage to be demonstrated by this test.

b. The phrase "amount of liability coverage" as used in subdivision a refers to the annual aggregate amounts for which coverage is required under subsections 1 and 2 and the annual aggregate amounts for which coverage is required under subsections 1 and 2 of section 33-24-05-79 and subsection 5 of section 33-24-06-16.

c. To demonstrate the owner or operator meets this test, the owner or operator shall submit the following three items to the department:

(1) A letter signed by the owner's or operator's chief financial officer and worded as specified in subsection 6 of section 33-24-02-42. If an owner or operator is using the financial test to demonstrate both assurance as specified by subsection 5 of section 33-24-02-36, and liability coverage, the owner or operator shall submit the letter specified in subsection 6 of section 33-24-02-42 to cover both forms of financial responsibility; a separate letter as specified in subsection 5 of section 33-24-02-42 is not required.

(2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(3) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing the owner or operator satisfies paragraph 1 of subdivision a which is different from the data in the audited financial statements referred to in paragraph 2 of subdivision c or any other audited financial statement or data filed with the securities and exchange commission, a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

d. The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in subdivision c if the fiscal year of the owner or operator ends during the ninety days prior to the effective date of this section and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of this section, a letter to the department. This letter from the chief financial officer must:

(1) Request the extension;

(2) Certify the owner or operator has grounds to believe that the owner or operator meets the criteria of the financial test;

- (3) Specify for each facility to be covered by the test the identification number, name, address, the amount of liability coverage and, when applicable, current closure and postclosure cost estimates to be covered by the test;
- (4) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of this section;
- (5) Specify the date, no later than ninety days after the end of such fiscal year, when the owner or operator will submit the documents specified in subdivision c; and
- (6) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

e. After the initial submission of items specified in subdivision c, the owner or operator shall send updated information to the department within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in subdivision c.

f. If the owner or operator no longer meets the requirements of subdivision a, the owner or operator shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the department within ninety days after the end of the fiscal year for which the yearend financial data shows the owner or operator no longer meets the test requirements.

g. The department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the independent certified public accountant's report on examination of the owner's or operator's financial statements (see paragraph 2 of subdivision c). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty days after notification of disallowance.

## 7. Guarantee for liability coverage.

a. Subject to subdivision b, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in subdivision a through f of subsection 6. The wording of the guarantee must be identical to the wording specified in subdivision b of subsection 7 of section 33-24-02-42. A certified copy of the guarantee must accompany the items sent to the department as specified in paragraph c of subsection 6. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(1) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount

agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(2) [Reserved]

b. The following applies:

(1) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the attorneys general or insurance commissioners of:

(a) The state in which the guarantor is incorporated; and

(b) Each state in which a facility covered by the guarantee is located have submitted a written statement to the department that a guarantee executed as described in this section and subdivision b of subsection 7 of section 33-24-02-42 is a legally valid and enforceable obligation in that state.

(2) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(a) The nonUnited States corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principal place of business; and if

(b) The attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the department that a guarantee executed as described in this section and subdivision b of subsection 8 of section 33-24-02-42 is a legally valid and enforceable obligation in that state.

8. Letter of credit for liability coverage.

a. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the department.

b. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

c. The wording of the letter of credit must be identical to the wording specified in subsection 10 of section 33-24-02-42.

d. An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

e. The wording of the standby trust fund must be identical to the wording specified in subsection 13 of section 33-24-02-42.

9. Surety bond for liability coverage.

- a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting a copy of the bond to the department.
- b. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the most recent circular 570 of the United States department of the treasury.
- c. The wording of the surety bond must be identical to the wording specified in subsection 11 of section 33-24-02-42.
- d. A surety bond may be used to satisfy the requirements of this section only if the attorneys general or insurance commissioners of:
  - (1) The state in which the surety is incorporated; and
  - (2) Each state in which a facility covered by the surety bond is located have submitted a written statement to the department that a surety bond executed as described in this section and subsection 11 of section 33-24-02-42 is a legally valid and enforceable obligation in that state.

10. Trust fund for liability coverage.

- a. An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the department.
- b. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- c. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, either shall add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subdivision, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden or nonsudden, or both, occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage which is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.
- d. The wording of the trust fund must be identical to the wording specified in subsection 12 of section 33-24-02-42.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-41. Incapacity of owners or operators, guarantors, or financial institutions.**

1. An owner or operator shall notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under United States Code title 11 (bankruptcy), naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in subsection 5 of section 33-24-02-36 shall

make such a notification if the owner or operator is named as debtor, as required under the terms of the corporate guarantee.

2. An owner or operator who fulfills the requirements of section 33-24-02-36 or 33-24-02-40 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within sixty days after such an event.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-42. Wording of the instruments.**

1. Trust agreement and certification of acknowledgment.

- a. A trust agreement for a trust fund as specified in subsection 1 of section 33-24-02-36 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT, the "AGREEMENT" entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation" "partnership," "association" or "proprietorship"], the "GRANTOR," and [name of corporate trustee], [insert "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "TRUSTEE".

Whereas, the North Dakota department of health "DEPARTMENT" a regulatory agency of the state of North Dakota, has established certain regulations applicable to the GRANTOR requiring that an owner or operator of a facility regulated under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819 or subsection 5 of section 33-24-06-16, or satisfying the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04 shall provide assurance that funds will be available when needed for care of the facility under sections 33-24-05-59 through 33-24-05-73 or subsection 5 of section 33-24-06-16, as applicable,

Whereas, the GRANTOR has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the GRANTOR acting through its duly authorized officers has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT and the TRUSTEE is willing to act as TRUSTEE,

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

#### **Section 1. Definitions. As used in this AGREEMENT:**

- (a) The term GRANTOR means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.
- (b) The term TRUSTEE means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities and Cost Estimate.** This AGREEMENT pertains to the facilities and cost estimates identified on attached schedule A [on schedule A for each facility list the identification number (if available), name, address and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a trust fund, the FUND, for the benefit of the DEPARTMENT in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04. The GRANTOR and the TRUSTEE intend that no third party have access to the FUND, except as herein provided. The FUND is established initially as consisting of the property which is acceptable to the TRUSTEE and described in schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND must be held by the TRUSTEE, IN TRUST, as herein provided. The TRUSTEE is not responsible, nor may it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payments from the Fund.** The TRUSTEE shall make payments from the FUND as the DEPARTMENT shall direct, in writing, to provide for the payment of the costs of the performance of activities required under sections 33-24-05-59 through 33-24-05-73 or subsection 5 of section 33-24-06-16 for the facilities covered by this AGREEMENT. The TRUSTEE shall reimburse the GRANTOR or other persons as specified by the DEPARTMENT from the FUND for expenditures for such activities in such amounts as the DEPARTMENT shall direct in writing. In addition, the TRUSTEE shall refund to the GRANTOR such amounts as the DEPARTMENT specifies in writing. Upon refund such funds shall no longer constitute part of the FUND as defined herein.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND must consist of cash or securities acceptable to the TRUSTEE.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal and income of the FUND and keep the FUND invested as a single FUND without distinction between principal and income in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject however to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the TRUSTEE's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the GRANTOR or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be acquired or held unless they are securities or other obligations of a federal or state government;
- (b) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (c) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without, in any way, eliminating the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE is bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;
- (d) To deposit any cash in the FUND in interest bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate capacity, or in any other banking institution affiliated with the TRUSTEE to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the FUND.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this TRUST, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR and all other proper charges and disbursements of the TRUSTEE, must be paid from the FUND.

**Section 10. Annual Valuation.** The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the TRUST. Any securities in the FUND must be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT, constitutes a conclusively binding assent by the GRANTOR barring the

GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected to the extent permitted by law in acting upon the advice of counsel.

**Section 12. TRUSTEE Compensation.** The TRUSTEE is entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 13. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement is not effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE's acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason, the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the TRUST in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section must be paid as provided in section 9.

**Section 14. Instructions to the TRUSTEE.** All orders, requests, and instructions by the GRANTOR to the TRUSTEE must be in writing, signed by such persons as are designated in the attached Exhibit A, or such other designees as the GRANTOR may designate by amendment to Exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR's orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE must be in writing, signed by an authorized DEPARTMENT representative and the TRUSTEE shall act and be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR or the DEPARTMENT, or both, except as provided for herein.

**Section 15. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist.

**Section 16. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in section 15, this TRUST is irrevocable and continues until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the TRUST, all remaining trust property, less final trust administration expenses, must be delivered to the GRANTOR.

**Section 17. Immunity and Indemnification.** The TRUSTEE may not incur personal liability of any nature in connection with any act or omission made in good faith in the administration of this TRUST or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE must be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity,

including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

**Section 18. Choice of Law.** This AGREEMENT must be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 19. Interpretation.** As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT do not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto fixed and attested as of the date first above written: The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subdivision a of subsection 1 of North Dakota Administrative Code section 33-24-02-42 as such regulation was constituted on the date first above written.

[Signature of GRANTOR]

[Title]

[Attest:]

[Title]

[Seal]

[Signature of TRUSTEE]

[Attest:]

[Title]

[Seal]

b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a trust fund as specified in subsection 1 of section 33-24-02-36.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

2. A surety bond guaranteeing payment into a trust fund as specified in subsection 2 of section 33-24-02-36 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture," "partnership" or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Identification number, name, address and amount or amounts for each facility guaranteed by this bond: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota Department of Health (hereinafter called the DEPARTMENT) in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assignors jointly and severally: provided that where the SURETY(IES) are corporations acting as cosureties, we, the SURETIES, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each SURETY binds itself, jointly and severally with the PRINCIPAL, for the payment of such sum only as is set forth opposite the name of such SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23-20.3 to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under subdivision y of subsection 1 of section 33-24-02-04, and

Whereas said PRINCIPAL is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under subdivision y of subsection 1 of section 33-24-02-04, and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the PRINCIPAL shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amounts identified above for the facility,

Or, if the PRINCIPAL shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under subdivision y of subsection 1 of section 33-24-02-04,

Or, if the PRINCIPAL shall fund the standby trust fund in such amounts within fifteen days after an order to begin closure is issued by the DEPARTMENT or a state or other court of competent jurisdiction,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in sections 33-24-02-33 through 33-24-02-42, as applicable, and obtain the DEPARTMENT's written approval of such assurance within ninety days after the date of notice of cancellation is

received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above. Upon notification by the DEPARTMENT that the PRINCIPAL has failed to perform as guaranteed by this bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The liability of the SURETY(IES) shall not be discharged by any payment or any succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required]

The PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In witness whereof, the PRINCIPAL and SURETY(IES) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 2 of North Dakota Administrative Code section 33-24-02-42 as such rule was constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and Title(s)]

[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$ \_\_\_\_\_

3. A letter of credit as specified in subsection 3 of section 33-24-02-36 must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Chief, Environmental Health Section, North Dakota Department of Health

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number \_\_\_\_\_ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility or facilities no longer meet the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] United States Dollars \$ \_\_\_\_\_, available upon presentation by you of

(1) Your sight draft bearing reference to this letter of credit Number \_\_\_\_\_, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of North Dakota Century Code chapter 23-20.3".

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in subsection 3 of North Dakota Administrative Code section 33-24-02-42 as such rule was constituted on the date shown immediately below.

[Signature(s) and Title(s) of Official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce", or "the Uniform Commercial Code"]

4. A certificate of insurance as specified in subsection 4 of section 33-24-02-36 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATE OF INSURANCE

Name and address of insurer (hereinafter called the "INSURER"): \_\_\_\_\_

Name and address of Insured (hereinafter called the "INSURED"): \_\_\_\_\_

Facilities covered: [List for each facility: the identification number (if any issued), name, address and amount of insurance for closure or the amount of insurance for all facilities covered, which must total the face amount shown below.]

Face amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The INSURER hereby certifies that it has issued to the INSURED the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The INSURER further warrants that such policy conforms in all respects with the requirements of subsection 4 of North Dakota Administrative Code section 33-24-02-36, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such rules is hereby amended to eliminate such inconsistency.

When requested by the North Dakota Department of Health (DEPARTMENT) the INSURER agrees to furnish to the DEPARTMENT a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in subsection 4 of North Dakota Administrative Code section 33-24-02-42 as such rule was constituted on the date shown immediately below.

[Authorized signature for INSURER]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

[Date]

5. A letter from the chief financial officer, as specified in subsection 5 of section 33-24-02-36, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to North Dakota Department of Health].

I am the chief financial officer of [name and address of firm]. This letter is in support

of this firm's use of the financial test to demonstrate financial assurance, as specified in sections 33-24-02-33 through 33-24-02-42.

[Fill out the following nine paragraphs regarding facilities and associated cost

estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in sections 33-24-02-33 through 33-24-02-42. The current cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
2. This firm guarantees, through the guarantee specified in sections 33-24-02-33 through 33-24-02-42, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].
3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of the financial test specified in sections 33-24-02-33 through 33-24-02-42. The current cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.
4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33-24-02-33 through 33-24-02-42. The current cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.
5. This firm is the owner or operator of the following underground injection control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.
6. This firm is the owner or operator of the following facilities for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-88 or subsection 5 of section 33-24-06-16. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
7. This firm guarantees, through the guarantee specified in sections 33-24-05-74 through 33-24-05-88 or subsection 5 of section 33-24-06-16, the closure or postclosure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) the direct or higher-tiered parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the

following value in consideration of this guarantee \_\_\_\_\_: or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of the financial test specified in sections 33-24-05-74 through 33-24-05-88 or subsection 5 of section 33-24-06-16. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33-24-05-74 through 33-24-05-88 and subsection 5 of section 33-24-06-16. The current closure and/or postclosure estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 5 of section 33-24-02-36 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 5 of section 33-24-02-36 are used].

#### **Alternative I**

1. Sum of current cost estimate (total of all costs estimates shown in the nine paragraphs above). \$ \_\_\_\_\_
- \*2. Total liabilities (if any portion of the cost estimate is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4). \$ \_\_\_\_\_
- \*3. Tangible net worth. \$ \_\_\_\_\_
- \*4. Net worth. \$ \_\_\_\_\_
- \*5. Current assets. \$ \_\_\_\_\_
- \*6. Current liabilities. \$ \_\_\_\_\_
7. Net working capital (line 5 minus line 6) \$ \_\_\_\_\_
- \*8. The sum of net income plus depreciation, depletion, and amortization. \$ \_\_\_\_\_
- \*9. Total assets in the United States (required only if less than 90% of firm's assets are located in the United States). \$ \_\_\_\_\_

Yes

No

10. Is line 3 at least \$10 million?
11. Is line 3 at least 6 times line 1?
12. Is line 7 at least 6 times line 1?
- \*13. Are at least 90% of firm's assets located in the United States? If not, complete line 14.
14. Is line 9 at least 6 times line 1?
15. Is line 2 divided by line 4 less than 2.0?
16. Is line 8 divided by line 2 greater than 0.1?
17. Is line 5 divided by line 6 greater than 1.5?

#### **Alternative II**

1. Sum of current cost estimates (total of all cost estimates shown in the nine paragraphs above). \$ \_\_\_\_\_
  2. Current bond rating of most recent issuance of this firm and name of rating service. \$ \_\_\_\_\_
  3. Date of issuance of bond. \$ \_\_\_\_\_
  4. Date of maturity of bond. \$ \_\_\_\_\_
  - \*5. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$ \_\_\_\_\_
  - \*6. Total assets in United States (required only if less than 90% of firm's assets are located in the United States). \$ \_\_\_\_\_
- Yes  
No
7. Is line 5 at least \$10 million?
  8. Is line 5 at least 6 times line 1?
  - \*9. Are at least 90% of firm's assets located in the United States? If not, complete line 10.
  10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in subsection 5 of section 33-24-02-42 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

6. A letter from the chief financial officer, as specified in subsection 6 of section 33-24-02-40, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer:

[Address to North Dakota Department of Health].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under 33-24-02-40 [insert "and costs assured subsection 5 of section 33-24-02-36" if applicable] as specified in sections 33-24-02-33 through 33-24-02-42.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number (if any issued), name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrence is being demonstrated through the financial test specified in sections 33-24-02-33 through 33-24-02-42:

The firm identified above guarantees, through the guarantee specified in sections 33-24-02-33 through 33-24-02-42, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_ . The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent

corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-88 or subsection 5 of section 33-24-06-16: .

The firm identified above guarantees, through the guarantee specified in sections 33-24-05-74 through 33-24-05-88 or subsection 5 of section 33-24-06-16, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under subsection 5 of section 33-24-02-36 or closure or postclosure case costs under sections 33-24-05-77 or subsection 5 of section 33-24-06-16, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number (if any issued), name, address, and current cost estimates.]

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1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in sections 33-24-02-33 through 33-24-02-42. The current cost estimates covered by the test are shown for each facility \_\_\_\_\_.

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2. This firm guarantees, through the guarantee specified in sections 33-24-02-33 through 33-24-02-42, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_, or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

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3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of the financial test specified in sections 33-24-02-33 through 33-24-02-42. The current cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

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4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33-24-02-33 through 33-24-02-42. The current cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator or guarantor of the following underground injection control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.
6. This firm is the owner or operator of the following facilities for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-88 and subsection 5 of section 33-24-06-16. The current closure and /or postclosure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
7. This firm guarantees, through the guarantee specified in sections 33-24-05-74 through 33-24-05-88 and subsection 5 of section 33-24-06-16, the closure or postclosure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: . The firm identified above is the [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ; or (3) engaged in the following substantial business relationship with the owner or operator , and receiving the following value in consideration of this guarantee ]. [Attach a written description of the business relationship or a copy of the contract establishing such a relationship to this letter].
8. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use the financial test specified in sections 33-24-05-74 through 33-24-05-88. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: .
9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33-24-05-74 through 33-24-05-88 or subsection 5 of section 33-24-06-16. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: .

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

#### Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-02-40 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-02-40 are used].

#### **Alternative I**

1. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
- \*2. Current assets. \$ \_\_\_\_\_
- \*3. Current liabilities. \$ \_\_\_\_\_
4. Net working capital (line 2 minus line 3). \$ \_\_\_\_\_
- \*5. Tangible net worth. \$ \_\_\_\_\_
- \*6. If less than 90% of assets are located in the United States, give total United States assets. \$ \_\_\_\_\_

Yes

No

7. Is line 5 at least \$10 million?
8. Is line 4 at least 6 times line 1?
9. Is line 5 at last 6 times line 1?
- \*10. Are at least 90% of assets located in the United States?  
If not, complete line 11.
11. Is line 6 at least 6 times line 1?

**Alternative II**

1. Amount of annual aggregate liability coverage to be demonstrated. \$ \_\_\_\_\_
2. Current bond rating of most recent issuance and name of rating service. \_\_\_\_\_
3. Date of issuance of bond. \_\_\_\_\_
4. Date of maturity of bond. \_\_\_\_\_
- \*5. Tangible net worth. \$ \_\_\_\_\_
- \*6. Total assets in United States (required only if less than 90% of assets are located in the United States) \$ \_\_\_\_\_

Yes

No

7. Is line 5 at least \$10 million?
8. Is line at least 6 times line 1?
9. Are at least 90% of assets located in the United States?  
If not, complete line 10.
10. Is line 6 at least 6 times line 1?

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under subsection 5 of section 33-24-02-36 or closure or postclosure care costs under section 33-24-05-77 or subsection 5 of section 33-24-06-16.]

**Part B. Facility Care and Liability Coverage**

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 5 of section 33-24-02-36 and paragraph 1 of subdivision a of subsection 6 of section 33-24-02-40 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 5 of section 33-24-02-36 and paragraph 2 of subdivision a of subsection 6 of section 33-24-02-40 are used].

**Alternative I**

1. Sum of current cost estimates (total of all cost estimates listed above). \$ \_\_\_\_\_
2. Amount of annual aggregate liability coverage to be demonstrated. \$ \_\_\_\_\_
3. Sum of lines 1 and 2. \$ \_\_\_\_\_
- \*4. Total liabilities (if any portion of your closure or postclosure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6). \$ \_\_\_\_\_
- \*5. Tangible net worth. \$ \_\_\_\_\_
- \*6. Net worth. \$ \_\_\_\_\_
- \*7. Current assets. \$ \_\_\_\_\_
- \*8. Current liabilities. \$ \_\_\_\_\_
9. Net working capital (line 7 minus line 8). \$ \_\_\_\_\_
- \*10. The sum of net income plus depreciation, depletion, and amortization. \$ \_\_\_\_\_
- \*11. Total assets in United States (required only if less than 90% of assets are located in the United States). \$ \_\_\_\_\_

Yes

No

12. Is line 5 at least \$10 million?

- 13. Is line 5 at least 6 times line 3?
- 14. Is line 9 at least 6 times line 3?
- \*15. Are at least 90% of assets located in the United States?  
If not, complete line 16.
- 16. Is line 11 at least 6 times line 3?
- 17. Is line 4 divided by line 6 less than 2.0?
- 18. Is line 10 divided by line 4 greater than 0.1?
- 19. Is line 7 divided by line 8 greater than 1.5?

**Alternative II**

- 1. Sum of current cost estimate (total of all cost estimates listed above). \$ \_\_\_\_\_
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$ \_\_\_\_\_
- 3. Sum of lines 1 and 2. \$ \_\_\_\_\_
- 4. Current bond rating of most recent issuance and name of rating service. \$ \_\_\_\_\_
- \*5. Date of issuance of bond.
- \*6. Date of maturity of bond.
- \*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line). \$ \_\_\_\_\_
- \*8. Total assets in the United States (required only if less than 90% of assets are located in the United States). \$ \_\_\_\_\_

Yes

No

- 9. Is line 7 at least \$10 million?
- 10. Is line 7 at least 6 times line 3?
- \*11. Are at least 90% of assets located in the United States?  
If not, complete line 12.
- 12. Is line 8 at least 6 times line 3?

I hereby certify that the wording of this letter is identical to the wording specified in subsection 6 of section 33-24-02-42 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

7. Corporate guarantee for facility care

- a. A corporate guarantee, as specified in subsection 5 of section 33-24-02-36, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Facility Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33-24-05-75"] to the DEPARTMENT.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 5 of section 33-24-02-36.
2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: identification number (if any issued), name, and address.]
3. "Closure plans" as used below refer to the plans maintained as required by sections 33-24-02-33 through 33-24-02-42 for the care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under subdivision y of subsection 1 of section 33-24-02-04, the guarantor shall dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819 or subsection 5 of section 33-24-06-16, as applicable, or establish a trust fund as specified in subsection 1 of section 33-24-02-36 in the name of the owner or operator in the amount of the current cost estimate.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate financial assurance as specified in sections 33-24-02-33 through 33-24-02-42, as applicable, in the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.
6. The guarantor agrees to notify the DEPARTMENT by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.
7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate financial assurance as specified in sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16, or sections 33-24-02-33 through 33-24-02-42, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16, or sections 33-24-02-33 through 33-24-02-42.
9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524,

33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819 and subsection 5 of section 33-24-06-16 or the financial assurance condition of subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04 for the above listed facilities, except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate coverage complying with section 33-24-02-36.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16, or sections 33-24-02-33 through 33-24-02-42, as applicable, and obtain written approval of such assurance from the DEPARTMENT within ninety days after a notice of cancellation by the guarantor is received by the DEPARTMENT from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the DEPARTMENT or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16, or sections 33-24-02-33 through 33-24-02-42.

I hereby certify that the wording of this guarantee is identical to the wording specified in subdivision a of subsection 7 of section 33-24-02-42 as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

- b. A guarantee, as specified in subsection 7 of section 33-24-02-40, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the state of " and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33-24-05-75", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 7 of section 33-24-02-40.
2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies Resource Conservation and Recovery Act third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.
3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.
4. Such obligation does not apply to any of the following:
  - (a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody, or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate liability coverage as specified in section 33-24-02-40, as applicable, in the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the DEPARTMENT by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in section 33-24-02-40 in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this AGREEMENT to take into account amendment or modification of the liability requirements set by section 33-24-02-40, provided that such modification shall become effective only if the DEPARTMENT does not disapprove the modification within thirty days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of section 33-24-02-40 for the above-listed facility(ies), except as provided in paragraph 10 of this AGREEMENT.

9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

10. Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate liability coverage complying with section 33-24-02-40.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee one hundred twenty days following receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's] facility should be paid in the amount of \$ \_\_\_\_.

[Signatures]

Principal .

(Notary) Date .

[Signatures] .

Claimant(s) .

(Notary) Date .

(b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in subdivision b of subsection 7 of section 33-24-02-42 as such regulations were constituted on the date shown immediately below.

Effective date: \_\_\_\_\_.

[Name of guarantor] \_\_\_\_\_.

[Authorized signature for guarantor] \_\_\_\_\_.

[Name of person signing] \_\_\_\_\_.

[Title of person signing] \_\_\_\_\_.

Signature of witness or notary: \_\_\_\_\_.

8. A hazardous waste facility liability endorsement as required in section 33-24-02-40 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-24-02-40. The coverage applies at [list identification number (if any issued), name and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(b) The insurer is liable for the payment of amounts within any deductible applicable to this policy, with a right of reimbursement by the insured for any such payment made

by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33-24-02-40.

(c) When requested by the DEPARTMENT, the insurer agrees to furnish to the DEPARTMENT a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the DEPARTMENT.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty days after a copy of such written notice is received by the DEPARTMENT, as evidenced by the return receipt.

Attached to and forming part of policy number \_\_\_\_\_ issued by [name of insurer], herein called the insurer of [address of insurer] to [name of insured] of [address] this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The effective date of said policy is \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in subsection 8 of North Dakota Administrative Code section 33-24-02-42 as such rule was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer]

[Address of representative]

9. A certificate of liability insurance as required in section 33-24-02-40 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY  
CERTIFICATE OF LIABILITY INSURANCE

1. [Name of insurer], (the "insurer") of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16 and the financial assurance condition of subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33-24-02-04. The coverage applies at [list identification number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each

occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number \_\_\_\_\_, issued on [date]. The effective date of said policy is [date].

2. The insurer further certifies the following with respect to the insurance described in paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in North Dakota Administrative Code section 33-24-02-40.

(c) When requested by the DEPARTMENT, the insurer agrees to furnish to the DEPARTMENT a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice, and only after the expiration of sixty days after a copy of such written notice is received by the DEPARTMENT.

(e) Any other termination of the insurance will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the DEPARTMENT, as evidenced by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in subsection 9 of North Dakota Administrative Code section 33-24-02-42, as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance, in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer]

[Address of representative]

10. A letter of credit, as specified in subsection 8 of section 33-24-02-40, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER of CREDIT

Name and Address of Issuing Institution

North Dakota Department of Health

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in the favor of ["any and all third-party liability claimants" or insert name of TRUSTEE of the standby trust fund], at the request and for the account of [owner or operator's name and

address] for third-party liability awards or settlements up to [in words] United States dollars \$ \_\_\_\_\_ per occurrence and the annual aggregate amount of [in words] United States dollars \$ \_\_\_\_\_, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] United States dollars \$ \_\_\_\_\_, and the annual aggregate amount of [in words] United States dollars \$ \_\_\_\_\_, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. \_\_\_\_\_, and [insert the following language if the letter of credit is being used without a standby trust fund]: (1) a signed certificate reading as follows:

#### Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of \$[\_\_\_\_]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs 1 and 2.

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] .

GRANTOR .

[Signatures] .

Claimant(s) .

or (2) a valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify you, the DEPARTMENT, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage.

We certify that the wording of this letter of credit is identical to the wording specified in subsection 10 of section 33-24-02-42 as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

11. A surety bond, as specified in subsection 9 of section 33-24-02-40, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], surety company(ies), of [Insert surety(ies) place of business].

Identification number (if any issued), name, and address for each facility guaranteed by this bond:

Sudden Accidental  
Occurrences

Nonsudden Accidental  
Occurrences

Penal Sum Per Occurrence  
Annual Aggregate

[Insert Amount]  
[Insert Amount]

[Insert Amount]  
[Insert Amount]

Purpose: This is an AGREEMENT between the surety(ies) and the principal under which the surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

- (1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.
- (2) Rules and regulations of the United States environmental protection agency (EPA), particularly 40 CFR parts 264, 265, and Subpart H of 40 CFR part 261 (if applicable).
- (3) Rules and regulations of the North Dakota Department of Health (Department), particularly sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559 and 33-24-05-800 through 33-24-05-819, subsection 5 of section 33-24-06-16, and sections 33-24-02-33 through 33-24-02-42 of the North Dakota Administrative Code (if applicable).

Conditions:

- (1) The principal is subject to the applicable governing provisions that require the principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:
  - (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.
  - (b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.
  - (c) Bodily injury to:
    - (1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or
    - (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:
      - (A) Whether [insert principal] may be liable as an employer or in any other capacity; and
      - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
  - (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal]:

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal]:

(4) Personal property in the care, custody or control of [insert principal]:

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the principal will satisfy valid third-party liability claims, as described in condition 1.

(3) If the principal fails to satisfy a valid third-party liability claim, as described above, the surety(ies) becomes liable on this bond obligation.

(4) The surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's] facility should be paid in the amount of \$[\_\_\_\_\_].

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

(b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the surety(ies)

hereunder exceed the amount of said annual aggregate penal sum, provided that the surety(ies) furnish(es) notice to the DEPARTMENT forthwith of all claims filed and payments made by the surety(ies) under this bond.

(7) The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and the DEPARTMENT provided, however, the cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the principal and the DEPARTMENT, as evidenced by the return receipt.

(8) The principal may terminate this bond by sending written notice to the surety(ies) and to the DEPARTMENT.

(9) The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the principal and surety(ies) have executed this bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in subsection 11 of section 33-24-02-42, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$ \_\_\_\_\_

12. Trust agreement.

- a. A trust agreement, as specified in subsection 10 of section 33-24-02-40, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT," entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the GRANTOR", and [name of corporate TRUSTEE], [insert, "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "TRUSTEE".

Whereas, the DEPARTMENT has established certain regulations applicable to the GRANTOR, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the GRANTOR, acting through its duly authorized officers, has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT, and the TRUSTEE is willing to act as TRUSTEE.

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

**Section 1. Definitions.** As used in this AGREEMENT:

- (a) The term "GRANTOR" means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.
- (b) The term "TRUSTEE" means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities.** This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the identification number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a trust fund, hereinafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden or nonsudden, or both] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amount of \$\_\_\_\_\_ [up to \$1 million] per occurrence and \$\_\_\_\_\_ [up to \$2 million] annual aggregate for sudden accidental occurrences and \$\_\_\_\_\_ [up to \$3 million] per occurrence and \$\_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

- (a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

- (1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

- (A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and
- (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

- (1) Any property owned, rented, or occupied by [insert GRANTOR];
- (2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;
- (3) Property loaned to [insert GRANTOR];
- (4) Personal property in the care, custody, or control of [insert GRANTOR];
- (5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the property, which is acceptable to the TRUSTEE, described in schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR, any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payment for Bodily Injury or Property Damage.** The TRUSTEE shall satisfy a third-party liability claim by making payments from the FUND only upon receipt of one of the following documents:

- (a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR's] facility or group of facilities should be paid in the amount of \$ [\_\_\_\_\_].

[Signatures]

GRANTOR

[Signatures]

Claimant(s)

- (b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR's facility or group of facilities.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND shall consist of cash or securities acceptable to the TRUSTEE.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the TRUSTEE's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the GRANTOR, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the federal or a state government;
- (ii) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (iii) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the FUND to any common commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without in any way limiting the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;
- (d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate corporate capacity, or in any other banking institution affiliated with the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the FUND.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this trust, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements of the TRUSTEE shall be paid from the FUND.

**Section 10. Annual Valuations.** The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the trust. Any securities in the FUND shall be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT shall constitute a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. TRUSTEE Compensation.** The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 13. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE's acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the trust in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**Section 14. Instructions to the TRUSTEE.** All orders, requests, and instructions by the GRANTOR to the TRUSTEE shall be in writing, signed by such persons as are designated in the attached exhibit A or such other designees as the GRANTOR may designate by amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR's orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE shall be in writing, signed by the DEPARTMENT, or its designees, and the TRUSTEE shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the DEPARTMENT, except as provided for herein.

**Section 15. Notice of Nonpayment.** If a payment for bodily injury or property damage is made under Section 4 of this trust, the TRUSTEE shall notify the GRANTOR of such payment and the amount(s) thereof within five working days. The GRANTOR shall, on or before the anniversary date of the establishment of the FUND following such notice, either make payments to the TRUSTEE in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the TRUSTEE that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the GRANTOR does not either make payments to the TRUSTEE or provide the TRUSTEE with such proof, the TRUSTEE shall within ten working days after the anniversary date of the establishment of the FUND provide a written notice of nonpayment to the DEPARTMENT.

**Section 16. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT if the GRANTOR ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE, and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the GRANTOR. The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

**Section 18. Immunity and Indemnification.** The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

**Section 19. Choice of Law.** This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 20. Interpretation.** As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT shall not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subsection 12 of section 33-24-02-42, as such regulations were constituted on the date first above written.

[Signature of GRANTOR]

[Title]

Attest:

[Title]

[Seal]

[Signature of TRUSTEE]

Attest:

[Title]

[Seal]

b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a trust fund as specified in subsection 10 of section 33-24-02-40.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

13. Standby trust agreement.

- a. A standby TRUST AGREEMENT, as specified in subsection 8 of section 33-24-02-40, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### STANDBY TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT", entered into as of [date] by and between [name of the owner or operator] a [name of a state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR," and [name of corporate TRUSTEE], [insert, "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "TRUSTEE."

Whereas the DEPARTMENT has established certain regulations applicable to the GRANTOR, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the GRANTOR, acting through its duly authorized officers, has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT, and the TRUSTEE is willing to act as TRUSTEE.

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

#### **Section 1. Definitions.** As used in this AGREEMENT:

- (a) The term "GRANTOR" means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.
- (b) The term "TRUSTEE" means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities.** This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the identification number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a standby trust fund, hereafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \$\_\_\_\_\_ [up to \$1 million] per occurrence and \$\_\_\_\_\_ [up to \$2 million] annual aggregate for sudden accidental occurrences and \$\_\_\_\_\_ [up to \$3 million] per occurrence and \$\_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

- (a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law, or any similar law.

(c) Bodily injury to:

- (1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or
- (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

- (A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and
- (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

- (1) Any property owned, rented, or occupied by [insert GRANTOR];
- (2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;
- (3) Property loaned by [insert GRANTOR];
- (4) Personal property in the care, custody, or control of [insert GRANTOR];
- (5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the proceeds of the letter of credit deposited into the FUND. Such proceeds and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR, any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payment for Bodily Injury or Property Damage.** The TRUSTEE shall satisfy a third party liability claim by drawing on the letter of credit described in schedule B and by making payments from the FUND only upon receipt of one of the following documents:

- (a) Certification from the GRANTOR and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR's] facility should be paid in the amount of \$[\_\_\_\_].

[Signature]

GRANTOR

[Signatures]

Claimant(s)

- (b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR's facility or group of facilities.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND shall consist of the proceeds from the letter of credit drawn upon by the TRUSTEE in accordance with the requirements of subsection 11 of section 33-24-02-42 and Section 4 of this AGREEMENT.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the TRUSTEE's duties with respect to the trust FUND solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the GRANTOR, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or a state government; and
- (iii) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without in any way limiting the powers and discretions conferred upon the TRUSTEE by other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;
- (d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate corporate capacity, or in any other banking institution affiliated with the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the FUND. Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this trust, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements to the TRUSTEE shall be paid from the FUND.

**Section 10. Advice of Counsel.** The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 11. TRUSTEE Compensation.** The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 12. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE's acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the trust in a

writing sent to the GRANTOR, the DEPARTMENT and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**Section 13. Instructions to the TRUSTEE.** All orders, requests, certifications of valid claims, and instructions to the TRUSTEE shall be in writing, signed by such persons as are designated in the attached exhibit A or such other designees as the GRANTOR may designate by amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR's orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the DEPARTMENT, except as provided for herein.

**Section 14. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT if the GRANTOR ceases to exist.

**Section 15. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in Section 14, this trust shall be irrevocable and shall continue until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be paid to the GRANTOR. The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternative financial assurance as specified in this section.

**Section 16. Immunity and Indemnification.** The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR and the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

**Section 17. Choice of Law.** This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 18. Interpretation.** As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT shall not affect the interpretation of the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subsection 13 of section 33--24-02-42 as such regulations were constituted on the date first above written.

[Signature of GRANTOR]

[Title]

Attest:

[Title]

[Seal]

[Signature of TRUSTEE]

Attest:

[Title]

[Seal]

b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a standby trust fund as specified in subsection 8 of section 33-24-02-40.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-43. [Reserved].

33-24-02-44. [Reserved].

33-24-02-45. [Reserved].

33-24-02-46. [Reserved].

33-24-02-47. [Reserved].

33-24-02-48. [Reserved].

**33-24-02-49. [Reserved].**

**33-24-02-50. Applicability of requirements for use and management of containers.**

Sections 33-24-02-50 through 33-24-02-59 apply to hazardous secondary materials excluded under the remanufacturing exclusion at subdivision z of subsection 1 of section 33-24-02-04 and stored in containers.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-51. Condition of containers.**

If a container holding hazardous secondary material is not in good condition (for example, severe rusting, apparent structural defects) or if it begins to leak, the hazardous secondary material must be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of this chapter.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-52. Compatibility of hazardous secondary materials with containers.**

The container must be made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-53. Management of containers.**

1. A container holding hazardous secondary material must always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.
2. A container holding hazardous secondary material must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-54. [Reserved].**

**33-24-02-55. Containment.**

1. Container storage areas must have a containment system that is designed and operated in accordance with subsection 2.
2. A containment system must be designed and operated as follows:

- a. A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;
- b. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;
- c. The containment system must have sufficient capacity to contain ten percent of the volume of containers or the volume of the largest container, whichever is greater.
- d. Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in subdivision c to contain any run-on which might enter the system; and
- e. Spilled or leaked material and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-56. Special requirements for ignitable or reactive hazardous secondary material.**

Containers holding ignitable or reactive hazardous secondary material must be located at least fifteen meters (fifty feet) from the facility's property line.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-57. Special requirements for incompatible materials.**

1. Incompatible materials must not be placed in the same container.
2. Hazardous secondary material must not be placed in an unwashed container that previously held an incompatible material.
3. A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-58. [Reserved].**

**33-24-02-59. Air emission standards.**

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of sections 33-24-02-170 through 33-24-02-214.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-60. Applicability of tank requirements.**

Sections 33-24-02-60 through 33-24-02-74 apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at subdivision z of subsection 1 of section 33-24-02-04. Tank systems, including sumps, as defined in section 33-24-01-04, which serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in subsection 1 of section 33-24-02-63.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-61. Assessment of existing tank system's integrity.**

1. Tank systems must meet the secondary containment requirements of section 33-24-02-63, or the remanufacturer or other person that handles the hazardous secondary material must determine that the tank system is not leaking or is unfit for use. Except as provided in subsection 3, a written assessment reviewed and certified by a qualified professional engineer must be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.

2. This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the materials to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

a. Design standards, if available, according to which the tank and ancillary equipment were constructed;

b. Hazardous characteristics of the materials that have been and will be handled;

c. Existing corrosion protection measures;

d. Documented age of the tank system, if available (otherwise, an estimate of the age); and

e. Results of a leak test, internal inspection, or other tank integrity examination such that:

(1) For nonenterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

(2) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified professional engineer that addresses cracks, leaks, corrosion, and erosion.

[Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.]

3. If, as a result of the assessment conducted in accordance with subsection 1, a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of section 33-24-02-66.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-62. [Reserved].**

**33-24-02-63. Containment and detection of releases.**

1. Secondary containment systems must be:

- a. Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and
- b. Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

[Note to subsection 1: If the collected material is a hazardous waste under this chapter, it is subject to management as a hazardous waste in accordance with all applicable requirements of chapters 33-24-03 and 33-24-04, sections 33-24-05-01 through 33-24-05-559, 33-24-05-800 through 33-24-05-929 and subsection 5 of section 33-24-06-16. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a publicly owned treatment works, it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.]

2. To meet the requirements of subsection 1, secondary containment systems must be at a minimum:

- a. Constructed of or lined with materials that are compatible with the materials to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).
- b. Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;
- c. Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and
- d. Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation must be removed from the secondary containment system within twenty-four hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

3. Secondary containment for tanks must include one or more of the following devices:

- a. A liner (external to the tank):
- b. A vault; or
- c. A double-walled tank

4. In addition to the requirements of subsections 1, 2 and 3, secondary containment systems must satisfy the following requirements:

a. External liner systems must be:

- (1) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;
- (2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five year, twenty-four hour rainfall event.
- (3) Free of cracks or gaps; and
- (4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tanks (for example, capable of preventing lateral as well as vertical migration of the material).

b. Vault systems must be:

- (1) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;
- (2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional twenty-four hour rainfall event;
- (3) Constructed with chemical-resistant water stops in place at all joints (if any);
- (4) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;
- (5) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and
- (6) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

c. Double-walled tanks must be:

- (1) Designed as an integral structure (for example, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;
- (2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(3) Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four hours, or at the earliest practicable time.

[Note to subdivision c: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.]

5. [Reserved]

6. Ancillary equipment must be provided with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of subsections 1 and 2 except for:

- a. Above-ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;
- b. Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;
- c. Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and
- d. Pressurized aboveground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-02-64. General operating requirements.

- 1. Hazardous secondary materials or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.
- 2. The remanufacturer or other person that stores or treats the hazardous secondary material must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:
  - a. Spill prevention controls (for example, check valves, dry disconnect couplings);
  - b. Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and
  - c. Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.
- 3. The remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of section 33-24-02-66 if a leak or spill occurs in the tank system.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-65. [Reserved].

33-24-02-66. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material shall satisfy the following requirements:

1. Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material immediately shall stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.
2. Removal of material from tank system or secondary containment system.
  - a. If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material, within twenty-four hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, shall remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.
  - b. If the material released was to a secondary containment system, all released materials must be removed within twenty-four hours or in as timely a manner as is possible to prevent harm to human health and the environment.
3. Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material immediately shall conduct a visual inspection of the release and, based upon that inspection:
  - a. Prevent further migration of the leak or spill to soils or surface water; and
  - b. Remove, and properly dispose of, any visible contamination of the soil or surface water.
4. Notifications, reports.
  - a. Any release to the environment, except as provided in subdivision b, must be reported to the department within twenty-four hours of its detection. The release should also be reported pursuant to 40 CFR part 302.
  - b. A leak or spill of hazardous secondary material is exempted from the requirements of this subsection if it is:
    - (1) Less than or equal to a quantity of one pound, and
    - (2) Immediately contained and cleaned up.
  - c. Within thirty days of detection of a release to the environment, a report containing the following information must be submitted to the department:
    - (1) Likely route of migration of the release;

(2) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(3) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty days, these data must be submitted to the department as soon as they become available.

(4) Proximity to downgradient drinking water, surface water, and populated areas; and

(5) Description of response actions taken or planned.

5. Provision of secondary containment, repair, or closure.

a. Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of subdivisions b through d, the tank system must cease to operate under the remanufacturing exclusion at paragraph z of subsection 1 of section 33-24-02-04.

b. If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

c. If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

d. If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of section 33-24-02-63 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of subsection 6 are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (for example, the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with section 33-24-02-63 prior to being returned to use.

6. Certification of major repairs. If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with subsection 5, and the repair has been extensive (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified professional engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification must be kept on file at the facility and maintained until closure of the facility.

[Note: 40 CFR part 302 may require the owner or operator to notify the national response center of certain releases.]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-67. Termination of remanufacturing exclusion.**

Hazardous secondary material stored in units more than ninety days after the unit ceases to operate under the remanufacturing exclusion at paragraph z of subsection 1 of section 33-24-02-04 or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under chapters 33-24-02 through 33-24-04, 33-24-06, 33-24-07, sections 33-24-05-01 through 33-24-05-559, 33-24-05-800 through 33-24-05-929 and subsection 5 of section 33-24-06-16, as applicable.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-68. Special requirements for ignitable or reactive materials.**

1. Ignitable or reactive material must not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.
2. The remanufacturer or other person that stores or treats hazardous secondary material that is ignitable or reactive shall store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), incorporated by reference, see section 33-24-01-05.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-69. Special requirements for incompatible materials.**

1. Incompatible materials must not be placed in the same tank system.
2. Hazardous secondary material must not be placed in a tank system that has not been decontaminated and which previously held an incompatible material.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-70. Air emission standards.**

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of sections 33-24-02-170 through 33-24-02-214.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-71. [Reserved].**

| 33-24-02-72. [Reserved].

| 33-24-02-73. [Reserved].

| 33-24-02-74. [Reserved].

| 33-24-02-75. [Reserved].

| 33-24-02-76. [Reserved].

| 33-24-02-77. [Reserved].

| 33-24-02-78. [Reserved].

| 33-24-02-79. [Reserved].

| 33-24-02-80. [Reserved].

| 33-24-02-81. [Reserved].

| 33-24-02-82. [Reserved].

| 33-24-02-83. [Reserved].

| 33-24-02-84. [Reserved].

| 33-24-02-85. [Reserved].

| 33-24-02-86. [Reserved].

| 33-24-02-87. [Reserved].

| 33-24-02-88. [Reserved].

| 33-24-02-89. [Reserved].

| 33-24-02-90. [Reserved].

| 33-24-02-91. [Reserved].

| 33-24-02-92. [Reserved].

| 33-24-02-93. [Reserved].

| 33-24-02-94. [Reserved].

| 33-24-02-95. [Reserved].

| 33-24-02-96. [Reserved].

| 33-24-02-97. [Reserved].

| 33-24-02-98. [Reserved].

| 33-24-02-99. [Reserved].

| 33-24-02-100. [Reserved].

| 33-24-02-101. [Reserved].

| 33-24-02-102. [Reserved].

| 33-24-02-103. [Reserved].

| 33-24-02-104. [Reserved].

| 33-24-02-105. [Reserved].

| 33-24-02-106. [Reserved].

| 33-24-02-107. [Reserved].

| 33-24-02-108. [Reserved].

| 33-24-02-109. [Reserved].

| 33-24-02-110. [Reserved].

| 33-24-02-111. [Reserved].

| 33-24-02-112. [Reserved].

| 33-24-02-113. [Reserved].

| 33-24-02-114. [Reserved].

| 33-24-02-115. [Reserved].

| 33-24-02-116. [Reserved].

| 33-24-02-117. [Reserved].

| 33-24-02-118. [Reserved].

| 33-24-02-119. [Reserved].

**33-24-02-120. Applicability of emergency preparedness and response for management of excluded hazardous secondary materials.**

The requirements of sections 33-24-02-120 through 33-24-02-129 apply to those areas of an entity managing hazardous secondary materials excluded under subdivision x or y, or both, of subsection 1 of section 33-24-02-04 where hazardous secondary materials are generated or accumulated on site.

1. A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10, which accumulates six thousand kilograms or less of hazardous secondary material at any time shall comply with sections 33-24-02-121 and 33-24-02-122.
2. A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 which accumulates more than six thousand kilograms of hazardous secondary material at any time shall comply with sections 33-24-02-121 and 33-24-02-129.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-121. Preparedness and prevention.**

1. Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.
2. Required equipment. All facilities generating or accumulating hazardous secondary material must be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:
  - a. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
  - b. A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
  - c. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
  - d. Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.
3. Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.
4. Access to communications or alarm system.
  - a. Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an

internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under subsection 2.

b. If there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under subsection 2.

5. Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

6. Arrangements with local authorities.

a. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

b. Where state or local authorities decline to enter such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 must document the refusal in the operating record.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-122. Emergency procedures for facilities generating or accumulating of six thousand kilograms or less of hazardous secondary material.**

A generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 which generates or accumulates six thousand kilograms or less of hazardous secondary material shall comply with the following requirements:

1. At all times there must be at least one employee either on the premises or on call (for example, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subsection 4. This employee is the emergency coordinator.

2. The generator or intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 shall post the following information next to the telephone:

a. The name and telephone number of the emergency coordinator;

b. Location of fire extinguishers and spill control material, and, if present, fire alarm; and

c. The telephone number of the fire department, unless the facility has a direct alarm.

3. The generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

4. The emergency coordinator or the emergency coordinator's designee shall respond to any emergencies that arise. The applicable responses are as follows:

a. In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

b. In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

c. In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 immediately shall notify the national response center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

(1) The name, address, and identification number of the facility;

(2) Date, time, and type of incident (for example, spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-123. [Reserved].**

33-24-02-124. [Reserved].

33-24-02-125. [Reserved].

33-24-02-126. [Reserved].

33-24-02-127. [Reserved].

33-24-02-128. [Reserved].

**33-24-02-129. Contingency planning and emergency procedures for facilities generating or accumulating more than six thousand kilograms of hazardous secondary material.**

A generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 which generates or accumulates more than six thousand kilograms of hazardous secondary material shall comply with the following requirements:

1. Purpose and implementation of contingency plan.

- a. Each generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 which accumulates more than six thousand kilograms of hazardous secondary material shall have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.
- b. The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents that could threaten human health or the environment.

2. Content of contingency plan.

- a. The contingency plan must describe the actions facility personnel must take to comply with subsections 1 and 6 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.
- b. If the generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 accumulating more than six thousand kilograms of hazardous secondary material has already prepared a spill prevention, control, and countermeasures plan in accordance with 40 CFR part 112, or some other emergency or contingency plan, the generator or an intermediate or reclamation facility need only amend that plan to incorporate hazardous waste

management provisions that are sufficient to comply with the requirements of this section. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33-24-01-10 may develop one contingency plan which meets all regulatory requirements. The department recommends the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to nonhazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

- c. The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to subsection 6 of section 33-24-02-121.
- d. The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subsection 5), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
- e. The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- f. The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous secondary material, hazardous waste or fires).

3. Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

- a. Maintained at the facility; and
- b. Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

4. Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

- a. Applicable regulations are revised;
- b. The plan fails in an emergency;
- c. The facility changes in its design, construction, operation, maintenance, or other circumstances, in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;
- d. The list of emergency coordinators changes; or
- e. The list of emergency equipment changes.

5. Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (for example, available to respond to an emergency by reaching the facility

within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in subsection 6. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary materials handled by the facility, and type and complexity of the facility.

6. Emergency procedures.

a. Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) immediately shall:

- (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
- (2) Notify appropriate state or local agencies with designated response roles if their help is needed.

b. Whenever there is a release, fire, or explosion, the emergency coordinator immediately shall identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

c. Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (for example, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

d. If the emergency coordinator determines the facility has had a release, fire, or explosion that could threaten human health, or the environment, outside the facility, the emergency coordinator shall report the emergency coordinator's findings as follows:

- (1) If the emergency coordinator's assessment indicates evacuation of local areas may be advisable, the emergency coordinator immediately shall notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and
- (2) The emergency coordinator immediately shall notify either the government official designated as the onscene coordinator for that geographical area, or the national response center (using their twenty-four-hour toll free number 800/424-8802). The report must include:
  - (a) Name and telephone number of reporter;
  - (b) Name and address of facility;
  - (c) Time and type of incident (for example, release, fire);
  - (d) Name and quantity of materials involved, to the extent known;
  - (e) The extent of injuries, if any; and

- (f) The possible hazards to human health, or the environment, outside the facility.
- e. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.
- f. If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
- g. Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with subsection 3 or 4 of section 33-24-02-03, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of chapters 33-24-03, 33-24-04 and subsection 5 of section 33-24-06-16.
- h. The emergency coordinator shall ensure that, in the affected areas of the facility:

  - (1) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
  - (2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
- i. The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, the hazardous secondary material generator shall submit a written report on the incident to the department. The report must include:

  - (1) Name, address, and telephone number of the hazardous secondary material generator;
  - (2) Name, address, and telephone number of the facility;
  - (3) Date, time, and type of incident (for example, fire, explosion);
  - (4) Name and quantity of materials involved;
  - (5) The extent of injuries, if any;
  - (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
  - (7) Estimated quantity and disposition of recovered material that resulted from the incident.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-130. [Reserved].**

| 33-24-02-131. [Reserved].

| 33-24-02-132. [Reserved].

| 33-24-02-133. [Reserved].

| 33-24-02-134. [Reserved].

| 33-24-02-135. [Reserved].

| 33-24-02-136. [Reserved].

| 33-24-02-137. [Reserved].

| 33-24-02-138. [Reserved].

| 33-24-02-139. [Reserved].

| 33-24-02-140. [Reserved].

| 33-24-02-141. [Reserved].

| 33-24-02-142. [Reserved].

| 33-24-02-143. [Reserved].

| 33-24-02-144. [Reserved].

| 33-24-02-145. [Reserved].

| 33-24-02-146. [Reserved].

| 33-24-02-147. [Reserved].

| 33-24-02-148. [Reserved].

| 33-24-02-149. [Reserved].

| 33-24-02-150. [Reserved].

| 33-24-02-151. [Reserved].

| 33-24-02-152. [Reserved].

| 33-24-02-153. [Reserved].

| 33-24-02-154. [Reserved].

| 33-24-02-155. [Reserved].

| 33-24-02-156. [Reserved].

| 33-24-02-157. [Reserved].

| 33-24-02-158. [Reserved].

| 33-24-02-159. [Reserved].

| 33-24-02-160. [Reserved].

| 33-24-02-161. [Reserved].

| 33-24-02-162. [Reserved].

| 33-24-02-163. [Reserved].

| 33-24-02-164. [Reserved].

| 33-24-02-165. [Reserved].

| 33-24-02-166. [Reserved].

33-24-02-167. [Reserved].

33-24-02-168. [Reserved].

33-24-02-169. [Reserved].

**33-24-02-170. Applicability to air emission standards for process vents.**

The requirements of sections 33-24-02-170 through 33-24-02-179 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at subdivision z of subsection 1 of section 33-24-02-04 with concentrations of at least ten parts per million weight, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-171. Definitions.**

As used in sections 33-24-02-170 through 33-24-02-179, all terms not defined in this section have the meaning given them in chapter 23-20.3, chapters 33-24-01 through 33-24-05 and section 33-24-05-401.

1. "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by sections 33-24-02-170 through 33-24-02-179.
2. "Hazardous secondary material management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than twenty-four hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.
3. "In gas or vapor service" means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.
4. "In light liquid service" means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than three-tenths kilopascals at twenty degrees Celsius, the total concentration of the pure organic components having a vapor pressure greater than three-tenths kilopascals at twenty degrees Celsius is equal to or greater than twenty percent by weight, and the fluid is a liquid at operating conditions.

5. "Malfunction" means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.
6. "Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.
7. "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (for example, distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.
8. "Sampling connection system" means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.
9. "Startup" means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-172. Standards - Process vents.**

1. The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least ten parts per million weight either shall:
  - a. Reduce total organic emissions from all affected process vents at the facility below one and four-tenths kilograms per hour (three pounds per hour) and two and eight-tenths megagrams per year (three and one-tenth tons per year), or
  - b. Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by ninety-five weight percent.
2. If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of subsection 1 the closed-vent system and control device must meet the requirements of section 33-24-02-173.
3. Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of subsection 3 of section 33-24-02-174.
4. When a remanufacturer or other person that stores or treats the hazardous secondary material and the department do not agree on determinations of vent emissions or emission reductions, or both, or total organic compound concentrations achieved by add-on control

devices based on engineering calculations, the procedures in subsection 3 of section 33-24-02-174 must be used to resolve the disagreement.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-173. Standards - Closed-vent systems and control devices.**

1. Requirements for remanufacturers or other persons of closed-vent systems and control devices.

a. The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of sections 33-24-02-170 through 33-24-02-179 shall comply with the provisions of this section.

b. The remanufacturer or other person that stores or treats the hazardous secondary materials in existing hazardous secondary material management units who cannot install a closed-vent system and control device to comply with the provisions of sections 33-24-02-170 through 33-24-02-179 on the effective date that the hazardous secondary material management units become subject to the provisions of sections 33-24-02-170 through 33-24-02-179 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to thirty months after the effective date that the hazardous secondary material management units become subject to sections 33-24-02-170 through 33-24-02-179 for installation and start-up. The remanufacturer or other person that stores or treats the hazardous secondary materials shall enter the implementation schedule in the operating record located onsite. All hazardous secondary material management units that begin operation after July 13, 2015, and are subject to the provisions of sections 33-24-02-170 through 33-24-02-179 when operation begins, shall comply with sections 33-24-02-170 through 33-24-02-179 immediately (for example, must have control devices installed and operating on start-up of the affected unit); the thirty month implementation schedule does not apply.

2. A control device involving vapor recovery (for example, a condenser or adsorber) must be designed and operated to recover the organic vapors vented to it with an efficiency of ninety-five weight percent or greater unless the total organic emission limits of subdivision a of subsection 1 of section 33-24-02-172 for all affected process vents can be attained at an efficiency less than ninety-five weight percent.

3. An enclosed combustion device (for example, a vapor incinerator, boiler, or process heater) must be designed and operated to reduce the organic emissions vented to it by ninety-five weight percent or greater; to achieve a total organic compound concentration of twenty parts per million volume, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three percent oxygen; or to provide a minimum residence time of fifty hundredths seconds at a minimum temperature of seven hundred sixty degrees Celsius. If a boiler or process heater is used as the control device, the vent stream must be introduced into the flame zone of the boiler or process heater.

4. Flares.

a. A flare must be designed for and operated with no visible emissions as determined by the methods specified in subdivision a of subsection 5, except for periods not to exceed a total of five minutes during any two consecutive hours.

- b. A flare must be operated with a flame present at all times, as determined by the methods specified in paragraph 3 of subdivision b of subsection 6.
- c. A flare may be used only if the net heating value of the gas being combusted is eleven and two-tenths mega joules per standard cubic meter at standard conditions (three hundred British thermal units per standard cubic foot at standard conditions) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is seven and forty-five hundredths mega joules per cubic meter at standard conditions (two hundred British thermal units per standard cubic foot at standard conditions) or greater if the flare is nonassisted. The net heating value of the gas being combusted must be determined by the methods specified in subdivision b of subsection 5.
- d. Steam-assisted or nonassisted flare.
- (1) A steam-assisted or nonassisted flare must be designed for and operated with an exit velocity, as determined by the methods specified in subdivision c of subsection 5, less than eighteen and three-tenths meters per second (sixty feet per second), except as provided in paragraphs 2 and 3.
- (2) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subdivision c of subsection 5, equal to or greater than eighteen and three-tenths meters per second (sixty feet per second) but less than one hundred twenty-two meters per second (four hundred feet per second) is allowed if the net heating value of the gas being combusted is greater than thirty seven and three-tenths mega joules per cubic meter at standard conditions (one thousand British thermal units per standard cubic foot at standard conditions).
- (3) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subdivision c of subsection 5, less than the velocity,  $V_{max}$ , as determined by the method specified in subdivision d of subsection 5 and less than one hundred twenty-two meters per second (four hundred feet per second) is allowed.
- e. An air-assisted flare must be designed and operated with an exit velocity less than the velocity,  $V_{max}$ , as determined by the method specified in subdivision e of subsection 5.
- f. A flare used to comply with this section must be steam-assisted, air-assisted, or nonassisted.

## 5. Methods.

- a. Referenced Method 22 in 40 CFR part 60 must be used to determine the compliance of a flare with the visible emission provisions of sections 33-24-02-170 through 33-24-02-179. The observation period is two hours and shall be used according to Method 22.
- b. The net heating value of the gas being combusted in a flare must be calculated using the following equation:

$$H_T = K \left[ \sum_{i=1}^n C_i H_i \right]$$

where:

$H_T$  = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20°C;

$K$  = Constant,  $1.74 \times 10^{-7}$  (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20°C;

$C_i$  = Concentration of sample component  $i$  in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82, as incorporated by reference as specified in section 33-24-01-05; and

$H_i$  = Net heat of combustion of sample component  $i$ , kcal/9 mol at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83, as incorporated by reference as specified in section 33-24-01-05, if published values are not available or cannot be calculated.

- c. The actual exit velocity of a flare must be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.
- d. The maximum allowed velocity in m/s,  $V_{max}$ , for a flare complying with paragraph 3 of subdivision d of subsection 4 shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

28.8 = Constant,

31.7 = Constant,

$H_T$  = The net heating value as determined in subdivision b.

- e. The maximum allowed velocity in m/s,  $V_{max}$ , for an air-assisted flare must be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (H_T)$$

where:

8.706 = Constant,

0.7084 = Constant,

$H_T$  = The net heating value as determined in subdivision b.

6. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

- a. Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor must be installed

in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

b. Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(1) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. The temperature sensor must be installed at a location in the combustion chamber downstream of the combustion zone.

(2) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature at two locations and have an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. One temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(3) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(4) For a boiler or process heater having a design heat input capacity less than forty-four megawatts, a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. The temperature sensor must be installed at a location in the furnace downstream of the combustion zone.

(5) For a boiler or process heater having a design heat input capacity greater than or equal to forty-four megawatts, a monitoring device equipped with a continuous recorder to measure a parameter or parameters that indicates good combustion operating practices are being used.

(6) For a condenser, either:

(a) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(b) A temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. The temperature sensor must be installed at a location in the exhaust vent stream from the condenser exit (for example, product side).

(7) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(a) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or



pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

12. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

a. Each closed-vent system that is used to comply with subdivision a of subsection 11 must be inspected and monitored in accordance with the following requirements:

(1) An initial leak detection monitoring of the closed-vent system must be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in subsection 2 of section 33-24-02-174 to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million volume above background.

(2) After initial leak detection monitoring required in paragraph 1, the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(a) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (for example, a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) must be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in subsection 2 of section 33-24-02-174 to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (for example, a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (for example, a flange is unbolted).

(b) Closed-vent system components or connections other than those specified in subparagraph a must be monitored annually and at other times as requested by the department, except as provided for in subsection 15, using the procedures specified in subsection 2 of section 33-24-02-174 to demonstrate that the components or connections operate with no detectable emissions.

(3) If a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of subdivision c.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 33-24-02-175.

b. Each closed-vent system that is used to comply with subdivision b of subsection 11 must be inspected and monitored in accordance with the following requirements:

- (1) The closed-vent system must be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include visible cracks, holes, or gaps in ductwork or piping or loose connections.
- (2) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.
- (3) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subdivision c.
- (4) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 33-24-02-175.

c. The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

- (1) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than five hundred parts per million volume above background, must be controlled as soon as practicable, but not later than fifteen calendar days after the emission is detected, except as provided for in paragraph 3.
- (2) A first attempt at repair must be made no later than five calendar days after the emission is detected.
- (3) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment must be completed by the end of the next process unit shutdown.
- (4) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in section 33-24-02-175.

13. Closed-vent systems and control devices used to comply with provisions of sections 33-24-02-170 through 33-24-02-179 must be operated at all times when emissions may be vented to them.

14. The owner or operator using a carbon adsorption system to control air pollutant emissions shall document all carbon that is a hazardous waste and which is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

a. Regenerated or reactivated in a thermal treatment unit that meets one of the following:

- (1) The owner or operator of the unit has been issued a final hazardous waste permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-300 through 33-24-05-309; or

(2) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of sections 33-24-02-170 through 33-24-02-179 and sections 33-24-02-200 through 33-24-02-214 or the applicable requirements of subsection 5 of section 33-24-06-16; or

(3) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

b. Incinerated in a hazardous waste incinerator for which the owner or operator either:

(1) Has been issued a final hazardous waste permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-144 through 33-24-05-159; or

(2) Has designed and operates the incinerator in accordance with the interim status requirements of subsection 5 of section 33-24-06-16.

c. Burned in a boiler or industrial furnace for which the owner or operator either:

(1) Has been issued a final hazardous waste permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-525 through 33-24-05-549; or

(2) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of sections 33-24-05-525 through 33-24-05-549.

15. Any components of a closed-vent system that are designated, as described in subdivision i of subsection 3 of section 33-24-02-175, as unsafe to monitor are exempt from the requirements of subparagraph b of paragraph 2 of subdivision a of subsection 12 if:

a. The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system determines the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subparagraph b of paragraph 2 of subdivision a of subsection 12; and

b. The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in subparagraph b of paragraph 2 of subdivision a of subsection 12 as frequently as practicable during safe-to-monitor times.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-174. Test methods and procedures.**

1. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of sections 33-24-02-170 through 33-24-02-179 shall comply with the test methods and procedural requirements provided in this section.

2. When a closed-vent system is tested for compliance with no detectable emissions, as required in subsection 12 of section 33-24-02-173, the test must comply with the following requirements:

a. Monitoring must comply with Reference Method 21 in 40 CFR part 60.

b. The detection instrument must meet the performance criteria of Reference Method 21.

- c. The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.
  - d. Calibration gases must be:
    - (1) Zero air (less than ten parts per million hydrocarbon in air).
    - (2) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand parts per million methane or n-hexane.
  - e. The background level must be determined as set forth in Reference Method 21.
  - f. The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
  - g. The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with five hundred parts per million for determining compliance.
3. Performance tests to determine compliance with subsection 1 of section 33-24-02-172 and with the total organic compound concentration limit of subsection 3 of section 33-24-02-173 must comply with the following:
- a. Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices must be conducted and data reduced in accordance with the following reference methods and calculation procedures:
    - (1) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.
    - (2) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic hazardous air pollutant used as the calibration gas must be the single organic hazardous air pollutant representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least twenty times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.
    - (3) Each performance test must consist of three separate runs; each run conducted for at least one hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average must be computed on a time-weighted basis.
    - (4) Total organic mass flow rates must be determined by the following equation:
      - (a) For sources utilizing Method 18.

$$E_h = Q_{2sd} \left\{ \sum_{i=1}^n C_i MW_i \right\} [0.0416][10^{-6}]$$

where:

E<sub>h</sub> = Total organic mass flow rate, kg/h;

$Q_{2sd}$  = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

$n$  = Number of organic compounds in the vent gas;

$C_i$  = Organic concentration in ppm, dry basis, of compound  $i$  in the vent gas, as determined by Method 18;

$MW_i$  = Molecular weight of organic compound  $i$  in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m<sup>3</sup> (@ 293 K and 760 mm Hg);

$10^{-6}$  = Conversion from ppm

(b) For sources utilizing Method 25A.

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

where:

$E_h$  = Total organic mass flow rate, kg/h;

$Q$  = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

$C$  = Organic concentration in ppm, dry basis, as determined by Method 25A;

$MW$  = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m<sup>3</sup> (@ 293 K and 760 mm Hg);

$10^{-6}$  = Conversion from ppm.

(5) The annual total organic emission rate must be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

$E_A$  = Total organic mass emission rate, kg/y;

$E_h$  = Total organic mass flow rate for the process vent, kg/h;

$H$  = Total annual hours of operations for the affected unit, h.

(6) Total organic emissions from all affected process vents at the facility must be determined by summing the hourly total organic mass emission rates ( $E_h$  as determined in paragraph 4) and by summing the annual total A organic mass emission rates ( $E_A$ , as determined in paragraph 5) for all affected process vents at the facility.

b. The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction must not constitute representative conditions for the purpose of a performance test.

c. The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(1) Sampling ports adequate for the test methods specified in subdivision a.

(2) Safe sampling platforms.

(3) Safe access to sampling platforms.

(4) Utilities for sampling and testing equipment.

d. For the purpose of making compliance determinations, the time-weighted average of the results of the three runs must apply. If a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance, upon the department's approval, may be determined using the average of the results of the two other runs.

4. To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of section 33-24-02-170 through 33-24-02-179, the remanufacturer or other person that stores or treats the hazardous secondary material shall make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than ten parts per million weight using one of the following two methods:

a. Direct measurement of the organic concentration of the material using the following procedures:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(2) For material generated onsite, the grab samples must be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples must be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(3) Each sample must be analyzed and the total organic concentration of the sample must be computed using Method 9060A (as incorporated by reference in section 33-24-01-05) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," environmental protection agency Publication SW-846, or analyzed for its individual organic constituents.

(4) The arithmetic mean of the results of the analyses of the four samples applies for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

b. Using knowledge of the material to determine that its total organic concentration is less than ten parts per million weight. Documentation of the material determination is required. Examples of documentation that must be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than ten parts per million weight, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

5. The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than ten parts per million weight must be made as follows:

a. By the effective date that the facility becomes subject to the provisions of sections 33-24-02-170 through 33-24-02-179 or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later; and

b. For continuously generated material, annually; or

c. Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

6. When a remanufacturer or other person that stores or treats the hazardous secondary material and the department do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least ten parts per million weight based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at subdivision a of subsection 4.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-175. Recordkeeping requirements.**

1. Applicability.

a. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of sections 33-24-02-170 through 33-24-02-179 shall comply with the recordkeeping requirements of this section.

b. A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of sections 33-24-02-170 through 33-24-02-179 may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

2. The remanufacturer or other person that stores or treats the hazardous secondary material must keep the following records on-site:

a. For facilities that comply with the provisions of subdivision b of subsection 1 of section 33-24-02-173, an implementation schedule that includes dates by which the closed-vent

system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of sections 33-24-02-170 through 33-24-02-179.

b. Up-to-date documentation of compliance with the process vent standards in section 33-24-02-172, including:

(1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (for example, the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (for example, identify the hazardous secondary material management units on a facility plot plan).

(2) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (for example, temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (for example, managing a material of different composition or increasing operating hours of affected hazardous secondary material management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

c. Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan must be developed and include:

(1) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This must include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(2) A detailed engineering description of the closed-vent system and control device including:

(a) Manufacturer's name and model number of control device.

(b) Type of control device.

(c) Dimensions of the control device.

(d) Capacity.

(e) Construction materials.

(3) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

d. Documentation of compliance with section 33-24-02-173 must include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by subsection 11 of section 33-24-02-173.

(3) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions", as incorporated by reference as specified in section 33-24-01-05, or other engineering texts acceptable to the department that present basic control device design information. Documentation provided by the control device manufacturer or vendor which describes the control device design in accordance with subparagraphs a through g may be used to comply with this requirement. The design analysis must address the vent stream characteristics and control device operation parameters as specified below.

(a) For a thermal vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis also must establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(b) For a catalytic vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis also must establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(c) For a boiler or process heater, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis also must establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(d) For a flare, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis also must consider the requirements specified in subsection 4 of section 33-24-02-173.

(e) For a condenser, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis also must establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(f) For a carbon adsorption system such as a fixed-bed adsorber which regenerates the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis also must establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and

working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling or drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(g) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis also must establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(4) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of ninety-five percent or greater unless the total organic concentration limit of subsection 1 of section 33-24-02-172 is achieved at an efficiency less than ninety-five weight percent or the total organic emission limits of subsection 1 of section 33-24-02-172 for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than ninety-five weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(6) If performance tests are used to demonstrate compliance, all test results.

3. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of sections 33-24-02-170 through 33-24-02-179 must be recorded and kept up to date at the facility. The information must include:

a. Description and date of each modification that is made to the closed-vent system or control device design.

b. Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with subdivisions a and b of subsection 6 of section 33-24-02-173.

c. Monitoring, operating, and inspection information required by subsections 6 through 11 of section 33-24-02-173.

d. Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(1) For a thermal vapor incinerator designed to operate with a minimum residence time of fifty-hundredths seconds at a minimum temperature of seven hundred sixty

degrees Celsius, period when the combustion temperature is below seven hundred sixty degrees Celsius.

(2) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of ninety-five weight percent or greater, period when the combustion zone temperature is more than twenty-eight degrees Celsius below the design average combustion zone temperature established as a requirement of subparagraph a of paragraph 3 of subdivision d of subsection 2.

(3) For a catalytic vapor incinerator, period when:

(a) Temperature of the vent stream at the catalyst bed inlet is more than twenty-eight degrees Celsius below the average temperature of the inlet vent stream established as a requirement of subparagraph b of paragraph 3 of subdivision d of subsection 2; or

(b) Temperature difference across the catalyst bed is less than eighty percent of the design average temperature difference established as a requirement of subparagraph b of paragraph 3 of subdivision d of subsection 2.

(4) For a boiler or process heater, period when:

(a) Flame zone temperature is more than twenty-eight degrees Celsius below the design average flame zone temperature established as a requirement of subparagraph c of paragraph 3 of subdivision d of subsection 2; or

(b) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subparagraph c of paragraph 3 of subdivision d of subsection 2.

(5) For a flare, period when the pilot flame is not ignited.

(6) For a condenser that complies with subparagraph a of paragraph 6 of subdivision b of subsection 6 of section 33-24-02-173, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than twenty percent greater than the design outlet organic compound concentration level established as a requirement of subparagraph e of paragraph 3 of subdivision d of subsection 2.

(7) For a condenser that complies with subparagraph b of paragraph 6 of subdivision b of subsection 6 of section 33-24-02-173, period when:

(a) Temperature of the exhaust vent stream from the condenser is more than six degrees Celsius above the design average exhaust vent stream temperature established as a requirement of subparagraph e of paragraph 3 of subdivision d of subsection 2; or

(b) Temperature of the coolant fluid exiting the condenser is more than six degrees Celsius above the design average coolant fluid temperature at the condenser outlet established as a requirement of subparagraph e of paragraph 3 of subdivision d of subsection 2.

(8) For a carbon adsorption system such as a fixed-bed carbon adsorber which regenerates the carbon bed directly on-site in the control device and complies with subparagraph a of paragraph 7 of subdivision b of subsection 6 of section 33-24-02-173, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than

twenty percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subparagraph f of paragraph 3 of subdivision d of subsection 2.

(9) For a carbon adsorption system such as a fixed-bed carbon adsorber which regenerates the carbon bed directly on-site in the control device and complies with subparagraph b of paragraph 7 of subdivision b of subsection 6 of section 33-24-02-173, period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subparagraph f of paragraph 3 of subdivision d of subsection 2.

e. Explanation for each period recorded under subdivision d of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

f. For a carbon adsorption system operated subject to requirements specified in subsection 7 or subdivision b of subsection 8 of section 33-24-02-173, date when existing carbon in the control device is replaced with fresh carbon.

g. For a carbon adsorption system operated subject to requirements specified in subdivision a of subsection 8 of section 33-24-02-173, a log that records:

(1) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(2) Date when existing carbon in the control device is replaced with fresh carbon.

h. Date of each control device startup and shutdown.

i. A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to subsection 15 of section 33-24-02-173 shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of subsection 15 of section 33-24-02-173, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

j. When each leak is detected as specified in subsection 12 of section 33-24-02-173, the following information must be recorded:

(1) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(2) The date the leak was detected and the date of first attempt to repair the leak.

(3) The date of successful repair of the leak.

(4) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonreparable.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen calendar days after discovery of the leak.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of

repair may be documented by citing the relevant sections of the written procedure.

(b) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

4. Records of the monitoring, operating, and inspection information required by subdivisions c through j of subsection 3 must be maintained by the owner or operator for at least three years following the date of each occurrence, measurement, maintenance, corrective action, or record.

5. For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the department will specify the appropriate recordkeeping requirements.

6. Up to date information and data used to determine whether or not a process vent is subject to the requirements in section 33-24-02-172 including supporting documentation as required by subdivision b of subsection 4 of section 33-24-02-174 when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, must be recorded in a log that is kept at the facility.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-176. [Reserved].

33-24-02-177. [Reserved].

33-24-02-178. [Reserved].

33-24-02-179. [Reserved].

**33-24-02-180. Applicability to air emission standards for equipment leaks.**

The requirements of sections 33-24-02-180 through 33-24-02-199 apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at subdivision z of subsection 1 of section 33-24-02-04, unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-181. Definitions.**

As used in sections 33-24-02-180 through 33-24-02-199, all terms not defined herein have the meaning given them in chapter 23-20.3, chapters 33-24-01 through 33-24-05 and section 33-24-05-401, as amended at section 33-24-02-171.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-182. Standards - Pumps in light liquid service.**

#### 1. Timeframe.

- a. Each pump in light liquid service must be monitored monthly to detect leaks by the methods specified in subsection 2 of section 33-24-02-193, except as provided in subsections 4, 5 and 6.
- b. Each pump in light liquid service must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

#### 2. Indicators.

- a. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.
- b. If there are indications of liquids dripping from the pump seal, a leak is detected.

#### 3. Response.

- a. When a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-02-189.
- b. A first attempt at repair (for example, tightening the packing gland) must be made no later than five calendar days after each leak is detected.

#### 4. Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection 1, provided the following requirements are met:

- a. Each dual mechanical seal system must be:
  - (1) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;
  - (2) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of section 33-24-02-190; or
  - (3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.
- b. The barrier fluid system must not be a hazardous secondary material with organic concentrations ten percent or greater by weight.
- c. Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.
- d. Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

e. Checks.

- (1) Each sensor as described in subdivision c of subsection 4 must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.
- (2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

f. Leaks.

- (1) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph 2 of subdivision e of subsection 4, a leak is detected.
  - (2) When a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-02-189.
  - (3) A first attempt at repair (for example, relapping the seal) must be made no later than five calendar days after each leak is detected.
5. Any pump that is designated, as described in subdivision b of subsection 7 of section 33-24-02-194, for no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, is exempt from the requirements of subsections 1, 3 and 4 if the pump meets the following requirements:
- a. Must have no externally actuated shaft penetrating the pump housing.
  - b. Must operate with no detectable emissions as indicated by an instrument reading of less than five hundred parts per million above background as measured by the methods specified in subsection 3 of section 33-24-02-193.
  - c. Must be tested for compliance with subdivision b initially upon designation, annually, and at other times as requested by the department.
6. If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of section 33-24-02-190, it is exempt from the requirements of subsections 1 through 5.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-183. Standards - Compressors.**

1. Each compressor must be equipped with a seal system that includes a barrier fluid system and which prevents leakage of total organic emissions to the atmosphere, except as provided in subsections 8 and 9.
2. Each compressor seal system as required in subsection 1 must be:
  - a. Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;
  - b. Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of section 33-24-02-190; or

c. Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

3. The barrier fluid must not be a hazardous secondary material with organic concentrations ten percent or greater by weight.

4. Each barrier fluid system as described in subsections 1 through 3 must be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

5. Checks.

a. Each sensor as required in subsection 4 must be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

b. The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

6. If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion determined under subdivision b of subsection 5, a leak is detected.

7. Leaks.

a. When a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-02-189.

b. A first attempt at repair (for example, tightening the packing gland) must be made no later than five calendar days after each leak is detected.

8. A compressor is exempt from the requirements of subsections 1 and 2 if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of section 33-24-02-190, except as provided in subsection 9.

9. Any compressor that is designated, as described in subdivision b of subsection 7 of section 33-24-02-194, for no detectable emissions as indicated by an instrument reading of less than five hundred parts per million above background is exempt from the requirements of subsections 1 through 8 if the compressor:

a. Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33-24-02-193.

b. Is tested for compliance with subdivision a initially upon designation, annually, and at other times as requested by the department.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-184. Standards - Pressure relief devices in gas or vapor service.**

1. Except during pressure releases, each pressure relief device in gas or vapor service must be operated with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33-24-02-193.

2. Pressure release.

- a. After each pressure release, the pressure relief device must be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as soon as practicable, but no later than five calendar days after each pressure release, except as provided in section 33-24-02-189.
- b. No later than five calendar days after the pressure release, the pressure relief device must be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33-24-02-193.

3. Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in section 33-24-02-190 is exempt from the requirements of subsections 1 and 2.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-185. Standards - Sampling connection systems.

1. Each sampling connection system must be equipped with a closed-purge, closed-loop, or closed-vent system. This system must collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.
2. Each closed-purge, closed-loop, or closed-vent system as required in subsection 1 must meet one of the following requirements:
  - a. Return the purged process fluid directly to the process line;
  - b. Collect and recycle the purged process fluid; or
  - c. Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of sections 33-24-02-204 through 33-24-02-206 or a control device that complies with the requirements of section 33-24-02-190.
3. In-situ sampling systems and sampling systems without purges are exempt from the requirements of subsections 1 and 2.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-02-186. Standards - Open-ended valves or lines.

1. Requirements.
  - a. Each open-ended valve or line must be equipped with a cap, blind flange, plug, or a second valve.
  - b. The cap, blind flange, plug, or second valve must seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

2. Each open-ended valve or line equipped with a second valve must be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.
3. When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but must comply with subsection 1 at all other times.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-187. Standards - Valves in gas or vapor service or in light liquid service.**

1. Each valve in gas or vapor or light liquid service must be monitored monthly to detect leaks by the methods specified in subsection 2 of section 33-24-02-193 and must comply with subsections 2 through 5, except as provided in subsections 6, 7, and 8, and sections 33-24-02-191 and 33-24-02-192.
2. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.
3. Timeframe.
  - a. Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.
  - b. If a leak is detected, the valve must be monitored monthly until a leak is not detected for two successive months.
4. Release.
  - a. When a leak is detected, it must be repaired as soon as practicable, but no later than fifteen calendar days after the leak is detected, except as provided in section 33-24-02-189.
  - b. A first attempt at repair must be made no later than five calendar days after each leak is detected.
5. First attempts at repair include the following best practices where practicable:
  - a. Tightening of bonnet bolts.
  - b. Replacement of bonnet bolts.
  - c. Tightening of packing gland nuts.
  - d. Injection of lubricant into lubricated packing.
6. Any valve that is designated, as described in subdivision b of subsection 7 of section 33-24-02-194, for no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, is exempt from the requirements of subsection 1 if the valve:
  - a. Has no external actuating mechanism in contact with the hazardous secondary material stream.

b. Is operated with emissions less than five hundred parts per million above background as determined by the method specified in subsection 3 of section 33-24-02-193.

c. Is tested for compliance with subdivision b initially upon designation, annually, and at other times as requested by the department.

7. Any valve that is designated, as described in subdivision a of subsection 8 of section 33-24-02-194, as an unsafe-to-monitor valve is exempt from the requirements of subsection 1 if:

a. The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection 1.

b. The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

8. Any valve that is designated, as described in subdivision b of subsection 8 of section 33-24-02-194, as a difficult-to-monitor valve is exempt from the requirements of subsection 1 if:

a. The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface.

b. The hazardous secondary material management unit within which the valve is located was in operation before January 15, 2015.

c. The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-188. Standards - Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.**

1. Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors must be monitored within five days by the method specified in subsection 2 of section 33-24-02-193 if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

2. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.

3. Timeframe.

a. When a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-02-189.

b. The first attempt at repair must be made no later than five calendar days after each leak is detected.

4. First attempts at repair include the best practices described under subsection 5 of section 33-24-02-187.

5. Any connector that is inaccessible or is ceramic or ceramic-lined (for example, porcelain, glass, or glass-lined) is exempt from the monitoring requirements of subsection 1 and from the recordkeeping requirements of section 33-24-02-194.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-189. Standards - Delay of repair.**

1. Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment must occur before the end of the next hazardous secondary material management unit shutdown.
2. Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least ten percent by weight.
3. Delay of repair for valves will be allowed if:
  - a. The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.
  - b. When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with section 33-24-02-190.
4. Delay of repair for pumps will be allowed if:
  - a. Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.
  - b. Repair is completed as soon as practicable, but not later than six months after the leak was detected.
5. Delay of repair beyond a hazardous secondary material management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than six months after the first hazardous secondary material management unit shutdown.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-190. Standards - Closed-vent systems and control devices.**

1. The remanufacturer or other person that stores or treats the hazardous secondary material in hazardous secondary material management units using closed-vent systems and control devices subject to sections 33-24-02-180 through 33-24-02-199 shall comply with the provisions of section 33-24-02-173.

2. For:

- a. The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of sections 33-24-02-180 through 33-24-02-199 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to thirty months after the effective date that the facility becomes subject to sections 33-24-02-180 through 33-24-02-199 for installation and startup.
- b. Any unit that begins operation after July 13, 2015, and is subject to the provisions of sections 33-24-02-180 through 33-24-02-199 when operation begins, must comply with the rules immediately (for example, must have control devices installed and operating on startup of the affected unit); the thirty-month implementation schedule does not apply.
- c. The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of sections 33-24-02-180 through 33-24-02-199 as soon as practicable but no later than thirty months after the amendment's effective date. When control equipment required by sections 33-24-02-180 through 33-24-02-199 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of onsite installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of sections 33-24-02-180 through 33-24-02-199. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.
- d. Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of sections 33-24-02-180 through 33-24-02-199 after January 13, 2015, due to an action other than those described in subdivision c must comply with all applicable requirements immediately (for example, must have control devices installed and operating on the date the facility or unit becomes subject to sections 33-24-02-180 through 33-24-02-199; the thirty-month implementation schedule does not apply).

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-191. Alternative standards for valves in gas or vapor service or in light liquid service - Percentage of valves allowed to leak.**

1. A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of section 33-24-02-187 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than two percent of the valves to leak.
2. The following requirements must be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing two percent of valves to leak:

- a. A performance test as specified in subsection 3 must be conducted initially upon designation, annually, and at other times requested by the department.
  - b. If a valve leak is detected, it must be repaired in accordance with subsections 4 and 5 of section 33-24-02-187.
3. Performance tests must be conducted in the following manner:
- a. All valves subject to the requirements in section 33-24-02-187 within the hazardous secondary material management unit must be monitored within one week by the methods specified in subsection 2 of section 33-24-02-193.
  - b. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.
  - c. The leak percentage must be determined by dividing the number of valves subject to the requirements in section 33-24-02-187 for which leaks are detected by the total number of valves subject to the requirements in section 33-24-02-187 within the hazardous secondary material management unit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-192. Alternative standards for valves in gas or vapor service or in light liquid service - Skip period leak detection and repair.**

1. A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of section 33-24-02-187 may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in subdivisions b and c of subsection 2.
2. Requirements.
  - a. A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in section 33-24-02-187, except as described in subdivisions b and c.
  - b. After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods (for example, monitor for leaks once every six months) for the valves subject to the requirements in section 33-24-02-187.
  - c. After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three of the quarterly leak detection periods (for example, monitor for leaks once every year) for the valves subject to the requirements in section 33-24-02-187.
  - d. If the percentage of valves leaking is greater than two percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in section 33-24-02-187, but may again elect to use this section after meeting the requirements of subdivision a of subsection 3 of section 33-24-02-187.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-193. Test methods and procedures.**

1. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of sections 33-24-02-180 through 33-24-02-199 shall comply with the test methods and procedures requirements provided in this section.
2. Leak detection monitoring, as required in sections 33-24-02-182 through 33-24-02-192, must comply with the following requirements:
  - a. Monitoring must comply with Reference Method 21 in 40 CFR part 60.
  - b. The detection instrument must meet the performance criteria of Reference Method 21.
  - c. The instrument must be calibrated before use on each day of its use by the procedures specified in Reference Method 21.
  - d. Calibration gases must be:
    - (1) Zero air (less than ten parts per million of hydrocarbon in air).
    - (2) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand parts per million methane or nhexane.
  - e. The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
3. When equipment is tested for compliance with no detectable emissions, as required in subsection 5 of section 33-24-02-182, subsection 9 of section 33-24-02-183, 33-24-02-184, and subsection 6 of section 33-24-02-187, the test must comply with the following requirements:
  - a. The requirements of subdivisions a through d of subsection 2 must apply.
  - b. The background level must be determined as set forth in Reference Method 21.
  - c. The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.
  - d. The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with five hundred parts per million for determining compliance.
4. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds ten percent by weight using the following:
  - a. Methods described in American society for testing and materials Methods D 2267–88, E 169–87, E 168–88, E 260–85 (as incorporated by reference under section 33-24-01-05);
  - b. Method 9060A (as incorporated by reference under section 33-24-01-05) of "Test Methods for Evaluating Solid Waste," environmental protection agency publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

c. Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than ten percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

5. If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least ten percent by weight, the determination can be revised only after following the procedures in subdivision a or b of subsection 4.

6. When a remanufacturer or other person that stores or treats the hazardous secondary material and the department do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least ten percent by weight, the procedures in subdivision a or b of subsection 4 can be used to resolve the dispute.

7. Samples used in determining the percent organic content must be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

8. To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by American society for testing and materials D-2879-86 (as incorporated by reference under section 33-24-01-05).

9. Performance tests to determine if a control device achieves ninety-five weight percent organic emission reduction must comply with the procedures of subdivisions a through d of subsection 3 of section 33-24-02-174.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-194. Recodkeeping requirements.**

1. Remanufacturer or other person that stores or treats the hazardous secondary material.

a. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of sections 33-24-02-180 through 33-24-02-199 shall comply with the recordkeeping requirements of this section.

b. A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of sections 33-24-02-180 through 33-24-02-199 may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

2. Remanufacturers and other persons that store or treat the hazardous secondary material shall record and keep the following information at the facility:

a. For each piece of equipment to which sections 33-24-02-180 through 33-24-02-199 applies:

(1) Equipment identification number and hazardous secondary material management unit identification.

(2) Approximate locations within the facility (for example, identify the hazardous secondary material management unit on a facility plot plan).

(3) Type of equipment (for example, a pump or pipeline valve).

(4) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(5) Hazardous secondary material state at the equipment (for example, gas and vapor or liquid).

(6) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

b. For facilities that comply with the provisions of subdivision b of subsection 1 of section 33-24-02-173, an implementation schedule as specified in subdivision b of subsection 1 of section 33-24-02-173.

c. Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in subdivision c of subsection 2 of section 33-24-02-175.

d. Documentation of compliance with section 33-24-02-190, including the detailed design documentation or performance test results specified in subdivision d of subsection 2 of section 33-24-02-175.

3. When each leak is detected as specified in sections 33-24-02-182, 33-24-02-183, 33-24-02-187, and 33-24-02-188, the following requirements apply:

a. A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with subsection 1 of section 33-24-02-188, and the date the leak was detected, must be attached to the leaking equipment.

b. The identification on equipment, except on a valve, may be removed after it has been repaired.

c. The identification on a valve may be removed after it has been monitored for two successive months as specified in subsection 3 of section 33-24-02-187 and no leak has been detected during those two months.

4. When each leak is detected as specified in sections 33-24-02-182, 33-24-02-183, 33-24-02-187, and 33-24-02-188, the following information must be recorded in an inspection log and must be kept at the facility:

a. The instrument and operator identification numbers and the equipment identification number.

b. The date evidence of a potential leak was found in accordance with subsection 1 of section 33-24-02-188.

- c. The date the leak was detected and the dates of each attempt to repair the leak.
- d. Repair methods applied in each attempt to repair the leak.
- e. "Above ten thousand" if the maximum instrument reading measured by the methods specified in subsection 2 of section 33-24-02-193 after each repair attempt is equal to or greater than ten thousand parts per million.
- f. "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen calendar days after discovery of the leak.
- g. Documentation supporting the delay of repair of a valve in compliance with subsection 3 of section 33-24-02-189.
- h. The signature of the remanufacturer or other person that stores or treats the hazardous secondary material (or designate) whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.
- i. The expected date of successful repair of the leak if a leak is not repaired within fifteen calendar days.
- j. The date of successful repair of the leak.

5. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of section 33-24-02-190 must be recorded and kept up-to-date at the facility as specified in subsection 3 of section 33-24-02-175. Design documentation is specified in subdivisions a and b of subsection 3 of section 33-24-02-175 and monitoring, operating, and inspection information in subdivisions c through h of subsection 3 of section 33-24-02-175.

6. For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the department will specify the appropriate recordkeeping requirements.

7. The following information pertaining to all equipment subject to the requirements in sections 33-24-02-182 through 33-24-02-190 must be recorded in a log that is kept at the facility:

a. A list of identification numbers for equipment (except welded fittings) subject to the requirements of sections 33-24-02-180 through 33-24-02-199.

b. Equipment.

(1) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, under the provisions of subsection 5 of section 33-24-02-182, subsection 9 of section 33-24-02-183, and subsection 6 of section 33-24-02-187.

(2) The designation of this equipment as subject to the requirements of subsection 5 of section 33-24-02-182, subsection 9 of section 33-24-02-183, or subsection 6 of section 33-24-02-187 must be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

c. A list of equipment identification numbers for pressure relief devices required to comply with subsection 1 of section 33-24-02-184.

d. Data.

(1) The dates of each compliance test required in subsection 5 of section 33-24-02-182, subsection 9 of section 33-24-02-183, section 33-24-02-184, and subsection 6 of section 33-24-02-187.

(2) The background level measured during each compliance test.

(3) The maximum instrument reading measured at the equipment during each compliance test.

e. A list of identification numbers for equipment in vacuum service.

f. Identification, either by list or location (area or group) of equipment that contains or contacts hazardous secondary material with an organic concentration of at least ten percent by weight for less than three hundred hours per calendar year.

8. The following information pertaining to all valves subject to the requirements of subsections 7 and 8 of section 33-24-02-187 must be recorded in a log that is kept at the facility:

a. A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

b. A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

9. The following information must be recorded in a log that is kept at the facility for valves complying with section 33-24-02-192:

a. A schedule of monitoring.

b. The percent of valves found leaking during each monitoring period.

10. The following information must be recorded in a log that is kept at in the facility:

a. Criteria required in paragraph 2 of subdivision e of subsection 4 of section 33-24-02-182 and subdivision b of subsection 5 of section 33-24-02-183 and an explanation of the design criteria.

b. Any changes to these criteria and the reasons for the changes.

11. The following information must be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of sections 33-24-02-180 through 33-24-02-190 and other specific section:

a. An analysis determining the design capacity of the hazardous secondary material management unit.

b. A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in sections 33-24-02-182 through 33-24-02-190 and an analysis determining whether these hazardous secondary materials are heavy liquids.

c. An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in sections 33-24-02-182 through 33-24-02-190. The record must include supporting documentation as required by subdivision c of subsection 4 of section 33-24-02-193 when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was

produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (for example, changing the process that produced the material) that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in sections 261.1052 through 261.1060, then a new determination is required.

12. Records of the equipment leak information required by subsection 4 and the operating information required by subsection 5 need be kept only three years.

13. The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to sections 33-24-02-180 through 33-24-02-199 and to regulations at 40 code of federal regulations part 60, part 61, or part 63 may elect to determine compliance with sections 33-24-02-180 through 33-24-02-199 either by documentation pursuant to section 33-24-02-194, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 CFR part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 must be kept with or made readily available at the facility.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-195. [Reserved].**

**33-24-02-196. [Reserved].**

**33-24-02-197. [Reserved].**

**33-24-02-198. [Reserved].**

**33-24-02-199. [Reserved].**

**33-24-02-200. Applicability to air emission standards for tanks and containers.**

1. The requirements of sections 33-24-02-200 through 33-24-02-214 apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at subdivision z of subsection 1 of section 33-24-02-04, unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

2. [Reserved]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-201. Definitions.**

As used in sections 33-24-02-200 through 33-24-02-214, all terms not defined herein have the meaning given them in chapter 23-20.3, chapters 33-24-01 through 33-24-05 and section 33-24-05-451.

1. "Average volatile organic concentration or average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of section 33-24-02-204.
2. "Cover" means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.
3. "Empty hazardous secondary material container" means:
  - a. A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating, and no more than two and one-half centimeters (one inch) of residue remain on the bottom of the container or inner liner.
  - b. A container that is less than or equal to one hundred nineteen gallons in size and no more than three percent by weight of the total capacity of the container remains in the container or inner liner, or
  - c. A container that is greater than one hundred nineteen gallons in size and no more than three-tenths of one percent by weight of the total capacity of the container remains in the container or inner liner.
4. "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.
5. "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.
6. "Material determination" means performing all applicable procedures in accordance with the requirements of section 33-24-02-204 to determine whether a hazardous secondary material meets standards specified in sections 33-24-02-200 through 33-24-02-214. Examples of a material determination include performing the procedures in accordance with the requirements of section 33-24-02-204 to determine the average volatile organic concentration of a hazardous secondary material at the point of material origination; the average volatile organic concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile

organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

7. "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (for example, temperature, agitation, pH effects of combining materials) reasonably expected to occur in the tank. For the purpose of sections 33-24-02-200 through 33-24-02-214, maximum organic vapor pressure is determined using the procedures specified in subsection 3 of section 33-24-02-204.

8. "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in subsection 4 of section 33-24-02-204.

9. "Point of material origination" means as follows:

a. When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under subdivision z of subsection 1 of section 33-24-02-04.

b. When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

10. "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of sections 33-24-02-200 through 33-24-02-214, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

11. "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

12. "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million as determined by direct measurement or by knowledge of the material in accordance with the requirements of section 33-24-02-204. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/meter<sup>3</sup>] at twenty-five degrees Celsius must be included.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-202. Standards - General.**

1. This section applies to the management of hazardous secondary material in tanks and containers subject to sections 33-24-02-200 through 33-24-02-214.
2. The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in sections 33-24-02-204 through 33-24-02-207, as applicable to the hazardous secondary material management unit, except as provided for in subsection 3.
3. A tank or container is exempt from standards specified in sections 33-24-02-204 through 33-24-02-207, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than five hundred parts per million by weight. The average VO concentration must be determined using the procedures specified in subsection 1 of section 33-24-02-203. The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as necessary, this determination at least once every twelve months following the date of the initial determination for the hazardous secondary material streams entering the unit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-203. Material determination procedures.**

1. Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination.
  - a. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of subdivision a of subsection 3 of section 33-24-02-202 from using air emission controls in accordance with standards specified in sections 33-24-02-204 through 33-24-02-207, as applicable to the hazardous secondary material management unit.
    - (1) An initial determination of the average VO concentration of the material stream must be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of subdivision a of subsection 3 of section 33-24-02-202 from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream must be made for each averaging period that a hazardous secondary material is managed in the unit; and
    - (2) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in section 33-24-02-202.
  - b. For a material determination that is required by subdivision a, the average VO concentration of a hazardous secondary material at the point of material origination must

be determined using either direct measurement as specified in subdivision c or by knowledge as specified in subdivision d.

c. Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination.

(1) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(2) Sampling. Samples of the hazardous secondary material stream must be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(a) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but may not exceed 1 year.

(b) A sufficient number of samples, but no less than four samples, must be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination must be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

(c) All samples must be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(d) Sufficient information, as specified in the "site sampling plan" required under subparagraph c, must be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(3) Analysis. Each collected sample must be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material

concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8 x 10<sup>-6</sup> atmospheres/gram-mole/meters<sup>3</sup>] at twenty-five degrees Celsius. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at twenty-five degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f<sub>m25D</sub>). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at twenty-five degrees Celsius contained in the material. Constituent-specific adjustment factors (f<sub>m25D</sub>) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in subparagraph a or b and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8 x 10<sup>-6</sup> atmospheres/gram-mole/meters<sup>3</sup>] at twenty-five degrees Celsius, is met.

(a) Any environmental protection agency standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(b) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(4) Calculations.

(a) The average VO concentration ( $\bar{c}$ ) on a mass-weighted basis must be calculated by using the results for all material determinations conducted in accordance with paragraphs 2 and 3 and the following equation:

$$\bar{c} = \frac{1}{Q_T} \sum_{i=1}^n (Q_i \times C_i)$$

where:

$\bar{c}$  = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, parts per million weight.

i= Individual material determination "i" of the hazardous secondary material.

$n$ = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed one year).

$Q_i$ = Mass quantity of hazardous secondary material stream represented by  $C_i$ , kilograms per hour.

$Q_T$ = Total mass quantity of hazardous secondary material during the averaging period, kilogram per hour.

$C_i$ = Measured VO concentration of material determination "i" as determined in accordance with the requirements of paragraph 3 (for example, the average of the four or more samples specified in subparagraph b of paragraph 2), parts per million weight.

(b) For the purpose of determining  $C_i$ , for individual material samples analyzed in accordance with paragraph 3, the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

[1] If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

[2] If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase ( $0.1 Y/X$ ) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/meter<sup>3</sup>] at twenty-five degrees Celsius.

d. Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.

(1) Documentation must be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing which are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(2) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream which are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(3) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent specific adjustment factor ( $f_{m25D}$ ).

(4) In the event that the department and the remanufacturer or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in subdivision c shall be used to establish compliance with the applicable requirements of sections 33-24-02-200 through 33-24-02-214. The department may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph 3 of subdivision c.

2. [Reserved]

3. Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.

a. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in subsection 3 of section 33-24-02-204.

b. A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in subdivision c or knowledge of the waste as specified by subdivision d to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

c. Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(1) Sampling. A sufficient number of samples must be collected to be representative of the hazardous secondary material contained in the tank. All samples must be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

- (a) Method 25E in 40 CFR part 60, appendix A;
  - (b) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (as incorporated by reference in section 33-24-01-05);
  - (c) Methods obtained from standard reference texts;
  - (d) ASTM Method 2879–92 (as incorporated by reference in section 33-24-01-05); and
  - (e) Any other method approved by the department.
- d. Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation must be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in paragraph 1 of subdivision a of subsection 2 of section 33-24-02-204 for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

4. Procedure for determining no detectable organic emissions for the purpose of complying with sections 33-24-02-200 through 33-24-02-214:

- a. The test must be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (for example, a location where organic vapor leakage could occur) on the cover and associated closure devices must be checked. Potential leak interfaces that are associated with covers and closure devices include: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.
- b. The test must be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices must be secured in the closed position.
- c. The detection instrument must meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 must be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.
- d. The detection instrument must be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.
- e. Calibration gases must be as follows:
  - (1) Zero air (less than ten parts per million volume hydrocarbon in air); and
  - (2) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand parts per million volume methane or n-hexane.

- f. The background level must be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.
- g. Each potential leak interface must be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface must be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (for example, some pressure relief devices), the instrument probe inlet must be placed at approximately the center of the exhaust area to the atmosphere.
- h. The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of five hundred parts per million volume except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison must be as specified in subdivision i. If the difference is less than five hundred parts per million volume, then the potential leak interface is determined to operate with no detectable organic emissions.
- i. For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of ten thousand parts per million weight. If the difference is less than ten thousand parts per million weight, then the potential leak interface is determined to operate with no detectable organic emissions.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-204. Standards - Tanks.**

- 1. The provisions of this section apply to the control of air pollutant emissions from tanks for which subsection 2 of section 33-24-02-202 references the use of this section for such air emission control.
- 2. The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:
  - a. For a tank that manages hazardous secondary material that meets all of the conditions specified in paragraphs 1 through 2, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in subsection 3 or the Tank Level 2 controls specified in subsection 4.
    - (1) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:
      - (a) For a tank design capacity equal to or greater than one hundred fifty one meters<sup>3</sup> (5,330 feet<sup>3</sup>), the maximum organic vapor pressure limit for the tank is five and two-tenths kilopascals.
      - (b) For a tank design capacity equal to or greater than seventy-five meters<sup>3</sup> (2,650 feet<sup>3</sup>) but less than one hundred fifty one meters<sup>3</sup> (5,330 feet<sup>3</sup>), the maximum

organic vapor pressure limit for the tank is twenty seven and six tenths kilopascals.

(c) For a tank design capacity less than seventy-five meters<sup>3</sup> (2,650 feet<sup>3</sup>), the maximum organic vapor pressure limit for the tank is seventy-six and six tenths kilopascals.

(2) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with paragraph 1.

b. For a tank that manages hazardous secondary material which does not meet all of the conditions specified in paragraphs 1 through 2 of subdivision a, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of subsection 4. An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph 1 of subdivision a.

3. Remanufacturers or other persons that store or treats the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in subdivisions a through d:

a. The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure must be determined using the procedures specified in subsection 3 of section 33-24-02-203. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph 1 of subdivision a of subsection 2, as applicable to the tank.

b. The tank must be equipped with a fixed roof designed to meet the following specifications:

(1) The fixed roof and its closure devices must be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank (for example, a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (for example, a horizontal cylindrical tank equipped with a hatch).

(2) The fixed roof must be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(3) Each opening in the fixed roof, and any manifold system associated with the fixed roof, must be either:

- (a) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or
  - (b) Connected by a closed-vent system that is vented to a control device. The control device must remove or destroy organics in the vent stream, and must be operating whenever hazardous secondary material is managed in the tank, except as provided for in brackets 1 and 2.
    - [1] During periods when it is necessary to provide access to the tank for performing the activities of bracket 2, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.
    - [2] During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.
  - (4) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.
- c. Whenever a hazardous secondary material is in the tank, the fixed roof must be installed with each closure device secured in the closed position except as follows:
  - (1) Opening of closure devices or removal of the fixed roof is allowed at the following times:
    - (a) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.
    - (b) To remove accumulated sludge or other residues from the bottom of tank.
  - (2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device must be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established such

that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(3) Opening of a safety device, as defined in section 33-24-02-201, is allowed at any time conditions require doing so to avoid an unsafe condition.

d. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements:

(1) The fixed roof and its closure devices must be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in subsection 12.

(3) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subsection 11.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-02-209.

4. Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

a. A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in subsection 5;

b. A tank equipped with an external floating roof in accordance with the requirements specified in subsection 6;

c. A tank vented through a closed-vent system to a control device in accordance with the requirements specified in subsection 7;

d. A pressure tank designed and operated in accordance with the requirements specified in subsection 8; or

- e. A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in subsection 9.
  
- 5. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in subdivisions a through c.
  - a. The tank must be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:
    - (1) The internal floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.
    - (2) The internal floating roof must be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:
      - (a) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in section 33-24-02-201; or
      - (b) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.
    - (3) The internal floating roof must meet the following specifications:
      - (a) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.
      - (b) Each opening in the internal floating roof must be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.
      - (c) Each penetration of the internal floating roof for the purpose of sampling must have a slit fabric cover that covers at least ninety percent of the opening.
      - (d) Each automatic bleeder vent and rim space vent must be gasketed.
      - (e) Each penetration of the internal floating roof that allows for passage of a ladder must have a gasketed sliding cover.
      - (f) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof must have a flexible fabric sleeve seal or a gasketed sliding cover.
  - b. The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:
    - (1) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and shall be completed as soon as practical.
    - (2) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.
    - (3) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof must be bolted or fastened closed (for example, no visible gaps). Rim space vents are to be set to open only when the internal

floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

c. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(1) The floating roof and its closure devices must be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include: the internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than ten percent open area.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in paragraph 3:

(a) Visually inspect the internal floating roof components through openings on the fixed-roof (for example, manholes and roof hatches) at least once every twelve months after initial fill, and

(b) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every ten years.

(3) As an alternative to performing the inspections specified in paragraph 2 for an internal floating roof equipped with two continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five years.

(4) Prior to each inspection required by paragraph 2 or 3, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the department in advance of each inspection to provide the department with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the department of the date and location of the inspection as follows:

(a) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the department at least thirty calendar days before refilling the tank except when an inspection is not planned as provided for in subparagraph b.

(b) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection thirty calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the department as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made

by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the department at least seven calendar days before refilling the tank.

(5) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subsection 11.

(6) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-02-209.

d. Safety devices, as defined in section 33-24-02-201, may be installed and operated as necessary on any tank complying with the requirements of this subsection.

6. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in subdivisions a through c.

a. The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(1) The external floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(2) The floating roof must be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(a) The primary seal must be a liquid-mounted seal or a metallic shoe seal, as defined in section 33-24-02-201. The total area of the gaps between the tank wall and the primary seal may not exceed two hundred twelve square centimeters per meter (10.0 square inches per foot) of tank diameter, and the width of any portion of these gaps may not exceed three and eight-tenths centimeters (1.5 inches). If a metallic shoe seal is used for the primary seal, the metallic shoe seal must be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least sixty-one centimeters above the liquid surface.

(b) The secondary seal must be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal may not exceed twenty-one and two-tenths square centimeters per meter (1.0 square inches per foot) of tank diameter, and the width of any portion of these gaps shall not exceed one and three-tenths centimeters (0.5 inches).

(3) The external floating must meet the following specifications:

(a) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof must provide a projection below the liquid surface.

(b) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be equipped with a gasketed cover, seal, or lid.

- (c) Each access hatch and each gauge float well must be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.
  - (d) Each automatic bleeder vent and each rim space vent must be equipped with a gasket.
  - (e) Each roof drain that empties into the liquid managed in the tank must be equipped with a slotted membrane fabric cover that covers at least ninety percent of the area of the opening.
  - (f) Each unslotted and slotted guide pole well must be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.
  - (g) Each unslotted guide pole must be equipped with a gasketed cap on the end of the pole.
  - (h) Each slotted guide pole must be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.
  - (i) Each gauge hatch and each sample well must be equipped with a gasketed cover.
- b. The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:
- (1) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and must be completed as soon as practical.
  - (2) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be secured and maintained in a closed position at all times except when the closure device must be open for access.
  - (3) Covers on each access hatch and each gauge float well must be bolted or fastened when secured in the closed position.
  - (4) Automatic bleeder vents must be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.
  - (5) Rim space vents must be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.
  - (6) The cap on the end of each unslotted guide pole must be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.
  - (7) The cover on each gauge hatch or sample well must be secured in the closed position at all times except when the hatch or well must be opened for access.
  - (8) Both the primary seal and the secondary seal must completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.
- c. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

- (1) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:
- (a) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within sixty calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five years.
- (b) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within sixty calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.
- (c) If a tank ceases to hold hazardous secondary material for a period of one year or more, subsequent introduction of hazardous secondary material into the tank must be considered an initial operation for the purposes of subparagraphs a and b.
- (d) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:
- [1] The seal gap measurements must be performed at one or more floating roof levels when the roof is floating off the roof supports.
- [2] Seal gaps, if any, must be measured around the entire perimeter of the floating roof in each place where a thirty-two one-hundredths centimeter (0.125 inch) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.
- [3] For a seal gap measured under this subdivision, the gap surface area must be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.
- [4] The total gap area must be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph 2 of subdivision a.
- (e) In the event that the seal gap measurements do not conform to the specifications in paragraph 2 of subdivision a, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subsection 11.
- (f) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-02-209.

- (2) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:
- (a) The floating roof and its closure devices must be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.
- (b) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in subsection 12.
- (c) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subsection 11.
- (d) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-02-209.
- (3) Prior to each inspection required by paragraph 1 or 2, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the department in advance of each inspection to provide the department with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the department of the date and location of the inspection as follows:
- (a) Prior to each inspection to measure external floating roof seal gaps as required under paragraph 1, written notification must be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the department at least thirty calendar days before the date the measurements are scheduled to be performed.
- (b) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the department at least thirty calendar days before refilling the tank except when an inspection is not planned as provided for in subparagraph c.
- (c) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection thirty calendar days before refilling the tank, the owner or operator shall notify the department as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why

the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the department at least seven calendar days before refilling the tank.

d. Safety devices, as defined in section 33-24-02-201, may be installed and operated as necessary on any tank complying with the requirements of this subsection.

7. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in subdivisions a through c.

a. The tank must be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(2) Each opening in the fixed roof not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices must be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable organic emissions.

(3) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices include: organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(4) The closed-vent system and control device must be designed and operated in accordance with the requirements of section 33-24-02-207.

b. Whenever a hazardous secondary material is in the tank, the fixed roof must be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(1) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(a) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(b) To remove accumulated sludge or other residues from the bottom of a tank.

(2) Opening of a safety device, as defined in section 33-24-02-201, is allowed at any time conditions require doing so to avoid an unsafe condition.

c. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(1) The fixed roof and its closure devices must be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include: visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The closed-vent system and control device must be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in section 33-24-02-207.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in subsection 12.

(4) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of subsection 11.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-02-209.

8. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

a. The tank must be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

b. All tank openings must be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in subsection 4 of section 33-24-02-203.

c. Whenever a hazardous secondary material is in the tank, the tank must be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph 1 or 2:

(1) At those times when opening of a safety device, as defined in section 33-24-02-201, is required to avoid an unsafe condition.

(2) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of section 33-24-02-207.

9. The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in subdivisions a through d.

a. The tank must be located inside an enclosure. The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

b. The enclosure must be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in section 33-24-02-207.

c. Safety devices, as defined in section 261.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of subdivisions a and b.

d. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in section 33-24-02-207.

10. The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to this section in accordance with the following requirements:

a. Transfer of hazardous secondary material, except as provided in subdivision b, to the tank from another tank subject to this section must be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

b. The requirements of subdivision a do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(1) The hazardous secondary material meets the average VO concentration conditions specified in subdivision a of subsection 3 of section 33-24-02-202 at the point of material origination.

(2) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in subdivision b of subsection 3 of section 33-24-02-202.

(3) The hazardous secondary material meets the requirements of subdivision d of subsection 3 of section 33-24-02-202.

11. The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the

requirements of subdivision d of subsection 3, subdivision c of subsection 5, subdivision c of subsection 6, or subdivision c of subsection 7 as follows:

- a. The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than five calendar days after detection, and repair shall be completed as soon as possible but no later than forty-five calendar days after detection except as provided in subdivision b.
- b. Repair of a defect may be delayed beyond forty-five calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect must be completed before the process or unit resumes operation.

12. Following the initial inspection and monitoring of the cover as required by the applicable provisions of sections 33-24-02-200 through 33-24-02-214, subsequent inspection and monitoring may be performed at intervals longer than one year under the following special conditions:

- a. In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:
  - (1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.
  - (2) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of sections 33-24-02-200 through 33-24-02-214, as frequently as practicable during those times when a worker can safely access the cover.
- b. In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (for example, fill ports, access hatches, gauge wells) which are located on or above the ground surface.

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**33-24-02-205. [Reserved].**

**33-24-02-206. Standards - Containers.**

1. The provisions of this section apply to the control of air pollutant emissions from containers for which subsection 2 of section 33-24-02-202 references the use of this section for such air emission control.

## 2. General requirements.

a. The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container.

(1) For a container having a design capacity greater than one-tenth meters<sup>3</sup> (3.5 feet<sup>3</sup>) and less than or equal to forty-six one-hundredths meters<sup>3</sup> (16.25 feet<sup>3</sup>), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection 3.

(2) For a container having a design capacity greater than forty-six one-hundredths meters<sup>3</sup> (16.25 feet<sup>3</sup>) which is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in subsection 3.

(3) For a container having a design capacity greater than forty-six one-hundredths meters<sup>3</sup> (16.25 feet<sup>3</sup>) which is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in subsection 4.

## 3. Container Level 1 standards.

a. A container using Container Level 1 controls is one of the following:

(1) A container that meets the applicable United States department of transportation regulations on packaging hazardous materials for transportation as specified in subsection 6.

(2) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (for example, a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (for example, a "portable tank" or bulk cargo container equipped with a screw-type cap).

(3) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

b. A container used to meet the requirements of paragraph 2 or 3 of subdivision a must be equipped with covers and closure devices, as applicable to the container, which are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices include: organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

c. If a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(1) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(a) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(b) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within fifteen minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(2) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(a) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (for example, covers and closure devices on such a container are not required to be secured in the closed position).

(b) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within fifteen minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(4) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the

container in accordance with the container design specifications. The device must be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(5) Opening of a safety device, as defined in section 33-24-02-201, is allowed at any time conditions require doing so to avoid an unsafe condition.

d. The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(1) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within twenty-four hours after the container is accepted at the facility (for example, is not an empty hazardous secondary material container) the remanufacturer or other person that stores or treats the hazardous secondary material visually shall inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection must be conducted on or before the date that the container is accepted at the facility (for example, the date the container becomes subject to the container standards in sections 33-24-02-200 through 33-24-02-214).

(2) In the case when a container used for managing hazardous secondary material remains at the facility for a period of one year or more, the remanufacturer or other person that stores or treats the hazardous secondary material visually shall inspect the container and its cover and closure devices initially and thereafter, at least once every twelve months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph 3.

(3) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than twenty-four hours after detection and repair must be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, the hazardous secondary material must be removed from the container and the container may not be used to manage hazardous secondary material until the defect is repaired.

e. The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of forty-six one-hundredths meters<sup>3</sup> (16.25 feet<sup>3</sup>) or greater, which do not meet applicable department of transportation regulations as specified in subsection 6, are not managing hazardous secondary material in light material service.

4. Container Level 2 standards.

a. A container using Container Level 2 controls is one of the following:

- (1) A container that meets the applicable United States department of transportation regulations on packaging hazardous materials for transportation as specified in subsection 6.
- (2) A container that operates with no detectable organic emissions as defined in section 33-24-02-201 and determined in accordance with the procedure specified in subsection 7.
- (3) A container that has been demonstrated within the preceding twelve months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in subsection 8.

b. Transfer of hazardous secondary material in or out of a container using Container Level 2 controls must be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the department considers to meet the requirements of this subdivision include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

c. Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

- (1) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:
  - (a) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.
  - (b) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within fifteen minutes; the person

performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(2) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(a) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (for example, covers and closure devices are not required to be secured in the closed position on an empty container).

(b) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within fifteen minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material promptly shall secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(4) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device must be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens must be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(5) Opening of a safety device, as defined in section 33-24-02-201, is allowed at any time conditions require doing so to avoid an unsafe condition.

d. The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

- (1) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within twenty-four hours after the container is accepted at the facility (for example, is not an empty hazardous secondary material container), the remanufacturer or other person that stores or treats the hazardous secondary material visually shall inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (for example, the date the container becomes subject to the container standards in sections 33-24-02-200 through 33-24-02-214).
- (2) In the case when a container used for managing hazardous secondary material remains at the facility for a period of one year or more, the remanufacturer or other person that stores or treats the hazardous secondary material visually shall inspect the container and its cover and closure devices initially and thereafter, at least once every twelve months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph 3.
- (3) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material must make first efforts at repair of the defect no later than twenty-four hours after detection, and repair shall be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous secondary material must be removed from the container and the container may not be used to manage hazardous secondary material until the defect is repaired.

#### 5. Container Level 3 standards.

##### a. A container using Container Level 3 controls is one of the following:

- (1) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph 2 of subdivision b.
- (2) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs 1 and 2 of subdivision b.

##### b. The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

- (1) The container enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for

the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The closed-vent system and control device must be designed and operated in accordance with the requirements of section 33-24-02-207.

c. Safety devices, as defined in section 33-24-02-201, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of subdivision a.

d. Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of sections 33-24-02-200 through 33-24-02-214 shall inspect and monitor the closed-vent systems and control devices as specified in section 33-24-02-207.

e. Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of sections 33-24-02-200 through 33-24-02-214 shall prepare and maintain the records specified in subsection 4 of section 33-24-02-209.

f. Transfer of hazardous secondary material in or out of a container using Container Level 3 controls must be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the department considers to meet the requirements of this subdivision include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

6. For the purpose of compliance with paragraph 1 of subdivision a of subsection 3 or paragraph 1 of subdivision a of subsection 4, containers must be used that meet the applicable United States department of transportation regulations on packaging hazardous materials for transportation as follows:

a. The container meets the applicable requirements specified in 49 CFR part 178 - Specifications for Packaging or 49 CFR part 179 - Specifications for Tank Cars.

b. Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B - Special Permits; 49 CFR part 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans; 49 CFR part 173 - Shippers - General Requirements for Shipments and Packaging; and 49 CFR part 180 - Continuing Qualification and Maintenance of Packagings.

c. For the purpose of complying with sections 33-24-02-200 through 33-24-02-214, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

7. To determine compliance with the no detectable organic emissions requirement of paragraph 2 of subdivision a of subsection 4, the procedure specified in subsection 4 of section 33-24-02-203 must be used.

- a. Each potential leak interface (for example, a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, must be checked. Potential leak interfaces that are associated with containers include: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.
  - b. The test must be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices must be secured in the closed position.
8. Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph 3 of subdivision a of subsection 4.
- a. The test must be performed in accordance with Method 27 of 40 CFR part 60, appendix A.
  - b. A pressure measurement device must be used that has a precision of plus or minus 2.5 millimeters (0.1 inch) water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.
  - c. If the test results determined by Method 27 indicate the container sustains a pressure change less than or equal to seven hundred fifty pascals within five minutes after it is pressurized to a minimum of four thousand five hundred pascals, the container is determined to be vapor-tight.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-207. Standards - Closed-vent systems and control devices.**

1. This section applies to each closed-vent system and control device installed and operated by the remanufacturer or other person that stores or treats the hazardous secondary material to control air emissions in accordance with standards of sections 33-24-02-200 through 33-24-02-214.
2. The closed-vent system must meet the following requirements:
  - a. The closed-vent system must route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in subsection 3.
  - b. The closed-vent system must be designed and operated in accordance with the requirements specified in subsection 11 of section 33-24-02-173.
  - c. In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device must be equipped with either a flow indicator as specified in paragraph 1 or a seal or locking device as specified in paragraph 2. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(1) If a flow indicator is used to comply with this subdivision, the indicator must be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this subdivision, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(2) If a seal or locking device is used to comply with this subdivision, the device must be placed on the mechanism by which the bypass device position is controlled (for example, valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that stores or treats the hazardous secondary material visually shall inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

d. The closed-vent system must be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in subsection 12 of section 33-24-02-173.

3. The control device must meet the following requirements:

a. The control device must be one of the following devices:

(1) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least ninety-five percent by weight;

(2) An enclosed combustion device designed and operated in accordance with the requirements of subsection 3 of section 33-24-02-173; or

(3) A flare designed and operated in accordance with the requirements of subsection 4 of section 33-24-02-173.

b. The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs 1 through 6.

(1) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraphs 1, 2, or 3 of subdivision a, as applicable, must not exceed two hundred forty hours per year.

(2) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during periods of planned routine maintenance.

(3) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during a control device system malfunction.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of paragraph 1 (for example, planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, shall not exceed two hundred forty hours per year) by recording the information specified in paragraph 5 of subdivision a of subsection 5 of section 33-24-02-209.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(6) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (for example, periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, or fumes, or any combination, to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

c. The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the following requirements:

(1) Following the initial startup of the control device, all activated carbon in the control device must be replaced with fresh carbon on a regular basis in accordance with the requirements of subsection 7 or 8 of section 33-24-02-173.

(2) All carbon that is hazardous waste and that is removed from the control device must be managed in accordance with the requirements of subsection 14 of section 33-24-02-173, regardless of the average volatile organic concentration of the carbon.

d. A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the requirements of subsection 10 of section 33-24-02-173.

e. The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of subdivision a as follows:

(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in paragraph 3 or a design analysis as specified in paragraph 4 the performance of each control device except for the following:

(a) A flare;

(b) A boiler or process heater with a design heat input capacity of forty-four megawatts or greater;

(c) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in subsection 5 of section 33-24-02-173.

(3) For a performance test conducted to meet the requirements of paragraph 1, the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in subdivisions a through d of subsection 3 of section 33-24-02-174.

(4) For a design analysis conducted to meet the requirements of paragraph 1, the design analysis must meet the requirements specified in paragraph 3 of subdivision d of subsection 2 of section 33-24-02-175.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of subdivision a based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

f. If the remanufacturer or other person that stores or treats the hazardous secondary material and the department do not agree on a demonstration of control device performance using a design analysis, the disagreement must be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of paragraph 3 of subdivision e. The department may choose to have an authorized representative observe the performance test.

g. The closed-vent system and control device must be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in subdivision b of subsection 6 and subsection 12 of section 33-24-02-173. The readings from each monitoring device required by subdivision b of subsection 6 of section 33-24-02-173 must be inspected at least once each operating day to check control device operation. Any necessary corrective measures must be implemented immediately to ensure the control device is operated in compliance with the requirements of this section.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-208. Inspection and monitoring requirements.**

1. The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with sections 33-24-02-200 through 33-24-02-214 in accordance with the applicable requirements specified in sections 33-24-02-204 through 33-24-02-207.

2. The remanufacturer or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform<sup>4</sup> the inspections and monitoring required by subsection 1. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-02-209. Recordkeeping requirements.**

1. Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of sections 33-24-02-200 through 33-24-02-214 shall record and maintain the information specified in subsections 2 through 10, as applicable to the facility. Except for air emission control equipment design documentation and information required by subsections 9 and 10, records required by this section must be maintained at the facility for a minimum of three years. Air emission control equipment design documentation must be

maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by subsections 9 and 10 must be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in sections 33-24-02-204 through 33-24-02-207 in accordance with the conditions specified in subsection 4 or subdivision g of subsection 2 of section 33-24-02-200, respectively.

2. The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of section 33-24-02-204 shall prepare and maintain records for the tank that include the following information:

a. For each tank using air emission controls in accordance with the requirements of section 33-24-02-204, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(1) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(2) A record for each inspection required by section 33-24-02-204 which includes the following information:

(a) Date inspection was conducted.

(b) For each defect detected during the inspection: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. If repair of the defect is delayed in accordance with the requirements of section 33-24-02-204, the remanufacturer or other person that stores or treats the hazardous secondary material also shall record the reason for the delay and the date that completion of repair of the defect is expected.

b. In addition to the information required by subdivision a, the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in subsection 3 of section 33-24-02-204 shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of subsection 3 of section 33-24-02-204. The records must include the date and time the samples were collected, the analysis method used, and the analysis results.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in subsection 5 of section 33-24-02-204 shall prepare and maintain documentation describing the floating roof design.

(3) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in subsection 6 of section 33-24-02-204 shall prepare and maintain the following records:

(a) Documentation describing the floating roof design and the dimensions of the tank.

(b) Records for each seal gap inspection required by subdivision c of subsection 6 of section 33-24-02-204 describing the results of the seal gap measurements. The records must include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. If the seal gap measurements do not conform to the specifications in subdivision a of subsection 6 of section 33-24-02-204, the records must include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(4) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in subsection 9 of section 33-24-02-204 shall prepare and maintain the following records:

(a) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(b) Records required for the closed-vent system and control device in accordance with the requirements of subsection 5.

3. [Reserved]

4. The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of section 33-24-02-206 shall prepare and maintain records that include the following information:

a. Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

b. Records required for the closed-vent system and control device in accordance with the requirements of subsection 5.

5. The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of section 33-24-02-207 shall prepare and maintain records that include the following information:

a. Documentation for the closed-vent system and control device which includes:

(1) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph 2 or by performance tests as specified in paragraph 3 when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(2) If a design analysis is used, then design documentation as specified in subdivision d of subsection 2 of section 33-24-02-175. The documentation must include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or

vendor that describes the control device design in accordance with paragraph 3 of subdivision d of subsection 2 of section 33-24-02-175 and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(3) If performance tests are used, then a performance test plan as specified in subdivision c of subsection 2 of section 33-24-02-175 and all test results.

(4) Information as required by subdivisions a and b of subsection 3 of section 33-24-02-175, as applicable.

(5) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in subparagraphs a and b for those planned routine maintenance operations that would require the control device not to meet the requirements of paragraph 1, 2, or 3 of subdivision a of subsection 3 of section 33-24-02-207, as applicable.

(a) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next six-month period. This description must include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(b) A description of the planned routine maintenance that was performed for the control device during the previous six-month period. This description must include the type of maintenance performed and the total number of hours during those six months that the control device did not meet the requirements of paragraph 1, 2, or 3 of subdivision a of subsection 3 of section 33-24-02-207, as applicable, due to planned routine maintenance.

(6) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in subparagraphs a through c for those unexpected control device system malfunctions that would require the control device not to meet the requirements of paragraph 1, 2, or 3 of subdivision a of subsection 3 of section 33-24-02-207, as applicable.

(a) The occurrence and duration of each malfunction of the control device system.

(b) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

(c) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(7) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with paragraph 2 of subdivision c of subsection 3 of section 33-24-02-207.

6. The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in subsection 3 of section 33-24-02-202, shall prepare and maintain at the facility records documenting the information used for each material determination (for example, test results, measurements, calculations, and other documentation). If analysis results for material samples are used for the material determination, the remanufacturer or other person that stores or treats the hazardous

secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of section 33-24-02-203.

7. A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as "unsafe to inspect and monitor" pursuant to subsection 12 of section 33-24-02-204 or subsection 7 of section 33-24-02-205 shall record and keep at facility the following information: the identification numbers for hazardous secondary material management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

8. The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to sections 33-24-02-200 through 33-24-02-214 and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of sections 33-24-02-200 through 33-24-02-214 by documentation either pursuant to sections 33-24-02-200 through 33-24-02-214, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-02-210. [Reserved].**

**33-24-02-211. [Reserved].**

**33-24-02-212. [Reserved].**

**33-24-02-213. [Reserved].**

**33-24-02-214. [Reserved].**

## APPENDIX I

### Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the agency to be representative of the waste.

Extremely viscous liquid - ASTM Standard D140-70 Crushed or powdered material - ASTM Standard D346-75 Soil or rock-like material - ASTM Standard D420-69 Soil-like material - ASTM Standard D1452-65

Fly Ash-like material - ASTM Standard D2234-76 (ASTM Standards are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103)

~~Containerized liquid wastes - "COLIWASA," described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods,"<sup>1a</sup> United States Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460. (Copies may be obtained from Solid Waste Information, United States Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268)~~

~~Liquid waste in pits, ponds, lagoons, and similar reservoirs: - "Pond Sampler," described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."<sup>1a</sup>~~

This manual also contains additional information on application of these protocols.

~~<sup>1a</sup> These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams", EPA 600/2-80-018, January 1980.~~

## APPENDIX II

### ~~Method 1311 -- Toxicity Characteristic Leaching Procedure (TCLP)~~[\[Reserved\]](#)

Note: ~~The toxicity characteristic leaching procedure, method 1311, is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05.~~

## APPENDIX III

### ~~Chemical Analysis Test Methods~~[\[Reserved\]](#)

~~Note: Appropriate analytical procedures to determine whether a sample contains a given toxic constituent are specified in chapter two, "Choosing the Correct Procedure" found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in environmental protection agency publication SW-846, for additional guidance on which of the approved methods should be employed for a specific sample analysis situation.~~

## APPENDIX IV

### Basis for Listing Hazardous Waste

EPA Hazardous Waste No.	Hazardous Waste Constituents for Which Listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodi-benzofurans; tri- and tetrachloro-phenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F021	Penta- and hexachlorodibenzo-p-dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F023	Tetra, and pentachlorodibenzo-p-dioxins; tetra-, and pentachlorodibenzofurans; tri- and tetra-chlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1-2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes, trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; dichloromethane; 1,2,4-trichloromethane; carbon tetrachloride; chloroethylene; 1,1-dichloroethane; 1,2-dichloroethane; trans-1,2-dichloroethylene; 1,1-dichloroethylene; 1,1,1-trichloroethane; 1,1,2-trichloroethane; trichloroethylene; 1,1,1,2-tetrachloroethane; 1,1,2,2-tetrachloroethane; tetrachloroethylene; pentachloroethane; hexachloroethane; allyl chloride (3-chloropropene); dichloropropane; dichloropropene; 2-chloro-1,3-butadiene; hexachloro-1,3-butadiene; hexachlorocyclopentadiene; benzene; chlorobenzene; dichlorobenzene; 1,2,4-trichlorobenzene; tetrachlorobenzene; pentachlorobenzene; hexachlorobenzene; toluene; naphthalene.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents for which treatment standards are specified for multisource leachate (wastewaters and nonwastewaters) under <b>subsection 1</b> of section 33-24-05-283, Table CCW.
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead.
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.

EPA Hazardous Waste No.	Hazardous Waste Constituents for Which Listed
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2-chloroethyl) ethers], trichloropropane, dichloropropanols.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes, (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4-naphthoquinone.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026	Paraldehyde, pyridines, 2-picoline.
K027	Toluene diisocyanate, toluene-2,4-diamine.
K028	1,1,1-trichloroethane, vinyl chloride.
K029	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benzo(a)anthracene dibenzo(a)anthracene, acenaphthalene.
K036	Toluene, phosphorodithioic and phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, ortho-dichlorobenzene.
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead.
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K088	Cyanide (complexes).
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106	Mercury.

EPA Hazardous Waste Hazardous Waste Constituents for Which Listed

No.	
K107	1,1-Dimethylhydrazine (UDMH).
K108	1,1-Dimethylhydrazine (UDMH).
K109	1,1-Dimethylhydrazine (UDMH).
K110	1,1-Dimethylhydrazine (UDMH).
K111	2,4-dinitrotoluene.
K112	2,4-toluenediamine, o-toluidine, p-toluidine, aniline.
K113	2,4-toluenediamine, o-toluidine, p-toluidine, aniline.
K114	2,4-toluenediamine, o-toluidine, p-toluidine.
K115	2,4-toluenediamine.
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117	Ethylene dibromide.
K118	Ethylene dibromide.
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
K131	Dimethyl sulfate, methyl bromide.
K132	Methyl bromide.
K136	Ethylene dibromide.
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.
K150	Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.
K151	Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7, 12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.
K174	1,2,3,4,6,7,8-Heptachlorodibenzo- p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9- Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p- dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9- Octachlorodibenzo-p-dioxin), OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All Tetrachlorodibenzo- p-dioxins), TCDFs (All Tetrachlorodibenzofurans).
K175	Mercury.
K176	Arsenic, lead.
K177	Antimony.
K178	Thallium.
<u>K181</u>	<u>Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.</u>

N.A. - Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

## APPENDIX V

### Hazardous Constituents

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
A2213	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	30558-43-1	U394
Acetonitrile	Same	75-05-8	U003
Acetophenone	Ethanone, 1-phenyl-	98-86-2	U004
2-Acetylaminofluorone	Acetamide, N-9H-fluoren-2-yl-	53-96-3	U005
Acetyl chloride	Same	75-36-5	U006
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	591-08-2	P002
Acrolein	2-Propenal	107-02-08	P003
Acrylamide	2-Propenamamide	79-06-1	U007
Acrylonitrile	2-Propenenitrile	107-13-1	U009
Aflatoxins	Same	1402-68-2	
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116-06-3	P070
Aldicarb sulfone	Propanal, 2-methyl-2- (methylsulfonyl) -, O-[(methylamino) carbonyl] oxime	1646-88-4	P203
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a- hexahydro-, (1alpha,4alpha,4abeta,5alpha, 8alpha,8abeta)-	309-00-2	P004
Allyl alcohol	2-Propen-1-ol	107-18-6	P005
Allyl chloride	1-Propane, 3-chloro	<del>107-18-6</del> 107-05-1	
Aluminum phosphide	Same	20859-73-8	P006
4-Aminobiphenyl	[1,1'-Biphenyl]-4-amine	92-67-1	
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	2763-96-4	P007
4-Aminopyridine	4-Pyridinamine	504-24-5	P008
Amitrole	1H-1,2,4-Triazol-3-amine	61-82-5	U011
Ammonium vanadate	Vanadic acid, ammonium salt	7803-55-6	P119
Aniline	Benzenamine	62-53-3	U012
<a href="#">o-Anisidine (2-methoxyaniline)</a>	<a href="#">Benzenamine, 2-Methoxy-</a>	<a href="#">90-04-0</a>	
Antimony	Same	7440-36-0	
Antimony compounds, N.O.S. <sup>1</sup>			
Aramite	Sulfurous acid, 2-chloroethyl	140-57-8	
Arsenic	2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester	7440-38-2	
Arsenic compounds, N.O.S. <sup>1</sup>	Same		
Arsenic acid	Arsenic acid H <sub>3</sub> AsO <sub>4</sub>	7778-39-4	P010
Arsenic pentoxide	Arsenic oxide As <sub>2</sub> O <sub>5</sub>	1303-28-2	P011
Arsenic trioxide	Arsenic oxide As <sub>2</sub> O <sub>3</sub>	1327-53-3	P012
Auramine	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl	492-80-8	U014
Azaserine	L-Serine, diazoacetate (ester)	115-02-6	U015
Barban	Carbamic acid, (3-chlorophenyl) -, 4-chloro-2-butynyl ester	101-27-9	U280
Barium	Same	7440-39-3	
Barium compounds, N.O.S. <sup>1</sup>			
Barium cyanide	Same	542-62-1	P013
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781-23-3	U278
Bendiocarb pheonol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961-82-6	U364
Benomyl	Carbamic acid, [1- [(butylamino) carbonyl]-1H-benzimidazol-2-yl] -, methyl ester	17804-35-2	U271
Benz[c]acridine	Same	225-51-4	U016
Benz[a]anthracene	Same	56-55-3	U018
Benzal chloride	Benzene, (dichloromethyl)-	98-87-3	U017
Benzene	Same	71-43-2	U019
Benzeneearsonic acid	Arsonic acid, phenyl-	98-05-5	
Benzidine	[1,1'-Biphenyl]-4,4'-diamine	92-87-5	U021
Benzo[b]fluoranthene	Benze[e]acephenanthrylene	205-99-2	
Benzo[j]fluoranthene	Same	205-82-3	
Benzo[k]fluoranthene	Same	207-08-9	
Benzo[a]pyrene	Same	50-32-8	U022
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4	U197
Benzotrichloride	Benzene, (trichloromethyl)-	98-07-7	U023
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7	P028
Beryllium powder	Same	7440-41-7	P015
Beryllium compounds, N.O.S. <sup>1</sup>			
Bis (pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	
Bromoacetone	2-Propanone, 1-bromo-	598-31-2	P017
Bromoform	Methane, tribromo-	75-25-2	U225
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	101-55-3	U030

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
Brucine	Strychnidin-10-one, 2,3-dimethoxy-	357-57-3	P018
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	
Butylate	Carbamothioic acid, bis (2-methylpropyl)-,S-ethyl ester	2008-41-5	
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5	U136
Cadmium	Same	7440-43-9	
Cadmium compounds, N.O.S. <sup>1</sup>			
Calcium chromate	Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt	13765-19-0	U032
Calcium cyanide	Calcium cyanide Ca(CN) <sub>2</sub>	592-01-8	P021
Carbaryl	1-Naphthalenol, methylcarbamate	63-25-2	U279
Carbendazim	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605-21-7	U372
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-,methylcarbamate	1563-66-2	P127
Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563-38-8	U367
Carbon disulfide	Same	75-15-0	P022
Carbon oxyfluoride	Carbonic difluoride	353-50-4	U033
Carbon tetrachloride	Methane, tetrachloro-	56-23-5	U211
Carbosulfan	Carbamic acid, [(dibutylamino) thio] methyl-, 2,3-dihydro-2,2-dimethyl-7- benzofuranyl ester	55285-14-8	P189
Chloral	Acetaldehyde, trichloro-	75-87-6	U034
Chlorambucil	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305-03-3	U035
Chlordane	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7, 7a-hexahydro-	57-74-9	U036
Chlordane (alpha and gamma isomers)			U036
Chlorinated benzenes, N.O.S. <sup>1</sup>			
Chlorinated ethane, N.O.S. <sup>1</sup>			
Chlorinated fluorocarbons, N.O.S. <sup>1</sup>			
Chlorinated naphthalene, N.O.S. <sup>1</sup>			
Chlorinated phenol, N.O.S. <sup>1</sup>			
Chlornaphazin	Naphthalenamine, N,N'-bis(2-chloroethyl)-	494-03-1	U026
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0	P023
Chloroalkyl ethers, N.O.S. <sup>1</sup>			
p-Chloroaniline	Benzenamine, 4-chloro-	106-47-8	P024
Chlorobenzene	Benzene, chloro-	108-90-7	U037
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6	U038
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7	U039
2-Chloroethyl vinyl ether	Ethene, (2-chloroethoxy)-	110-75-8	U042
Chloroform	Methane, trichloro-	67-66-3	U044
Chloromethyl methyl ether	Methane, chloromethoxy-	107-30-2	U046
beta-Chloronaphthalene	Naphthalene, 2-chloro-	91-58-7	U047
o-Chlorophenol	Phenol, 2-chloro-	95-57-8	U048
1-(O-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5344-82-1	P026
Chloroprene	1,3-Butadiene, 2-chloro-	126-99-8	
3-Chloropropionitrile	Propanenitrile, 3-chloro-	542-76-7	P027
Chromium	Same	7440-47-3	
Chromium compounds, N.O.S. <sup>1</sup>			
Chrysene	Same	218-01-9	U050
Citrus red No. 2	2-Naphthalenol, 1-[(2,5-dimethoxyphenyl)azo]-	6358-53-8	
Coal tar creosote	Same	8007-45-2	
Copper cyanide	Copper cyanide CuCN	544-92-3	P029
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-, Same	137-29-1	U051
Cresote			
<a href="#">p-Cresidine</a>	<a href="#">2-Methoxy-5-methylbenzenamine</a>	<a href="#">120-71-8</a>	
Cresol (Cresylic acid)	Phenol, methyl-	1319-77-3	U052
Crotonaldehyde	2-Butenal	4170-30-3	U053
m-Cumenyl methylcarbamate	Phenol, 3-(methylethyl)-, methyl carbamate	64-00-6	P202
Cyanides (soluble salts and complexes) N.O.S. <sup>1</sup>			P030
Cyanogen	Ethanedinitrile	460-19-5	P031
Cyanogen bromide	Cyanogen bromide (CN)Br	506-68-3	U246
Cyanogen chloride	Cyanogen chloride (CN)Cl	506-77-4	P033
Cycasin	beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl	14901-08-7	
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5	P034
Cyclophosphamide	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50-18-0	U058
2,4-D	Acetic acid, (2,4-dichlorophenoxy)-	94-75-7	U240
2,4-D, salts, esters			U240
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo- hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8, 11-trihydroxy-1-methoxy-, (8S-cis)-	20830-81-3	U059

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
DDD	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72-54-8	U060
DDE	Benzene, 1,1'-dichloroethylydene)bis[4-chloro-	72-55-9	
DDT	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50-29-3	U061
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl	533-74-4	
Diallate	Carbamothioic acid, bis(1-methylethyl)-, S(2,3-dichloro-2-propenyl) ester	2303-16-4	U062
Dibenz[a,h]acridine	Same	226-36-8	
Dibenz[a,i]acridine	Same	224-42-0	
Dibenz[a,h]anthracene	Same	53-70-3	U063
7H-Dibenzo[c,g]carbazole	Same	194-59-2	
Dibenzo[a,e]pyrene	Naphtho[1,2,3,4-def]chrysene	192-65-4	
Dibenzo[a,h]pyrene	Dibenzo[b,def]chrysene	189-64-0	
Dibenzo[a,i]pyrene	Benzo[rs]t]pentaphene	189-55-9	U064
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	96-12-8	U066
Dibutyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	U069
o-Dichlorobenzene	Benzene, 1,2-dichloro-	95-50-1	U070
m-Dichlorobenzene	Benzene, 1,3-dichloro-	541-73-1	U071
p-Dichlorobenzene	Benzene, 1,4-dichloro-	106-46-7	U072
Dichlorobenzene, N.O.S. <sup>1</sup>	Benzene, dichloro-	25321-22-6	
3,3'-Dichlorobenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	91-94-1	U073
1,4-Dichloro-2-butene	2-Butene, 1,4-dichloro-	764-41-0	U074
Dichlorodifluoromethane	Methane, dichlorodifluoro-	75-71-8	U075
Dichloroethylene, N.O.S. <sup>1</sup>	Dichloroethylene	25323-30-2	
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	75-35-4	U078
1,2-Dichloroethylene	Ethene, 1,2-dichloro-, (E)-	156-60-5	U079
Dichloroethyl ether	Ethane, 1,1'-oxybis[2-chloro-	111-44-4	U025
Dichloroisopropyl ether	Propane, 2,2'-oxybis[2-chloro-	108-60-1	U027
Dichloromethoxy ethane	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	111-91-1	U024
Dichloromethyl ether	Methane, oxybis[chloro-	542-88-1	P016
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	120-83-2	U081
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	87-65-0	U082
Dichlorophenylarsine	Arsonous dichloride, phenyl-	696-28-6	P036
Dichloropropane, N.O.S. <sup>1</sup>	Propane, dichloro-	26638-19-7	
Dichloropropanol, N.O.S. <sup>1</sup>	Propanol, dichloro-	26545-73-3	
Dichloropropene, N.O.S. <sup>1</sup>	1-Propene, dichloro-	26952-23-8	
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	542-75-6	U084
Dieldrin	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7aocctahydro-, (1aalpha,2beta,2aalpha, 3beta,6beta,6aalpha,7beta,7aalpha)-	60-57-1	P037
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	1464-53-5	U085
Diethylarsine	Arsine, diethyl-	692-42-2	P038
Diethylene glycol, dicarbamate	Ethanol, 2,2'-oxybis-, dicarbamate	5952-26-1	U395
1,4-Diethyleneoxide	1,4-Dioxane	123-91-1	U108
Diethylhexyl phthalate	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	U028
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1615-80-1	U086
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58-2	U087
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5	P041
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	U088
O,O-Diethyl O-pyrazinyl phosphoro- thioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297-97-2	P040
Diethylstilbesterol	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-	56-53-1	U089
Dihydrosafrole	1,3-Benzodioxole, 5-propyl-	94-58-6	U090
Diisopropylfluorophosphate (DFP)	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4	P043
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	60-51-5	P044
3,3'-Dimethoxybenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	U091
p-Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7	U093
<a href="#">2,4-Dimethylaniline (2,4-xylydine)</a>	<a href="#">Benzenamine, 2,4-dimethyl-</a>	<a href="#">95-68-1</a>	
7,12-Dimethylbenz[a]anthracene	Benz[a]anthracene, 7,12-dimethyl-	57-97-6	U094
3,3'-Dimethylbenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	119-93-7	U095
Dimethylcarbamoyl chloride	Carbamic chloride, dimethyl-	79-44-7	U097
1,1-Dimethylhydrazine	Hydrazine, 1,1-dimethyl-	57-14-7	U098
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	540-73-8	U099
alpha,alpha-Dimethylphene thylamine	Benzeneethanamine, alpha,alpha-dimethyl-	122-09-8	P046
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	105-67-9	U101
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	U102
Dimethyl sulfate	Sulfuric acid, dimethyl ester	77-78-1	U103
Dimetilan	Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol- 3-yl ester	644-64-4	P191
Dinitrobenzene, N.O.S. <sup>1</sup>	Benzene, dinitro-	25154-54-5	
4,6-Dinitro-o-cresol	Phenol, 2-methyl-4,6-dinitro-	534-52-1	P047
4,6-Dintro-o-cresol salts			P047

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	51-28-5	P048
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	121-14-2	U105
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3-dinitro-	606-20-2	U106
Dinoseb	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7	P020
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	U017
Diphenylamine	Benzenamine, N-phenyl-	122-39-4	
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	122-66-7	U109
Di-n-propyl nitrosamine	1-Propanamine, N-nitroso-N-propyl-	621-64-7	U111
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	
Disulfoton	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	298-04-4	P039
Dithiobiuret	Thioimidodicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> NH	541-53-7	P049
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	
Endosulfan	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9, 9a-hexahydro-, 3-oxide	115-29-7	P050
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145-73-3	P088
Endrin	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7, 7a-octahydro-, (1aalpha,2beta,2beta,3alpha, 6alpha,6beta,7beta,7aalpha)-	72-20-8	P051
Endrin metabolites			P051
Epichlorohydrin	Oxirane, (chloromethyl)-	106-89-8	U041
Epinephrine	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-	51-43-4	P042
Ethyl carbamate (urethane)	Carbamic acid, ethyl ester	51-79-6	U238
Ethyl cyanide	Propanenitrile	107-12-0	P101
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	
Ethylenebisdithiocarbamic acid	Carbamodithioic acid, 1,2-ethanediybis-	111-54-6	U114
Ethylenebisdithiocarbamic acid, salts and esters			U114
Ethylene dibromide	Ethane, 1,2-dibromo-	106-93-4	U067
Ethylene dichloride	Ethane, 1,2-dichloro-	107-06-2	U077
Ethylene glycol monoethyl ether	Ethanol, 2-ethoxy-	110-80-5	U359
Ethyleneimine	Aziridine	151-56-4	P054
Ethylene oxide	Oxirane	75-21-8	U115
Ethylenethiourea	2-Imidazolidinethione	96-45-7	U116
Ethylidene dichloride	Ethane, 1,1-dichloro-	75-34-3	U076
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	U118
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	62-50-0	U119
Famphur	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester	52-85-7	P097
Ferbam	Iron, tris(dimethylcarbamodithioato-S,S')-,	14484-64-1	
Fluoranthene	Same	206-44-0	U120
Fluorine	Same	7782-41-4	P056
Fluoroacetamide	Acetamide, 2-fluoro-	640-19-7	P057
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	62-74-8	P058
Formaldehyde	Same	50-00-0	U122
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride	23422-53-9	P198
Formic acid	Same	64-18-6	U123
Formparante	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]-, Oxiranecarboxyaldehyde	17702-57-7	p197
Glycidylaldehyde	Oxiranecarboxyaldehyde	765-34-4	U126
Halomethanes, N.O.S. <sup>1</sup>			
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	P059
Heptachlor epoxide	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6, 6a-hexa-hydro-, (1aalpha,1bbeta,2alpha,5alpha, 5beta,6beta,6aalpha)-	1024-57-3	
Heptachlor epoxide (alpha, beta, and gamma isomers)			
Heptachlorodibenzofurans			
Heptachlorodibenzo-p-dioxins			
Hexachlorobenzene	Benzene, hexachloro-	118-74-1	U127
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	U128
Hexachlorocyclopentadiene	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	U130
Hexachlorodibenzo-p-dioxins			
Hexachlorodibenzofurans			
Hexachloroethane	Ethane, hexachloro-	67-72-1	U131
Hexachlorophene	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	70-30-4	U132

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7	U243
Hexaethyl tetraphosphate	Tetraphosphoric acid, hexaethyl ester	757-58-4	P062
Hydrazine	Same	302-01-2	U133
Hydrogen cyanide	Hydrocyanic acid	74-90-8	P063
Hydrogen fluoride	Hydrofluoric acid	7664-39-3	U134
Hydrogen sulfide	Hydrogen sulfide H <sub>2</sub> S	7783-06-4	U135
Indeno[1,2,3-cd]pyrene	Same	193-39-5	U137
3-Iodo-2-propynyl n-butylcarbamate	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	
Isobutyl alcohol	1-Propanol, 2-methyl-	78-83-1	U140
Isodrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8, 8a-hexahydro, (1alpha,4alpha,4beta,5beta, 8beta,-8beta) - Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	465-73-6 119-38-0	P060 P192
Isolan			
Isosafrole	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	U141
Kepone	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143-50-0	U142
Lasiocarpine	2-Butenoic acid, 2-methyl-,7-[[2,3-dihydroxy-2-(1-methoxyethyl)- 3-methyl-1-oxobutoxy]menthyl]- 2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7alpha]]-	303-34-1 303-34-4	4143 U143
Lead	Same	7439-92-1	
Lead compounds, N.O.S. <sup>1</sup>			
Lead acetate	Acetic acid, lead(2+) salt	301-04-2	U144
Lead phosphate	Phosphoric acid, lead(2+) salt (2:3)	7446-27-7	U145
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6	U146
Lindane	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)- 2,5-Furandione	58-89-9 108-31-6	U129 U147
Maleic anhydride	3,6-Pyridazinedione, 1,2-dihydro-	123-33-1	U148
Maleic hydrazide	Propanedinitrile	109-77-3	U149
Malononitrile	Manganese, bis(dimethylcarbamodithioato-S,S')-, L-Phenylalanine, 4-[bis(2-chloroethyl)aminol]-	15339-36-3 148-82-3	P196 U150
Manganese dimethyldithiocarbamate	Same	7439-97-6	U151
Melphalan			
Mercury			
Mercury compounds, N.O.S. <sup>1</sup>			
Mercury fulminate	Fulminic acid, mercury(2+) salt	628-86-4	P065
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	
Methacrylonitrile	2-Propenenitrile, 2-methyl-	126-98-7	U152
Methapyrilene	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5	U155
Methiocarb	Phenol, (3,5-dimethyl-4-(methylthio)-,methylcarbamate	2032-65-7	P199
Methomyl	Ethanimidothioic acid, N-[[[(methylamino)carbonyl]oxy]-, methyl ester	16752-77-5	P066
Methoxychlor	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	72-43-5	U247
Methyl bromide	Methane, bromo-	74-83-9	U029
Methyl chloride	Methane, chloro-	74-87-3	U045
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	79-22-1	U156
Methyl chloroform	Ethane, 1,1,1-trichloro-	71-55-6	U226
3-Methylcholanthrene	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5	U157
4,4'-Methylenebis (2-chloroaniline)	Benzenamine, 4,4'-methylenebis[2-chloro-	101-14-4	U158
Methylene bromide	Methane, dibromo-	74-95-3	U068
Methylene chloride	Methane, dichloro-	75-09-2	U080
Methyl ethyl ketone (MEK)	2-Butanone	78-93-3	U159
Methyl ethyl ketone peroxide	2-Butanone, peroxide	1338-23-4	U160
Methyl hydrazine	Hydrazine, methyl-	60-34-4	P068
Methyl iodide	Methane, iodo-	74-88-4	U138
Methyl isocyanate	Methane, isocyanato-	624-83-9	P064
2-Methylacetonitrile	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5	P069
Methyl methacrylate	2-Propenoic acid, 2-methyl-, methyl ester	80-62-6	U162
Methyl methanesulfonate	Methanesulfonic acid, methyl ester	66-27-3	
Methyl parathion	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298-00-0	P071
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2	U164
Metolcarb	Carbamic acid, methyl-, 3-methylphenyl ester	1129-41-5	P190
Mexacarbate	Phenol, 4-(dimethylamino)-3,5-dimethyl-,methylcarbamate (ester)	315-18-4	P128
Mitomycin C	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[[(aminocarbonyl)oxy]methyl]- 1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1alpha,8beta,8alpha,8beta)]]-	50-07-7	U010
MNNG	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7	U163
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S- ethyl ester	2212-67-1	

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
Mustard gas	Ethane, 1,1'-thiobis[2-chloro-	505-60-2	
Naphthalene	Same	91-20-3	U165
1,4-Naphthoquinone	1,4-Naphthalenedione	130-15-4	U166
alpha-Naphthylamine	1-Naphthalenamine	134-32-7	U167
beta-Naphthylamine	2-Naphthalenamine	91-59-8	U168
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	86-88-4	P072
Nickel	Same	7440-02-0	
Nickel compounds, N.O.S. <sup>1</sup>			
Nickel carbonyl	Nickel carbonyl Ni(CO) <sub>4</sub> , (T-4)-	13463-39-3	P073
Nickel cyanide	Nickel cyanide Ni(CN) <sub>2</sub>	557-19-7	P074
Nicotine	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54-11-5	P075
Nicotine salts			P075
Nitric oxide	Nitrogen oxide NO	10102-43-9	P076
p-Nitroaniline	Benzenamine, 4-nitro-	100-01-6	P077
Nitrobenzene	Benzene, nitro-	98-95-3	U169
Nitrogen dioxide	Nitrogen oxide NO <sub>2</sub>	10102-44-0	P078
Nitrogen mustard	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-	51-75-2	
Nitrogen mustard, hydrochloride salt			
Nitrogen mustard N-oxide	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-, N-oxide	126-85-2	
Nitrogen mustard, N-oxide, hydrochloride salt			
Nitroglycerin	1,2,3-Propanetriol, trinitrate	55-63-0	P081
p-Nitrophenol	Phenol, 4-nitro-	100-02-7	U170
2-Nitropropane	Propane, 2-nitro-	79-46-9	U171
Nitrosamines, N.O.S. <sup>1</sup>		35576-91-1D	
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	924-16-3	U172
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7	U173
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	55-18-5	U174
N-Nitrosodimethylamine	Methanamine, N-methyl-N-nitroso-	62-75-9	PO82
N-Nitroso-N-ethylurea	Urea, N-ethyl-N-nitroso-	759-73-9	U176
N-Nitrosomethylethylamine	Ethanamine, N-methyl-N-nitroso-	10595-95-6	
N-Nitroso-N-methylurea	Urea, N-methyl-N-nitroso-	684-93-5	U177
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	615-53-2	U178
N-Nitrosomethylvinylamine	Vinylamine, N-methyl-N-nitroso-	4549-40-0	P084
N-Nitrosomorpholine	Morpholine, 4-nitroso-	59-89-2	
N-Nitrososarcosine	Pyridine, 3-(1-nitroso-2-pyrrolidinyl)-, (S)-	16543-55-8	
N-Nitrosopiperidine	Piperidine, 1-nitroso-	100-75-4	U179
N-Nitrosopyrrolidine	Pyrrolidine, 1-nitroso-	93055-2	U180
N-Nitrososarcosine	Glycine, N-methyl-N-nitroso-	13256-22-9	
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	99-55-8	U181
Octachlorodibenzo-p-dioxin (OCDD)	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	3268-87-9	
Octachlorodibenzofuran (OCDF)	1,2,3,4,6,7,8,9-Octachlorodibenzofuran	39001-02-0	
Octamethylpyrophosphoramidate	Diphosphoramidate, octamethyl-	152-16-9	P085
Osmium tetroxide	Osmium oxide OsO <sub>4</sub> , (T-4)-	20816-12-0	P087
Oxamyl	Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester	23135-22-0	P194
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7	U182
Parathion	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56-38-2	P089
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	
Pentachlorobenzene	Benzene, pentachloro-	608-93-5	U183
Pentachlorodibenzo-p-dioxins			
Pentachlorodibenzofurans			
Pentachloroethane	Ethane, pentachloro-	76-01-7	U184
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	82-68-8	U185
Pentachlorophenol	Phenol, pentachloro-	87-86-5	See F027
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	62-44-2	U187
Phenol	Same	108-95-2	U188
Phenylenediamine	Benzenediamine	25265-76-3	
1,2-Phenylenediamine	1,2-Benzenediamine	95-54-5	
1,3-Phenylenediamine	1,3-Benzenediamine	108-45-2	
Phenylmercury acetate	Mercury, (acetato-O)phenyl-	62-38-4	P092
Phenylthiourea	Thiourea, phenyl-	103-85-5	P093
Phosgene	Carbonic dichloride	75-44-5	P095
Phosphine	Same	7803-51-2	P096
Phorate	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	298-02-2	P094
Phthalic acid esters, N.O.S. <sup>1</sup>			
Phthalic anhydride	1,3-Isobenzofurandione	85-44-9	U190
Physostigmine	Pyrrrolo[2,3-b]indol-5-01, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-	57-47-6	P204

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
Physostigmine salicylate	Benzoic acid, 2-hydroxy-, compd. with (3a <i>S</i> - <i>cis</i> )-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3- <i>b</i> ]indol-5-yl methylcarbamate ester (1:1).	57-64-7	P188
2-Picoline	Pyridine, 2-methyl-	109-06-8	U191
Polychlorinated biphenyls, N.O.S. <sup>1</sup>			
Potassium cyanide	Potassium cyanide K(CN)	151-50-8	P098
Potassium dimethyl-dithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	
Potassium n-hydroxymethyl-n-methyl-dithiocarbamate	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt	51026-28-9	
Potassium n-methyldithiocarbamate	Carbamodithioic acid, methyl-monopotassium salt	137-41-7	U377
Potassium pentachlorophenate	Pentachlorophenol, potassium salt	7778-73-6	
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium	506-61-6	P099
Promecarb	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631-37-0	P201
Pronamide	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5	U192
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1120-71-4	U193
Propham	Carbamic acid, phenyl-, 1-methylethyl ester	122-42-9	U373
n-Propylamine	1-Propanamine	107-10-8	U194
Propargyl alcohol	2-Propyn-1-ol	107-19-7	P102
Propylene dichloride	Propane, 1,2-dichloro-	78-87-5	U083
1,2-Propylenimine	Aziridine, 2-methyl-	75-55-8	P067
Propylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-propyl-2-thioxo-	51-52-5	
Propoxur	Phenol, 2-(1-methylethoxy)-, methylcarbamate	114-26-1	U411
Prosulfocarb	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9	U387
Pyridine	Same	110-86-1	U196
Reserpine	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-smethyl ester, (3beta,16beta,17alpha,18beta,20alpha)-	50-55-5	U200
Resorcinol	1,3-Benzenediol	108-46-3	U201
Saccharin	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81-07-2	U202
Saccharin salts			U202
Safrole	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	U203
Selenium	Same	7782-49-2	
Selenium compounds, N.O.S. <sup>1</sup>			
Selenium dioxide	Selenious acid	7783-00-8	U204
Selenium sulfide	Selenium sulfide SeS <sub>2</sub>	7488-56-4	U205
Selenium, tetrakis (dimethyl-dithiocarbamate)	Carbamodithioic acid, dimethyl-, tetraanhydro-sulfide with orthothioselenious acid	144-34-3	
Selenourea	Same	630-10-4	P103
Silver	Same	7440-22-4	
Silver compounds, N.O.S. <sup>1</sup>			
Silver cyanide	Silver cyanide Ag(CN)	506-64-9	P104
Silvex (2,4,5-TP)	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1	See F027
Sodium cyanide	Sodium cyanide Na(CN)	143-33-9	P106
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	
Sodium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	
Sodium pentachlorophenate	Pentachlorophenol, sodium salt	131-52-2	
Streptozotocin	D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino)carbonyl]amino]-Strychnidin-10-one	18883-66-4	U206
Strychnine		57-24-9	P108
Strychnine salts			P108
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	
TCDD	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	1746-01-6	
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	
Tetramethylthiuram monosulfide	Bis (dimethylthiocarbamoyl) sulfide	97-74-5	
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	95-94-3	U207
Tetrachlorodibenzo-p-dioxins			
Tetrachlorodibenzofurans			
Tetrachloroethane, N.O.S. <sup>1</sup>	Ethane, tetrachloro-, N.O.S.	25322-20-7	
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	630-20-6	U208
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	79-34-5	U209
Tetrachloroethylene	Ethene, tetrachloro-	127-18-4	U210
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	58-90-2	See F027
2,3,4,6-Tetrachlorophenol, potassium salt	Same	53535-27-6	
2,3,4,6-Tetrachlorophenol, sodium salt	Same	25567-55-9	
Tetraethyldithiopyrophosphate	Thiodiphosphoric acid, tetraethyl ester	3689-24-5	P109
Tetraethyl lead	Plumbane, tetraethyl-	78-00-2	P110
Tetraethyl pyrophosphate	Diphosphoric acid, tetraethyl ester	107-49-3	P111
Tetranitromethane	Methane, tetranitro-	509-14-8	P112
Thallium	Same	7440-28-0	
Thallium compounds, N.O.S. <sup>1</sup>			

Common Name	Chemical Abstracts Name	Chemical Abstracts No.	Hazardous Waste No.
Thallic oxide	Thallium oxide $Tl_2O_3$	1314-32-5	P113
Thallium(I) acetate	Acetic acid, thallium(1+) salt	563-68-8	U214
Thallium(I) carbonate	Carbonic acid, dithallium(1+) salt	6533-73-9	U215
Thallium(I) chloride	Thallium chloride $TlCl$	7791-12-0	U216
Thallium(I) nitrate	Nitric acid, thallium(1+) salt	10102-45-1	U217
Thallium selenite	Selenious acid, dithallium(1+) salt	12039-52-0	P114
Thallium(I) sulfate	Sulfuric acid, dithallium(1+) salt	7446-18-6	P115
Thioacetamide	Ethanethioamide	62-55-5	U218
Thiodicarb	Ethanimidothioic acid, N,N'-[thiobis[(methylimino) carbonyloxy]] bis-, dimethyl ester	59669-26-0	U410
Thiofanox	2-Butanone, 3,3-dimethyl-1-(methylthio)-, 0-[(methylamino)carbonyl] oxime	39196-18-4	P045
Thiomethanol	Methanethiol	74-93-1	U153
Thiophanate-methyl	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)] bis-, dimethyl ester	23564-05-8	U409
Thiophenol	Benzenethiol	108-98-5	P014
Thiosemicarbazide	Hydrazinecarbothioamide	79-19-6	P116
Thiourea	Same	62-56-6	U219
Thiram	Thioperoxydicarbonic diamide [( $H_2N$ )C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl-	137-26-8	U244
Tirpate	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino) carbonyl] oxime.	26419-73-8	P185
Toluene	Benzene, methyl-	108-88-3	U220
Toluenediamine	Benzenediamine, ar-methyl-	25376-45-8	U221
Toluene-2,4-diamine	1,3-Benzenediamine, 4-methyl-	95-80-7	
Toluene-2,6-diamine	1,3-Benzenediamine, 2-methyl-	823-40-5	
Toluene-3,4-diamine	1,2-Benzenediamine, 4-methyl-	496-72-0	
Toluene diisocyanate	Benzene, 1,3-diisocyanatomethyl-	26471-62-5	U223
o-Toluidine	Benzenamine, 2-methyl-	95-53-4	U328
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	636-21-5	U222
p-Toluidine	Benzenamine, 4-methyl-	106-49-0	U353
Toxaphene	Same	8001-35-2	P123
Triallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	2303-17-5	U389
1,2,4-Trichlorobenzene	Benzene, 1,2,4-trichloro-	120-82-1	
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	79-00-5	U227
Trichloroethylene	Ethene, trichloro-	79-01-6	U228
Trichloromethanethiol	Methanethiol, trichloro-	75-70-7	P118
Trichloromonofluoromethane	Methane, trichlorofluoro-	75-69-4	U121
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	95-95-4	See F027
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	88-06-2	See F027
2,4,5-T	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5	See F027
Trichloropropane, N.O.S. <sup>1</sup>		25735-29-9	
1,2,3-Trichloropropane	Propane, 1,2,3-trichloro-	96-18-4	
Triethylamine	Ethanamine, N,N-diethyl-	121-44-8	U404
O,O,O-Triethyl phosphorothioate	Phosphorothioic acid, O,O,O-triethyl ester	126-68-1	
1,3,5-Trinitrobenzene	Benzene, 1,3,5-trinitro-	99-35-4	U234
Tris(1-aziridinyl) phosphine sulfide	Aziridine, 1,1',1"-phosphinothioylidynetris-	52-24-4	
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7	U235
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'diyl) bis(azo)]- bis[5-amino-4-hydroxy-, tetrasodium salt.	72-57-1	U236
Uracil mustard	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66-75-1	U237
Vanadium pentoxide	Vanadium oxide $V_2O_5$	1314-62-1	P120
Vernolate	Carbamothioic acid, dipropyl-, S-propyl ester	1929-77-7	
Vinyl chloride	Ethene, chloro-	75-01-4	U043
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%	81-81-2	U248
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%	81-81-2	P001
Warfarin salts, when present at concentrations less than 0.3%			U248
Warfarin salts, when present at concentrations greater than 0.3%			P001
Zinc cyanide	Zinc cyanide $Zn(CN)_2$	557-21-1	P121
Zinc phosphide	Zinc phosphide $Zn_3P_2$ , when present at concentrations greater than 10%	1314-84-7	P122
Zinc phosphide	Zinc phosphide $Zn_3P_2$ , when present at concentrations of 10% or less	1314-84-7	U249
Ziram	Zinc, bis(dimethylcarbamdithioato -S,S')-, (T-4)-	137-30-4	P205

FOOTNOTE: <sup>1</sup>The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

**CHAPTER 33-24-03  
STANDARDS FOR GENERATORS**

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**33-24-03-01. Scope and applicability.**

This chapter establishes standards for generators of hazardous waste.

1. Subsections 3 and 4 of section 33-24-02-05 must be used to determine the applicability of provisions of this chapter that are dependent on calculations of the quantity of hazardous waste generated per month.

2. A generator who treats, stores, or disposes of hazardous waste onsite must only comply with the following sections of this chapter with respect to that waste: Section 33-24-03-02 for determining whether or not the generator has a hazardous waste, section 33-24-03-03 for obtaining an identification number, section 33-24-03-12 for accumulation of hazardous waste, subsections 3 and 4 of section 33-24-03-13 for recordkeeping, section 33-24-03-16 for additional reporting and if applicable, section 33-24-03-40 for farmers.
3. Any person who exports or imports hazardous waste into the United States through this state must comply with the standards applicable to generators established in this chapter.

4. Any person who exports or imports wastes that are considered hazardous under United States national procedures to or from the countries listed in subdivision a of subsection 1 of section 33-24-03-25 for recovery must comply with sections 33-24-03-50 through 33-24-03-59. A waste is considered hazardous under United States national procedures if the waste meets the federal definition of hazardous waste in 40 CFR 261.3 and is subject to manifesting requirements at sections 33-24-03-04 through 33-24-03-07, the universal waste management standards of sections 33-24-05-700 through 33-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33-24-05-235 through 33-24-05-249.

~~4-5.~~ A farmer who generates waste pesticides which are hazardous waste and who complies with all the requirements of section 33-24-03-40 is not required to comply with other standards in chapters 33-24-03 ~~through, 33-24-05, and~~ 33-24-06 with respect to such pesticides.

~~5-6.~~ A person who generates a hazardous waste as defined in chapter 33-24-02 is subject to the compliance requirements and penalties prescribed in North Dakota Century Code chapter 23-20.3 if the person does not comply with the requirements of this chapter.

~~6-7.~~ An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this chapter.

~~7-8.~~ Persons responding to an explosives or munitions emergency in accordance with subparagraph d of paragraph 1 of subdivision g of subsection 6 of section 33-24-05-01 or paragraph 4 of subdivision g of subsection 6 of section 33-24-05-01 or 40 CFR 265.1(c)(11)(i) (D) or (iv) as incorporated by reference at subsection 5 of section 33-24-06-16, and item 4 of subparagraph a and subparagraph c of paragraph 9 of subdivision b of subsection 2 of section 33-24-06-01, are not required to comply with the standards of chapter 33-24-03.

9. The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of sections 33-24-03-60 through 33-24-03-77 are not subject to (for purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in section 33-24-03-61):

a. The requirements of section 33-24-03-02 or subsection 3 of section 33-24-03-12, for large quantity generators and small quantity generators, except as provided in sections 33-24-03-60 through 33-24-03-77; and

b. The conditions of subsection 2 of section 33-24-02-05, for conditionally exempt small quantity generators, except as provided in sections 33-24-03-60 through 33-24-03-77.

Note 1: The provisions of section 33-24-03-12 are applicable to the onsite accumulation of hazardous waste by generators. Therefore, the provisions of section 33-24-03-12 only apply to owners or operators who are shipping hazardous waste that they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste onsite must comply with the applicable standards and permit requirements set forth in chapters 33-24-05 and 33-24-06.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-02. Hazardous waste determination.**

A person who generates a solid waste as defined in section 33-24-02-02 must determine if that waste is a hazardous waste using the following method:

1. The person should first determine if the waste is excluded from regulation under section 33-24-02-04;
2. The person must then determine if the waste is listed as a hazardous waste in chapter 33-24-02; and
3. For purposes of compliance with sections 33-24-05-250 through 33-24-05-299, or if the waste is not listed in sections 33-24-02-15 through 33-24-02-18, the generator must then determine whether the waste is identified in sections 33-24-02-10 through 33-24-02-14 by either:
  - a. Testing the waste according to the methods set forth in chapter 33-24-02 or an equivalent method as approved by the department; or
  - b. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.
  - c. All waste analysis pursuant to subdivision a must be conducted by a laboratory approved by the department's certification procedures.
4. If the waste is determined to be hazardous, the generator must refer to ~~chapters~~[chapter 33-24-02](#) and ~~33-24-05~~[sections 33-24-05-01 through 33-24-05-559, sections 33-24-05-700 through 33-24-05-1149, and subsection 5 of section 33-24-06-16](#) for possible exclusions or restrictions pertaining to management of the generator's specific waste.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-03. Identification number and registration certificate.**

1. A generator may not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an identification number and a registration certificate from the department.
2. A generator who has not received an identification number and a registration certificate may obtain one by applying to the department. Upon receiving the request the department will assign an identification number and issue a registration certificate to the generator.
3. A generator may not offer the generator's hazardous waste to transporters that have not received an identification number and a transporter permit, or to treatment, storage, or disposal facilities that have not received an identification number and applied for a [hazardous waste](#) permit.
4. The department may assess and collect reasonable fees for the issuance of registration certificates.

**History:** Effective January 1, 1984; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03, 23-20.3-05.1

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05.1

**33-24-03-04. General requirements of the manifest.**

1. A generator who transports, or offers for ~~transportation~~, transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a ~~uniform hazardous waste~~-manifest, on environmental protection agency form 8700-22, and if necessary, environmental protection agency form ~~8700-22a~~8700-22A, according to instructions included in appendix I to this chapter.
  - a. The revised manifest form and procedures in sections 33-24-01-04, 33-24-02-07, 33-24-03-04, 33-24-03-05, subsection 6 of section 33-24-03-07, sections 33-24-03-10, 33-24-03-12, 33-24-03-21, 33-24-03-30, and appendix I to this chapter, shall not apply until September 5, 2006, or article 33-24 is amended and effective, but not prior to September 5, 2006. The manifest form and procedures in sections 33-24-01-04, 33-24-02-07, 33-24-03-04, 33-24-03-05, 33-24-03-10, 33-24-03-12, 33-24-03-21, 33-24-03-30, and appendix I to this chapter contained in article 33-24, amended December 1, 2003, shall be applicable until September 5, 2006, or when amended, but not prior to September 5, 2006.
  - b. Electronic manifest. In lieu of using the manifest form specified in subsection 1, a person required to prepare a manifest under subsection 1 may prepare and use an electronic manifest, provided that the person:
    - (1) Complies with the requirements in subsection 8 of section 33-24-03-07 for use of electronic manifests; and
    - (2) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to the environmental protection agency.
2. A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.
3. A generator may also designate on the manifest one alternate facility which is permitted to handle the generator's waste in the event an emergency prevents delivery of the waste to the primary designated facility.
4. If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.
5. The requirements of sections 33-24-03-04 through 33-24-03-07 do not apply to hazardous waste produced by generators of greater than one hundred kilograms but less than one thousand kilograms in a calendar month where:
  - a. The waste is reclaimed under a contractual agreement pursuant to which:
    - (1) The type of waste and frequency of shipments are specified in the agreement; and
    - (2) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and
  - b. The generator maintains a copy of the reclamation agreement in the generator's files for a period of at least three years after termination or expiration of the agreement.

6. The requirements of sections 33-24-03-04 through 33-24-03-07 and subsection 2 of section 33-24-03-10 do not apply to the transport of hazardous wastes on a public or private right of way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right of way. Notwithstanding subsection 1 of section 33-24-04-01, the generator or transporter must comply with the requirements for transporters set forth in sections 33-24-04-07 and 33-24-04-08 in the event of a discharge of hazardous waste on a public or private right of way.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-05. ~~Acquisition of manifests~~ Manifest tracking numbers, manifest printing, and obtaining manifests.**

1. ~~If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator must use that manifest.~~ A registrant:
  - a. May not print, or have printed, the manifest for use of distribution unless it has received approval from the environmental protection agency director of the office of resource conservation and recovery to do so under subsections 3 and 5.
  - b. The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to the registrant's manifests.
2. ~~If the consignment state does not supply the manifest, then the generator may obtain the manifest from any source.~~ A registrant must submit an initial application to the environmental protection agency director of the office of resource conservation and recovery that contains the following information:
  - a. Name and mailing address of registrant;
  - b. Name, telephone number, and email address of contact person;
  - c. Brief description of registrant's government or business activity;
  - d. Environmental protection agency identification number of the registrant, if applicable;
  - e. Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:
    - (1) A description of the printing operation. The description should include an explanation of whether the registrant intends to print the registrant's manifests in-house (for example, using the registrant's own printing establishments) or through a separate (for example, unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on the registrant's behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (for example, prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company.

(2) A description of how the registrant will ensure that the registrant's organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be preprinted on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will preprint a unique number on each form (for example, crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(3) An indication of whether the registrant intends to use the manifests for the registrant's own business operations or to distribute the manifests to a separate company or to the general public (for example, for purchase).

f. A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (for example, corporate brochures, product samples, customer references, documentation of international organization for standardization certification), so long as such information pertains to the establishments or company being proposed to print the manifest.

g. Proposed unique three letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to preprint a unique manifest tracking number on each manifest.

h. A signed certification by a duly authorized employee of the registrant that the organizations and companies in the registrant's application will comply with the procedures of its approved application and the requirements of this section and that the registrant will notify the environmental protection agency director of the office of resource conservation and recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

3. The environmental protection agency will review the application submitted under subsection 2 and either approve the application or request additional information or modification before approving the application.

4. The environmental protection agency upon approval of the application under subsection 3:

a. Will provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in subdivision c of this subsection. The registrant's samples must meet all of the specifications in subsection 6 and be printed by the company that will print the manifest as identified in the application approved under subsection 3.

b. The registrant must submit a description of the manifest samples as follows:

(1) Paper type (for example, manufacturer and grade of the manifest paper);

(2) Paper weight of each copy;

(3) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and

(4) Method of binding the copies.

c. The registrant need not submit samples of the continuation sheet if the registrant will print the registrant's continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

5. The environmental protection agency will evaluate the forms and either approve the registrant to print the forms as proposed or request additional information or modification to the forms before approval. The environmental protection agency will notify the registrant of the environmental protection agency's decision by mail. The registrant cannot use or distribute the registrant's forms until the environmental protection agency approves the forms. An approved registrant must print the manifest and continuation sheet according to the registrant's application approved under subsection 3 and the manifest specifications in subsection 6. The registrant also must print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of the registrant's approved forms.

6. Paper manifests and continuation sheets must be printed according to the following specifications:

a. The manifest and continuation sheet must be printed with the exact format and appearance as environmental protection agency forms 8700-22 and 8700-22a, respectively. However, information required to complete the manifest may be preprinted on the manifest form.

b. A unique manifest tracking number assigned in accordance with a numbering system approved by environmental protection agency must be preprinted in item 4 of the manifest. The tracking number must consist of a unique three letter suffix following nine digits.

c. The manifest and continuation sheet must be printed on eight and one half by eleven inch white paper, excluding common stubs (for example, top or side bound stubs). The paper must be durable enough to withstand normal use.

d. The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be printed with a distinct ink color or with another method (for example, white text against black background, in text box, or, black text against gray background in text box) that clearly distinguishes the copy distribution notations from the other text and data entries on the form.

e. The manifest and continuation sheet must be printed as six copy forms. Copy to copy registration must be exact within one thirty-second of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

f. Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(1) Page 1 (top copy): "designated facility to destination state (if required)".

(2) Page 2: "designated facility to generator state (if required)".

(3) Page 3: "designated facility to generator".

(4) Page 4: "designated facility's copy".

(5) Page 5: "transporters' copy".

(6) Page 6 (bottom copy): "generator's initial copy".

g. The instructions in the appendix to 40 CFR regulations part 262 must appear legibly on the back of the copies of the manifest and continuation sheet as provided in subsection 6. The instructions must not be visible through the front of the copies when photocopied or faxed.

(1) Manifest form 8700-22.

(a) The "instructions for generators" on copy 6;

(b) The "instructions for international shipment block" and "instructions for transporters" on copy 5; and

(c) The "instructions for treatment, storage, and disposal facilities" on copy 4.

(2) Manifest form 8700-22a.

(a) The "instructions for generators" on copy 6;

(b) The "instructions for transporters" on copy 5; and

(c) The "instructions for treatment, storage, and disposal facilities" on copy 4.

#### 7. A generator:

a. May use manifests printed by any source so long as the source of the printed form has received approval from the environmental protection agency to print the manifest under subsections 3 and 5. A registered source may be a:

(1) State agency;

(2) Commercial printer;

(3) Hazardous waste generator, transporter or treatment, storage, or disposal facility; or

(4) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

b. Must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

#### 8. Registrant requests.

a. If an approved registrant would like to update any of the information provided in its application approved under subsection 3 (for example, to update a company phone number or name of contact person), the registrant must revise the application and submit it to the environmental protection agency director of the office of resource conservation and recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The agency either will approve or deny the revision.

If the agency denies the revision, the agency will explain the reasons for the denial, and the agency will contact the registrant and request further modification before approval.

b. If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the environmental protection agency director of the office of resource conservation and recovery, along with the reason for requesting a new tracking number suffix. The agency will either approve the suffix or deny the suffix and provide an explanation why the proposed suffix is not acceptable.

c. If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of the registrant's manifest or continuation sheet subsequent to approval under subsection 5, then the registrant must submit three samples of the revised form for the environmental protection agency review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. The environmental protection agency will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to the manifests before approval. The environmental protection agency will notify the registrant of the agency's decision by mail. The registrant cannot use or distribute the registrant's revised forms until the environmental protection agency approves the forms.

9. If, subsequent to the registrant's approval under subsection 5, a registrant typesets the registrant's manifest or continuation sheet instead of using the electronic file of the forms provided by the environmental protection agency, the registrant must submit three samples of the manifest or continuation sheet to the registry for approval. The environmental protection agency will evaluate the manifest or continuation sheet and either approve the registrant to print the manifest or continuation sheet as proposed or request additional information or modification to the manifest or continuation sheet before approval. The environmental protection agency will notify the registrant of the agency's decision by mail. The registrant cannot use or distribute its typeset forms until the environmental protection agency approves the forms.

10. The environmental protection agency may exempt a registrant from the requirement to submit form samples under subsection 4 or subdivision c of subsection 8 if the agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision (for example, a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant). A registrant may request an exemption from the environmental protection agency by indicating why an exemption is warranted.

11. An approved registrant must notify the environmental protection agency by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

12. If, subsequent to approval of a registrant under subsection 5, the environmental protection agency becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, the environmental protection agency will contact the registrant and require modifications to the form.

13. The environmental protection agency:

a. May suspend and, if necessary, revoke printing privileges if the agency find that the registrant:

(1) Has used or distributed forms that deviate from the registrant's approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(2) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

b. Will send a warning letter to the registrant that specifies the date by which the registrant must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, the environmental protection agency will send a second letter notifying the registrant that the environmental protection agency has suspended or revoked the registrant's printing privileges. An approved registrant must provide information on the registrant's printing activities to the environmental protection agency if requested.

**History:** Effective January 1, 1984; amended effective October 1, 1986; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-07. Use of the manifest.**

1. The generator must:
  - a. Sign the manifest certification by hand;
  - b. Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and
  - c. Retain one copy, in accordance with subsection 1 of section 33-24-03-13.
2. The generator must give the transporter the remaining copies of the manifest.
3. For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.
4. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:
  - a. The next nonrail transporter, if any;
  - b. The designated facility if transported solely by rail; or
  - c. The last rail transporter to handle the waste in the United States if exported by rail.
5. For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.
6. Waste minimization certification. A generator who initiates a shipment of hazardous waste must certify to one of the following statements in item 15 of the uniform hazardous waste manifest:

a. "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

b. "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

7. For rejected shipments of hazardous waste or container residues contained in nonempty containers that are returned to the generator by the designated facility (following the procedures of subsection 6 of section 33-24-05-39), the generator must:

a. Sign either:

(1) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(2) Item 18c of the original manifest if the original manifest is used for the returned shipment.

b. Provide the transporter a copy of the manifest;

c. Within thirty days of delivery of the rejected shipment or container residues contained in nonempty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

d. Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

8. Use of the electronic manifest. Electronic manifests are equivalent to paper manifests.

a. Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33-24-03-04, and used in accordance with this subsection in lieu of environmental protection agency forms 8700-22 and 8700-22a are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these rules to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(2) Any requirement in these rules to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these rules for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency or authorized department representative.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under this subsection if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

- b. A generator may participate in the electronic manifest system either by accessing the electronic manifest system from the generator's own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for offsite transportation.
- c. Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system.
- d. Requirement for one printed copy. To the extent the hazardous materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.
- e. Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet in accordance with the manifest instructions in appendix I to this chapter, and use these paper forms from this point forward in accordance with the requirements of subsections 1 through 7.
- f. Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator or offeror certification on the printed copy of the manifest provided under subdivision d.
- g. Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by the environmental protection agency for the origination of each electronic manifest. The environmental protection agency shall maintain and update from time-to-time the schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The schedule of electronic manifest user fees shall be published by the environmental protection agency as an appendix to 40 CFR Part 262.

9. Electronic manifest signatures. Electronic signature methods for the e-manifest system shall:

- a. Be a legally valid and enforceable signature under applicable environmental protection agency and other federal requirements pertaining to electronic signatures; and
- b. Be a method that is designed and implemented in a manner that the environmental protection agency considers to be as cost-effective and practical as possible for users of the manifest.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-03-10. Marking.

1. Before transporting or offering hazardous waste for transportation offsite, a generator must mark each package of hazardous waste in accordance with the applicable department of transportation regulations on hazardous materials under 49 CFR part 172.
2. Before transporting hazardous waste or offering hazardous waste for transportation offsite, a generator must mark each container of one hundred ~~ten~~nineteen gallons [~~416.40 liters~~]-or less used in such transportation with the following words and information ~~displayed~~ in accordance with the requirements of 49 CFR part 172.304:

HAZARDOUS WASTE - Federal Law prohibits improper disposal. If found, contact the nearest police or public safety authority or the U.S. United States Environmental Protection Agency.

~~Generator~~Generator's Name and Address \_\_\_\_\_.

Generator's Identification Number \_\_\_\_\_.

Manifest ~~Document~~Tracking Number \_\_\_\_\_.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-03-12. Accumulation time.

1. Except as provided in subsections 4, 5, and 6, a generator may accumulate hazardous waste onsite for ninety days or less without a permit or without having interim status provided that:
  - a. The waste is placed:
    - (1) In containers and the generator complies with the applicable requirements of sections 33-24-05-89 through 33-24-05-102 and sections 33-24-05-400 through 33-24-05-474;
    - (2) In tanks and the generator complies with the applicable requirements of sections 33-24-05-103 through 33-24-05-115 and sections 33-24-05-400 through 33-24-05-474, except subsection 3 of section 33-24-05-110 and section 33-24-05-113;
    - (3) On drip pads and the generator complies with sections 33-24-05-501 through 33-24-05-524 and maintains the following records at the facility:
      - (a) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and
      - (b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; or
    - (4) In containment buildings and the generator complies with sections 33-24-05-475 through 33-24-05-500 and has placed its professional engineer certification that the building complies with the design standards specified in section 33-24-05-476 in the facility's operating record no later than sixty days after the date of initial operation of the unit. After February 18, 1993, professional engineer certification will be required

prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

- (a) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or
- (b) Documentation that the unit is emptied at least once every ninety days.

In addition, such a generator is exempt from all the requirements in sections 33-24-05-59 through 33-24-05-88, except for sections 33-24-05-60 and 33-24-05-63;

- b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
  - c. While being accumulated onsite, each container and tank is properly labeled or marked with the words "Hazardous Waste"; and
  - d. The generator complies with the requirements for owners or operators in sections 33-24-05-15 through 33-24-05-36, with section 33-24-05-07, and with ~~subdivision e of subsection 1 of section 33-24-05-256~~all applicable requirements under sections 33-24-05-250 through 33-24-05-299.
2. A generator of one thousand kilograms or greater of hazardous waste in a calendar month, or greater than one kilogram of acute hazardous waste listed in section 33-24-02-16 or subsection 5 of section 33-24-02-18 in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than ninety days is an operator of a storage facility and is subject to the requirements of ~~chapter 33-24-05~~sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, 33-24-05-950 through 33-24-05-1149, subsection 5 of section 33-24-06-16 and the permit requirements of chapter 33-24-06; unless the generator has been granted an extension to the ninety-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than ninety days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.
3. A generator may accumulate as much as fifty-five gallons of hazardous waste or one quart of acutely hazardous waste listed in section 33-24-02-16 or subsection 5 of section 33-24-02-18 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with ~~subsection 1~~subsections 1 or 4 provided the operator:
- a. Complies with sections 33-24-05-90, 33-24-05-91, and subsection 1 of section 33-24-05-92; and
  - b. Marks the operator's containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
  - c. A generator who accumulates either hazardous waste or acutely hazardous waste listed in section 33-24-02-16 or subsection 5 of section 33-24-02-18 in excess of the amounts listed in subsection 3 at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection 1 or other applicable provisions of this section. During the three-day period, the generator must continue to comply with subdivisions a and b. The generator must mark the container holding the

excess accumulation of hazardous waste with the date the excess amount began accumulating.

4. A generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month may accumulate hazardous waste onsite for one hundred eighty days or less without a permit or without having interim status provided that:
  - a. The quantity of waste accumulated onsite never exceeds six thousand kilograms;
  - b. The generator complies with requirements of sections 33-24-05-89 through 33-24-05-102, except sections 33-24-05-95 and 33-24-05-98;
  - c. The generator complies with the requirements of section 33-24-05-114;
  - d. The generator complies with the requirements of subdivisions b and c of subsection 1, sections 33-24-05-12 through 33-24-05-21, ~~and the~~with all applicable requirements of ~~subdivision e of subsection 1 of section 33-24-05-256~~sections 33-24-05-250 through 33-24-05-299; and
  - e. The generator complies with the following requirements:
    - (1) At all times there must be at least one employee either on the premises or on call (for example, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all the emergency response measures specified in paragraph 4 ~~of subdivision e of subsection 4~~. This employee is the emergency coordinator.
    - (2) The generator shall post the following information next to the telephone:
      - (a) The name and telephone number of the emergency coordinator;
      - (b) Location of fire extinguishers and spill control material and, if present, fire alarm; and
      - (c) The telephone number of the fire department, unless the facility has a direct alarm.
    - (3) The generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;
    - (4) An emergency coordinator or the emergency coordinator's designee shall respond to any emergency that arises. The applicable responses are as follows:
      - (a) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;
      - (b) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil; and
      - (c) In the event of a fire, explosion, or other release which could threaten human health outside the facility, or when the generator has knowledge that a spill has reached surface water, the generator shall immediately notify the national response center using their twenty-four-hour toll-free number 1-800-424-8802. The report must include the following information:

- [1] The name, address, and identification number of the generator;
  - [2] Date, time, and type of incident (for example, spill or fire);
  - [3] Quantity and type of hazardous waste involved in the incident;
  - [4] Extent of injuries, if any; and
  - [5] Estimated quantity and disposition of recovered materials, if any.
5. A generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month and who must transport the waste, or offer the waste for transportation, over a distance of two hundred miles or more for offsite treatment, storage, or disposal may accumulate hazardous waste onsite for two hundred seventy days or less without a permit or without having interim status provided the generator complies with the requirements of subsection 4.
  6. A generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding six thousand kilograms or accumulates hazardous waste for more than one hundred eighty days (or for more than two hundred seventy days if the generator shall transport the waste or offer the waste for transportation, over a distance of two hundred miles [321.87 kilometers] or more) is an operator of a storage facility and is subject to the requirements of ~~chapter 33-24-05~~sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, 33-24-05-950 through 33-24-05-1149, subsection 5 of section 23-24-06-16 and the permit requirements of chapter 33-24-06 unless the generator has been granted an extension to one hundred eighty days (or two hundred seventy days if applicable). Such extension may be granted by the department if hazardous waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.
  7. A generator who generates one thousand kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the hazardous waste code F006, may accumulate F006 waste onsite for more than ninety days, but not more than one hundred eighty days without a permit or without having interim status provided that:
    - a. The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;
    - b. The F006 waste is legitimately recycled through metals recovery;
    - c. No more than twenty thousand kilograms of F006 waste is accumulated onsite at any one time; and
    - d. The F006 waste is managed in accordance with the following:
      - (1) The F006 waste is placed:
        - (a) In containers and the generator complies with the applicable requirements of sections 33-24-05-89 through 33-24-05-102 and sections 33-24-05-400 through 33-24-05-474;

- (b) In tanks and the generator complies with the applicable requirements of sections 33-24-05-103 through 33-24-05-117 and sections 33-24-05-400 through 33-24-05-474, except for subsection 3 of section 33-24-05-110 and section 33-24-05-113;
  - (c) In containment buildings and the generator complies with sections 33-24-05-475 through 33-24-05-500, and has placed its professional engineer certification that the building complies with the design standards specified in section 33-24-05-476 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:
    - [1] A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one-hundred-eighty-day limit, and documentation that the generator is complying with the procedures; or
    - [2] Documentation that the unit is emptied at least once every one hundred eighty days.
  - (d) Or any combination of subparagraphs a, b, and c, as applicable;
- (2) In addition, such a generator is exempt from all the requirements in sections 33-24-05-59 through 33-24-05-88, except for sections 33-24-05-60 and 33-24-05-63;
  - (3) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;
  - (4) While being accumulated onsite, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and
  - (5) The generator complies with the requirements for owners or operators in sections 33-24-05-15 through 33-24-05-36, with section 33-24-05-07, and with subdivision e of subsection 1 of section 33-24-05-256.
8. A generator who generates one thousand kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the hazardous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of two hundred miles [321.87 kilometers] or more for offsite metals recovery, may accumulate F006 waste onsite for more than ninety days, but not more than two hundred seventy days without a permit or without having interim status if the generator complies with the requirements of subdivisions a through d of subsection 7.
9. A generator accumulating F006 waste in accordance with subsections 7 and 8 who accumulates F006 waste onsite for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles [321.87 kilometers] or more), or who accumulates more than twenty thousand kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, ~~and~~ 33-24-05-550 through 33-24-05-59933-24-05-559, 33-24-05-800 through 33-24-05-819, 33-24-05-950 through 33-24-05-1149, subsection 5 of section 33-24-06-16, and the permit requirements of chapter 33-24-06 unless the generator has been granted an extension to the one hundred eighty day

(or two hundred seventy day if applicable) period or an exception to the twenty thousand kilogram accumulation limit. Such extensions and exceptions may be granted by the department if F006 waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than twenty thousand kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the department on a case-by-case basis.

10. A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of section 33-24-05-39 may accumulate the returned waste onsite in accordance with subsections 1 and 2 or 4, 5 and 6, depending on the amount of hazardous waste onsite in that calendar month. Upon receipt of the returned shipment, the generator must:

a. Sign item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

b. Sign item 20 of the manifest, if the transporter returned the shipment using a new manifest.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-13. Recordkeeping.**

1. A generator must keep a copy of each manifest signed in accordance with subsection 1 of section 33-24-03-07 for three years or until the generator receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.
2. A generator must keep a copy of each biennial report and exception report for a period of at least three years from the due date of the report, ~~March first of each even-numbered year.~~
3. A generator must keep records of any test results, waste analyses, or other determinations made in accordance with section 33-24-03-02 for at least three years from the date the waste was last sent to onsite or offsite treatment, storage, or disposal.
4. The periods for retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

**History:** Effective January 1, 1984; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-14. Biennial reporting.**

1. A generator who ships any hazardous waste offsite to a treatment, storage, or disposal facility within the United States shall prepare and submit a single copy of a biennial report to the department by March first of each even-numbered year. The biennial report must be submitted on department-approved forms, must cover generator activities during the previous calendar year, and must include the following information:

- a. The identification number, name, and address of the generator;
  - b. The calendar year covered by the report;
  - c. The identification number, name, and address for each offsite treatment, storage, or disposal facility in the United States to which waste was shipped during the year;
  - d. The name and identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;
  - e. A description, hazardous waste number (from chapter 33-24-02), department of transportation hazard class, and quantity of each hazardous waste shipped offsite for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by identification number of each such offsite facility to which waste was shipped;
  - f. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;
  - g. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to the previous year to the extent such information is available for years prior to 1984; and
  - h. The certification signed by the generator or authorized representative.
2. Any generator who treats, stores, or disposes of hazardous waste onsite must submit a biennial report covering those wastes in accordance with the provisions of chapters 33-24-05 and 33-24-06.
  3. Reporting for exports of hazardous waste is not required on the ~~annual~~biennial report form. A separate annual report requirement is set forth in section 33-24-03-23.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-15. Exception reporting.**

1. A generator of ~~greater than~~ one thousand kilograms or greater of hazardous waste in a calendar month, or greater than one kilogram of acute hazardous waste listed in section 33-24-02-16 or subsection 5 of section 33-24-02-18 in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five days of the date the waste was accepted by the initial transporter shall contact the transporter or the owner or operator, or both, of the designated facility to determine the status of the hazardous waste.
2. A generator of ~~greater than~~ one thousand kilograms or greater of hazardous waste in a calendar month, or greater than one kilogram of acute hazardous waste listed in section 33-24-02-16 or subsection 5 of section 33-24-02-18 in a calendar month, must submit an exception report to the department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five days of the date the waste was accepted by the initial transporter. The exception report must be submitted to the department within sixty days of the date the waste was accepted by the initial transporter and must include:

- a. A legible copy of the manifest for which the generator does not have confirmation of delivery; and
  - b. A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.
3. A generator ~~who generates~~of greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within sixty days of the date the waste was accepted by the initial transporter shall submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the department.

4. For rejected shipments of hazardous waste or container residues contained in nonempty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of paragraphs a through f of subsection 5 of section 33-24-05-39), the generator must comply with the requirements of subsections 1 through 3, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of subsections 1 through 3 for a shipment forwarding such waste to an alternate facility by a designated facility:

- a. The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility; and
- b. The thirty-five, forty-five, or sixty-day time frames begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-03-17. Exports of hazardous waste.**

Sections 33-24-03-17 through 33-24-03-25 establish requirements applicable to exports of hazardous waste. Except to the extent section 33-24-03-25 provides otherwise, a primary exporter of hazardous waste ~~shall~~must comply with the special requirements of ~~these~~ sections 33-24-03-17 through 33-24-03-25 and a transporter transporting hazardous waste for export shall comply with applicable requirements of chapter 33-24-04. ~~40 CFR 262.58~~Section 33-24-03-25 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste for shipments between the United States and those countries ~~are set forth in 40 CFR 262.58.~~

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-03-20. Notification of intent to export.**

1. A primary exporter of hazardous waste shall notify the department and the environmental protection agency of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is

intended to be shipped offsite. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

- a. Name, mailing address, telephone number, and identification number of the primary exporter; and
  - b. By consignee, for each hazardous waste type:
    - (1) A description of the hazardous waste and hazardous waste number (from chapter 33-24-02), United States department of transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 CFR part 171-177;
    - (2) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;
    - (3) The estimated total quantity of the hazardous waste in units as specified in the instructions to the uniform hazardous waste manifest form (8700-22);
    - (4) All points of entry to and departure from each foreign country through which the hazardous waste will pass;
    - (5) A description of the means by which each shipment of the hazardous waste will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.)), types of container (drums, boxes, tanks, etc.);
    - (6) A description of the manner in which the hazardous waste will be treated, stored, or disposed of in the receiving country (for example, land or ocean, incineration, other land disposal, ocean dumping, recycling);
    - (7) The name and site address of the consignee and any alternate consignee; and
    - (8) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there.
2. ~~Notification~~Notifications sent by mail must be sent to the department and to the following mailing address: Office of ~~Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data~~Federal Activities, International Compliance Assurance Division (~~2222A~~2254A), Environmental Protection Agency, ~~401 M Street SW~~1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of ~~Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data~~Federal Activities, International Compliance Assurance Division (~~2222A~~), Environmental Protection Agency, Ariel Rios Building, ~~12~~Room 6144, ~~12<sup>th</sup>~~ Street and Pennsylvania Avenue NW., Washington, D.C. ~~20004~~. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export".
3. Except for changes to the telephone number in subdivision a of subsection 1, changes to paragraph 5 of subdivision b of subsection 1, and decreases in the quantity indicated pursuant to paragraph 3 of subdivision b of subsection 1 when the ~~condition~~conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter shall provide the department and the environmental protection agency with a written ~~notification~~renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph 8 of subdivision b of subsection 1 and in the ports of entry to and departure from transit countries pursuant to paragraph 4 of subdivision b of

subsection 1) has been obtained and the primary exporter receives an environmental protection agency acknowledgment of consent reflecting the receiving country's consent to the changes.

4. Upon request by the department or the environmental protection agency, a primary exporter shall furnish to the department or the environmental protection agency any additional information which a receiving country requests in order to respond to a notification.
5. A notification is complete when the department receives a notification which the department determines satisfies the requirements of subsection 1 and the requirements of the environmental protection agency such that an environmental protection agency acknowledgment of consent is issued to the primary exporter.
6. The primary exporter shall provide the department with a copy of the environmental protection agency acknowledgment of consent prior to shipment offsite.

**History:** Effective December 1, 1988; amended effective January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-21. Special manifest requirements.**

A primary exporter shall comply with the manifest requirements of sections 33-24-03-04 through 33-24-03-07 except that:

1. In lieu of the name, site address, and identification number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;
2. In lieu of the name, site address, and identification number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;
3. ~~In special handling instructions and additional information, the primary exporter shall identify the point of departure from the United States~~In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and state) from the United States;
4. The following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form: "and conforms to the terms of the attached environmental protection agency acknowledgment of consent";
5. ~~In lieu of the requirements of section 33-24-03-05, the primary exporter may obtain a manifest form from any source~~The primary exporter may obtain the manifest from any source that is registered with the United States environmental protection agency as a supplier of manifests (for example, states, waste handlers, or commercial forms printers);
6. The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in subsection 1 of section 33-24-05-39) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;
7. In lieu of the requirements of subsection 4 of section 33-24-03-04, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:
  - a. Renotify the state and the environmental protection agency of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with

subsection 3 of section 33-24-03-20 and obtain an environmental protection agency acknowledgment of consent prior to delivery; or

- b. Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and
  - c. Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.
8. The primary exporter shall attach a copy of the environmental protection agency acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipments), the primary exporter shall provide the transporter with an environmental protection agency acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipments) the primary exporter shall attach the copy of the environmental protection agency acknowledgment of consent to the shipping paper; and
9. The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with subdivision d of subsection 7 of section 33-24-04-04.

**History:** Effective December 1, 1988; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-22. Exception reports for exporters.**

In lieu of the requirements of section 33-24-03-15, a primary exporter shall file an exception report with the ~~environmental protection agency administrator~~[Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division \(2254A\), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460](#) and ~~the~~ department if [any of the following occurs](#):

1. The primary exporter has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days ~~of~~[from](#) the date it was accepted by the initial transporter; or
2. Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received; or
3. The waste is returned to the United States.

**History:** Effective December 1, 1988; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-23. Annual reports for exporters.**

1. Primary exporters of hazardous waste shall file with the environmental protection agency administrator and [the](#) department no later than March first of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports must include the following:
  - a. The identification number, name, mailing, and site address of the exporter;

- b. The calendar year covered by the report;
  - c. The name and site address of each consignee;
  - d. By consignee, for each hazardous waste exported, a description of the hazardous waste, the hazardous waste number (from chapter 33-24-02), department of transportation hazard class, the name and identification number (where applicable) for each transporter used, the total amount of waste shipped, and number of shipments pursuant to each notification; ~~and~~
  - e. Except for hazardous waste produced by exporters of greater than one hundred kilograms but less than one thousand kilograms in a calendar month, unless provided pursuant to section 33-24-03-14, in even-numbered years:
    - (1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and
    - (2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
  - f. A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.
2. Annual reports submitted by mail must be sent to the department and to the following mailing address: Office of Enforcement and Compliance Assurance, Office of ~~Compliance, Enforcement Planning, Targeting, and Data~~Federal Activities, International Compliance Assurance Division (2222A2254A), Environmental Protection Agency, 401 M Street, SW1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Building, Room 6144, 12<sup>th</sup> Street and Pennsylvania Avenue NW, Washington, D.C. 20004.

**History:** Effective December 1, 1988; amended effective January 1, 1994; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-24. Recordkeeping.**

- 1. For all exports a primary exporter shall:
  - a. Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
  - b. Keep a copy of each environmental protection agency acknowledgment of consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
  - c. Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

- d. Keep a copy of each annual report for a period of at least three years from the due date of the report.
2. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department or the administrator.

**History:** Effective December 1, 1988; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-25. International agreements. ~~[Reserved]~~**

1. Any person who exports or imports wastes that are considered hazardous under United States national procedures to or from designated member countries of the Organization for Economic Cooperation and Development as defined in subdivision a for purposes of recovery is subject to sections 33-24-03-50 through 33-24-03-59. The requirements of sections 33-24-03-17 through 33-24-03-25 and section 33-24-03-30 do not apply to such exports and imports. A waste is considered hazardous under United States national procedures if the waste meets the federal definition of hazardous waste in 40 CFR 261.3 and is subject to manifesting requirements at sections 33-24-03-04 through 33-24-03-07, the universal waste management standards of sections 33-24-05-700 through 33-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33-24-05-235 through 33-24-05-249.
  - a. For the purposes of sections 33-24-03-50 through 33-24-03-59, the designated Organization for Economic Cooperation and Development member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.
  - b. For the purposes of sections 33-24-03-50 through 33-24-03-59, Canada and Mexico are considered Organization for Economic Cooperation and Development member countries only for the purposes of transit.
2. Any person who exports hazardous waste to or imports hazardous waste from: A designated Organization for Economic Cooperation and Development member country for purposes other than recovery (for example, incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of sections 33-24-03-17 through 33-24-03-25 and section 33-24-03-30, and is not subject to the requirements of sections 33-24-03-50 through 33-24-03-59.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-30. Imports of hazardous waste.**

1. Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of this chapter and the special requirements of this section.
2. When importing a hazardous waste, a person shall meet all the requirements of ~~subsection 1 of~~ section 33-24-03-04 for the manifest except that:

- a. In place of the generator's name, address, and identification number, the name and address of the foreign generator and the importer's name, address, and identification number must be used.
- b. In place of the generator's signature on the certification statement, the United States importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.

3. ~~A person who imports hazardous waste shall obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.~~ A person who imports hazardous waste may obtain the manifest form from any source that is registered with the United States environmental protection agency as a supplier of manifests (for example, states, waste handlers, or commercial forms printers).

4. In the International Shipments block, the importer must check the import box and enter the point of entry (city and state) into the United States.

5. The importer must provide the transporter with additional copies of the manifest to be submitted by the receiving facility to the environmental protection agency and the department in accordance with subdivision c of subsection 1 of section 33-24-05-38 and the applicable requirements of subsection 5 of section 33-24-06-16.

**History:** Effective December 1, 1988; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-03-40. Farmers.**

A farmer disposing of waste pesticides from the farmer's own use which are hazardous wastes is not required to comply with the standards in this chapter or chapters 33-24-05 and 33-24-06 for those wastes provided the farmer triple rinses each emptied pesticide container in accordance with subdivision a, b, or c of subsection 45 of section 33-24-02-07 and disposes of the pesticide residues on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label.

**History:** Effective December 1, 1988; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

33-24-03-41. [Reserved].

33-24-03-42. [Reserved].

33-24-03-43. [Reserved].

33-24-03-44. [Reserved].

33-24-03-45. [Reserved].

33-24-03-46. [Reserved].

33-24-03-47. [Reserved].

33-24-03-48. [Reserved].

33-24-03-49. [Reserved].

**33-24-03-50. Transboundary movements of hazardous waste for recovery within the Organization for Economic Cooperation and Development.**

Sections 33-24-03-50 through 33-24-03-59 establish requirements applicable to transboundary movements of hazardous waste for recovery within the Organization for Economic Cooperation and Development.

1. The requirements of sections 33-24-03-50 through 33-24-03-59 apply to imports and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in subdivision a of subsection 1 of section 33-24-03-25. A waste is considered hazardous under United States national procedures if the waste:
  - a. Meets the federal definition of a hazardous waste in 40 CFR 261.3; and
  - b. Is subject to the manifesting requirements at sections 33-24-03-04 through 33-24-03-07, the universal waste management standards of sections 33-24-05-700 through 33-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33-24-05-235 through 33-24-05-249.
2. Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under chapter 33-24-03 and any exporter duties, if applicable, under sections 33-24-03-50 through 33-24-03-59.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-03-51. Definitions.

In addition to the definitions set forth in section 33-24-01-04, the following definitions apply to sections 33-24-03-50 through 33-24-03-59:

1. "Competent authority" means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.
2. "Countries concerned" means the Organization for Economic Cooperation and Development member countries of export or import and any Organization for Economic Cooperation and Development member countries of transit.
3. "Country of export" means any designated Organization for Economic Cooperation and Development member country listed in subdivision a of subsection 1 of section 33-24-03-25 from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.
4. "Country of import" means any designated Organization for Economic Cooperation and Development member country listed in subdivision a of subsection 1 of section 33-24-03-25 to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.
5. "Country of transit" means any designated Organization for Economic Cooperation and Development member country listed in subdivisions a and b of subsection 1 of section 33-24-03-25 other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.
6. "Exporter" means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States is the country of export, exporter is interpreted to mean a person domiciled in the United States.
7. "Importer" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.
8. "Organization for Economic Cooperation and Development area" means all land or marine areas under the national jurisdiction of any Organization for Economic Cooperation and Development member country listed in section 33-24-03-25. When the regulations refer to shipments to or from an Organization for Economic Cooperation and Development member country, this means Organization for Economic Cooperation and Development area.
9. "OECD" means the Organization for Economic Cooperation and Development.
10. "Recognized trader" means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.
11. "Recovery facility" means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.
12. "Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses, which include:

- a. R1 - Use as a fuel (other than in direct incineration) or other means to generate energy.
- b. R2 - Solvent reclamation/regeneration.
- c. R3 - Recycling/reclamation of organic substances which are not used as solvents.
- d. R4 - Recycling/reclamation of metals and metal compounds.
- e. R5 - Recycling/reclamation of other inorganic materials.
- f. R6 - Regeneration of acids or bases.
- g. R7 - Recovery of components used for pollution abatement.
- h. R8 - Recovery of components used from catalysts.
- i. R9 - Used oil rerefining or other reuses of previously used oil.
- j. R10 - Land treatment resulting in benefit to agriculture or ecological improvement.
- k. R11 - Uses of residual materials obtained from any of the operations numbered R1 through R10.
- l. R12 - Exchange of wastes for submission to any of the operations numbered R1 through R11.
- m. R13 - Accumulation of material intended for any operation numbered R1 through R12.

13. "Transboundary movement" means any movement of wastes from an area under the national jurisdiction of one Organization for Economic Cooperation and Development member country to an area under the national jurisdiction of another Organization for Economic Cooperation member country.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-52. General conditions.**

1. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in subsection 1 of section 33-24-03-50. The Organization for Economic Cooperation and Development Green and Amber lists are incorporated by reference in subsection 4 of section 33-24-03-59.

a. Listed wastes subject to the Green control procedures.

(1) Green wastes that are not considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50 are subject to existing controls normally applied to commercial transactions.

(2) Green wastes that are considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50 are subject to the Amber control procedures set forth in sections 33-24-03-50 through 33-24-03-59.

b. Listed wastes subject to the Amber control procedures.

- (1) Amber wastes that are considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50 are subject to the Amber control procedures set forth in sections 33-24-03-50 through 33-24-03-59.
- (2) Amber wastes that are considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50, are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated member country listed in subdivision a of subsection 1 of section 33-24-03-25 that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided.

  - (a) For United States exports, the United States shall issue an acknowledgment of receipt and assume other responsibilities of the competent authority of the country of import.
  - (b) For United States imports, the United States recovery facility or importer, or both, and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.
- (3) Amber wastes that are not considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50, but are considered hazardous by an Organization for Economic Cooperation and Development member country are subject to the Amber control procedures in the Organization for Economic Cooperation and Development member country that considers the waste hazardous. All responsibilities of the United States importer or exporter, or both, shift to the importer or exporter, or both, of the Organization for Economic Cooperation and Development member country that considers the waste hazardous unless the parties make other arrangements through contracts.

[Note to subdivision b: Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under the Resource Conservation and Recovery Act, and therefore are not subject to the Amber control procedures of sections 33-24-03-50 through 33-24-03-59. Regardless of the status of the waste under the Resource Conservation and Recovery Act, however, other federal environmental statutes (for example, the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to sections 33-24-03-50 through 33-24-03-59.]

c. Procedures for mixtures of wastes.

- (1) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50 shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

[Note to paragraph 1: The regulated community should note that some Organization for Economic Cooperation and Development member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.]

- (2) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50 are subject to the

Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

[Note to paragraph 2: The regulated community should note that some Organization for Economic Cooperation and Development member countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.]

d. Wastes not yet assigned to an Organization for Economic Cooperation and Development waste list are eligible for transboundary movements, as follows:

(1) If such wastes are considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50, such wastes are subject to the Amber control procedures.

(2) If such wastes are not considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50, such wastes are subject to the Green control procedures.

## **2. General conditions applicable to transboundary movements of hazardous waste:**

a. The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country:

b. The transboundary movement must be in compliance with applicable international transport agreements; and

[Note to subdivision b: These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SILAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).]

c. Any transit of waste through a non-Organization for Economic Cooperation and Development member country must be conducted in compliance with all applicable international and national laws and regulations.

## **3. Provisions relating to re-export for recovery to a third country:**

a. Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in subdivision a of subsection 1 of section 33-24-03-25 may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in section 33-24-03-53 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty days to object to the proposed movement.

(1) The thirty-day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgments of Receipt of the notification.

(2) The transboundary movement may commence if no objection has been lodged after the thirty-day period has passed or immediately after written consent is received from all relevant Organization for Economic Cooperation and Development importing and transit countries.

b. In the case of re-export of Amber wastes to a country other than those listed in subdivision a of subsection 1 of section 33-24-03-25, notification to and consent of the competent authorities of the Organization for Economic Cooperation and Development member country of export and any Organization for Economic Cooperation and Development member countries of transit is required as specified in subdivision a, in addition to compliance with all international agreements and arrangements to which the first importing Organization for Economic Cooperation and Development member country is a party and all applicable regulatory requirements for exports from the first country of import.

4. **Duty to return or re-export wastes subject to the Amber control procedures.** When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consents and alternative arrangements cannot be made to recover the wastes in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of subsection 3 apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

a. Return from the United States to the country of export: The United States importer must inform the environmental protection agency at the specified address in paragraph 1 of subdivision a of subsection 2 of section 33-24-03-53 and the state of the need to return the shipment. The environmental protection agency will then inform the competent authorities of the countries of export and transit, citing the reasons for returning the wastes. The United States importer must complete the return within ninety days from the time the environmental protection agency informs the country of export of the need to return the waste, unless informed in writing by the environmental protection agency of another time frame agreed to by the concerned member countries. If the return shipment will cross any transit country, the return shipment may only occur after the environmental protection agency provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the United States importer.

b. Return from the country of import to the United States: The United States exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs the environmental protection agency of the need to return the waste or such other period of time as the concerned member countries agree. The United States exporter must submit an exception report to the environmental protection agency and the state in accordance with subsection 2 of section 33-24-03-57.

5. **Duty to return wastes subject to the Amber control procedures from a country of transit.** When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

a. Return from the United States (as country of transit) to the country of export. The United States transporter must inform the environmental protection agency at the specified address in paragraph 1 of subdivision a of subsection 2 of section 33-24-03-53 and the state of the need to return the shipment. The environmental protection agency will then inform the competent authority of the country of export, citing the reasons for returning the waste. The United States transporter must complete the return within ninety days from the time the environmental protection agency informs the country of export of the

need to return the waste, unless informed in writing by the environmental protection agency of another time frame agreed to by the concerned member countries.

- b. Return from the country of transit to the United States (as country of export): The United States exporter must provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs the environmental protection agency of the need to return the waste or such other period of time as the concerned member countries agree. The United States exporter must submit an exception report to the environmental protection agency and the state in accordance with subsection 2 of section 33-24-03-57.

**6. Requirements for wastes destined for and received by R12 and R13 facilities.** The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in section 33-24-03-53 and for the movement document as set forth in section 33-24-03-54. Additional responsibilities of R12 or R13, or both, facilities include:

- a. Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1 through R11 recovery operation takes place or may take place.
- b. Within three days of the receipt of the wastes by the R12 or R13, or both, recovery facility or facilities, the facilities shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facilities shall retain the original of the movement document for three years.
- c. As soon as possible, but no later than thirty days after the completion of the R12 or R13, or both, recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facilities shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and to the state, by email, email without digital signature followed by mail, or fax followed by mail.
- d. When an R12 or R13, or both, recovery facility delivers wastes for recovery to an R1 through R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1 through R11 facility that recovery of the wastes at that facility has been completed. The R12 or R13, or both, facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.
- e. When an R12 or R13, or both, recovery facility delivers wastes for recovery to an R1 through R11 recovery facility located:
  - (1) In the initial country of export, Amber control procedures apply including a new notification;
  - (2) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

**7. Laboratory analysis exemption.** The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity

reasonably needed to perform the analysis in each particular case adequately but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis must still be appropriately packaged and labeled.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-53. Notification and consent.**

1. **Applicability.** Consent must be obtained from the competent authorities of the relevant Organization for Economic Cooperation and Development countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to sections 33-24-03-50 through 33-24-03-59. Hazardous wastes subject to the Amber control procedures are subject to the requirements of subsection 2; and wastes not identified on any list are subject to the requirements of subsection 3.

2. **Amber wastes.** Exports of hazardous wastes from the United States as described in subsection 1 of section 33-24-03-50 that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of subdivision a or b of subsection 2 are met.

a. Transactions requiring specific consent:

(1) **Notification.** At least forty-five days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, with the words "Attention: Organization for Economic Cooperation and Development Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in subsection 4. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same hazardous waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to section 33-24-03-54.

(2) **Tacit consent.** If no objection has been lodged by any countries concerned (for example, exporting, importing, or transit) to a notification provided pursuant to paragraph 1 within thirty days after the date of issuance of the acknowledgment of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the thirty-day period; renotification and renewal of all consents are required for exports after that date.

(3) **Written consent.** If the competent authorities of all the relevant Organization for Economic Cooperation and Development importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant Organization for Economic Cooperation and Development importing and transit country one calendar year after that date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

b. Transboundary movements to facilities preapproved by the competent authorities of the importing countries to accept specific wastes for recovery:

(1) Notification. The exporter must provide the environmental protection agency, and the state, a notification that contains all the information identified in subsection 4 in English, at least ten days in advance of commencing shipment to a preapproved facility. The notification must indicate that the recovery facility is preapproved, and may apply to a single specific shipment or to multiple shipments as described in paragraph 1 of subdivision a. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, with the words "Organization for Economic Cooperation and Development Export Notification - Preapproved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph 1 of subdivision a may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to section 33-24-03-54.

(2) Exports to preapproved facilities may take place after the elapse of seven working days from the issuance of an acknowledgment of receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

3. **Wastes not covered in the Organization for Economic Cooperation and Development Green and Amber lists.** Wastes destined for recovery operations, that have not been assigned to the Organization for Economic Cooperation and Development Green and Amber lists, incorporated by reference in subsection 4 of section 33-24-03-59, but which are considered hazardous under United States national procedures as defined in subsection 1 of section 33-24-03-50, are subject to the notification and consent requirements established for the Amber control procedures in accordance with subsection 2. Wastes destined for recovery operations, that have not been assigned to the Organization for Economic Cooperation and Development Green and Amber lists incorporated by reference in subsection 4 of section 33-24-03-59, and are not considered hazardous under United States national procedures as defined by subsection 1 of section 33-24-03-50 are subject to the Green control procedures.

4. **Notifications submitted under this section must include the following information:**

a. Serial number or other accepted identifier of the notification document;

b. Exporter name and identification number (if applicable), address, telephone, fax numbers, and email address;

c. Importing recovery facility name, address, telephone, fax number, email address, and technologies employed;

d. Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and email address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

e. Intended transporters or their agents, or both, address, telephone, fax, and email address;

- f. Country of export and relevant competent authority, and point of departure;
- g. Countries of transit and relevant competent authorities and points of entry and departure;
- h. Country of import and relevant competent authority, and point of entry;
- i. Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;
- j. Dates foreseen for commencement of transboundary movements;
- k. Means of transport envisaged;
- l. Designation of waste types from the appropriate Organization for Economic Cooperation and Development list incorporated by reference in subsection 4 of section 33-24-03-59, descriptions of each waste type, estimated total quantity of each, hazardous waste code, and the United Nations number for each waste type;
- m. Specification of the recovery operations as defined in section 33-24-03-51.
- n. Certification signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

[Note to subdivision n of subsection 4: The United States does not currently require financial assurance for these waste shipments. However, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.]

- 5. **Certificate of Recovery.** As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the United States recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, email without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under section 33-24-03-55.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-54. Movement document.**

- 1. All United States parties subject to the contract provisions of section 33-24-03-55 must ensure that a movement document meeting the conditions of subsection 2 of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored or sorted, or both, by the importer prior to

shipment to the final recovery facility, except as provided in subdivisions a and b of subsection 1.

a. For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water (in accordance with the manifest routing procedures at subsection 3 of section 33-24-03-07).

b. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in subsection 4 of section 33-24-03-07) to the next nonrail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

2. The movement document must include all information required under section 33-24-03-53 (for notification), as well as the following information:

a. Date movement commenced;

b. Name (if not exporter), address, telephone, fax numbers, and email of primary exporter;

c. Company name and identification number of all transporters;

d. Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

e. Any special precautions to be taken by transporters;

f. Certification signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; or

2. The shipment is directed to a recovery facility within the Organization for Economic Cooperation and Development area and no objection has been received from any of the countries concerned within the thirty-day tacit consent period; or

3. The shipment is directed to a recovery facility preapproved for that type of waste within the Organization for Economic Cooperation and Development area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

(Delete sentences that are not applicable)

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

g. Appropriate signatures for each custody transfer (for example, transporter, importer, and owner or operator of the recovery facility).

3. Exporters also must comply with the special manifest requirements of subsections 1, 2, 3, 5, and 9 of section 33-24-03-21, and importers must comply with the import requirements of section 33-24-03-30.
4. Each United States person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (for example, transporter, importer, and owner or operator of the recovery facility).
5. Within three working days of the receipt of imports subject to sections 33-24-03-50 through 33-24-03-59, the owner or operator of the United States recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, to the state and to the competent authorities of the countries of export and transit. If the concerned United States recovery facility is a R12 or R13, or both, recovery facility as defined under section 33-24-03-51, the facility shall retain the original of the movement document for three years.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-55. Contracts.**

1. Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator, or both, of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.
2. Contracts or equivalent arrangements must specify the name and identification number, where available, of subdivisions a through d of this subsection:
  - a. The generator of each type of waste;
  - b. Each person who will have physical custody of the wastes;
  - c. Each person who will have legal control of the wastes; and
  - d. The recovery facility.
3. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:
  - a. The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and
  - b. The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including,

if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

4. Contracts must specify that the importer will provide the notification required in subsection 3 of section 33-24-03-52 prior to the re-export of controlled wastes to a third country.
5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

[Note to subsection 5: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some Organization for Economic Cooperation and Development member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.]

6. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of sections 33-24-03-50 through 33-24-03-59.
7. Upon request by the environmental protection agency, United States exporters, importers, or recovery facilities must submit to the environmental protection agency copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by the environmental protection agency only as provided in 40 CFR 260.2.

[Note to subsection 7: Although the United States does not require routine submission of contracts at this time, the Organization for Economic Cooperation and Development decision allows member countries to impose such requirements. When other Organization for Economic Cooperation and Development member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, the environmental protection agency will request the required information; absent submission of such information, some Organization for Economic Cooperation and Development member countries may deny consent for the proposed movement.]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-03-56. Provisions relating to recognized traders.**

1. A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws and state rules.
2. A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of sections 33-24-03-50 through 33-24-03-59 associated with being an exporter or importer.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-03-57. Reporting and recordkeeping.

1. **Annual reports.** For all waste movements subject to sections 33-24-03-50 through 33-24-03-59, persons (for example, exporters and recognized traders) who meet the definition of primary exporter in section 33-24-03-18 or who initiate the movement documentation under section 33-24-03-54 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under section 33-24-03-54 is required to file an annual report for waste exports that are not covered under sections 33-24-03-50 through 33-24-03-59, the primary exporter or the person who initiates the movement document under section 33-24-03-54 may include all export information in one report provided the following information on exports of waste destined for recovery within the designated Organization for Economic Cooperation and Development member countries is contained in a separate section.) Such reports shall include all of the following:

- a. The identification number, name, and mailing and site address of the exporter filing the report;
- b. The calendar year covered by the report;
- c. The name and site address of each final recovery facility;
- d. By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the hazardous waste number (from sections 33-24-02-10 through 33-24-02-19), designation of waste types and applicable waste codes from the appropriate Organization for Economic Cooperation and Development waste list incorporated by reference in subsection 4 of section 33-24-03-59, department of transportation hazard class, the name and identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to sections 33-24-03-50 through 33-24-03-59, and number of shipments pursuant to each notification;
- e. In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than one hundred kilograms but less than one thousand kilograms in a calendar month, and except for hazardous waste for which information was already provided pursuant to section 33-24-03-14.
  - (1) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and
  - (2) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and
- f. A certification signed by the person acting as primary exporter or initiator of the movement document under section 33-24-03-54 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are

significant penalties for submitting false information including the possibility of fine and imprisonment.

**2. Exception reports.** Any person who meets the definition of primary exporter in section 33-24-03-18 or who initiates the movement document under section 33-24-03-54 must file an exception report in lieu of the requirements of section 33-24-03-15 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, if any of the following occurs:

- a. The primary exporter or the person who initiates the movement document has not received a copy of the hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five days from the date it was accepted by the initial transporter;
- b. Within ninety days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;
- c. The waste is returned to the United States.

**3. Recordkeeping.**

a. Persons who meet the definition of primary exporter in section 33-24-03-18 or who initiate the movement document under section 33-24-03-54 shall keep the following records:

- (1) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;
- (2) A copy of each annual report for a period of at least three years from the due date of the report;
- (3) A copy of any exception reports and a copy of each confirmation of delivery (for example, movement document) sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and
- (4) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.

b. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrator or the department.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-58. Preapproval for United States recovery facilities. [Reserved].**

### **33-24-03-59. Organization for Economic Cooperation and Development waste lists.**

1. For the purposes of sections 33-24-03-50 through 33-24-03-59, a waste is considered hazardous under United States national procedures, and subject to sections 33-24-03-50 through 33-24-03-59, if the waste:
  - a. Meets the federal definition of hazardous waste in 40 CFR 261.3; and
  - b. Is subject to either the manifesting requirements at sections 33-24-03-04 through 33-24-03-07, the universal waste management standards of sections 33-24-05-700 through 33-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33-24-05-235 through 33-24-05-249.
2. If a waste is hazardous under subsection 1 of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the Organization for Economic Cooperation and Development decision, as defined in section 33-24-03-51.
3. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in section 33-24-03-52.
4. The Organization for Economic Cooperation and Development waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "Organization for Economic Cooperation and Development waste lists") of the 2009 "guidance manual for the implementation of council decision C(2001) 107/FINAL, as amended, on the control of transboundary movements of wastes destined for recovery operations," are incorporated by reference. This incorporation by reference was approved by the director of the federal register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the federal register. The materials are available for inspection at the United States Environmental Protection Agency, Docket Center Public Reading Room, Environmental Protection Agency West, Room 3334, 1301 Constitution Avenue NW, Washington, D.C. 20004, (Docket #EPA-HQ-RCRA-2005-0018) or at the national archives and records administration, and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at the national archives and records administration, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the environmental protection agency docket center public reading room, call 202-566-1744. To contact the Organization for Economic Cooperation and Development, call +33(0) 1 45 24 81 67.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-60. Alternative requirements for hazardous waste determination and accumulation of unwanted material for laboratories owned by eligible academic entities.**

Sections 33-24-03-60 through 33-24-03-77 apply to laboratories owned by eligible academic entities that generate hazardous waste and choose to comply with these alternative requirements.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-03-61. Definitions.

In addition to the definitions set forth in section 33-24-01-04, the following definitions apply to sections 33-24-03-60 through 33-24-03-77:

1. "Central accumulation area" means an onsite hazardous waste accumulation area subject to either subsections 1 and 2 of section 33-24-03-12 (large quantity generators), or subsections 4 through 6 of sections 33-24-03-12 (small quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to sections 33-24-03-60 through 33-24-03-77 must also comply with section 33-24-03-72 when accumulating unwanted material, or hazardous waste, or both.
2. "College or university" means a private or public, post-secondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the United States department of education.
3. "Eligible academic entity" means a college or university, or a nonprofit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.
4. "Formal written affiliation agreement" for a nonprofit research institute means a written document that establishes a relationship between institutions for the purposes of research or education, or both, and is signed by authorized representatives, as defined by section 33-24-01-04, from each institution. A relationship on a project-by-project, or grant-by-grant basis, is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the accreditation council for graduate medical education, with an accredited medical program or medical school.
5. "Laboratory" means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a nonproduction basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching, or research laboratories (or diagnostic laboratories at teaching hospitals), are also considered laboratories.
6. "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (for example, at the end of a semester or academic year), or as a result of a renovation, relocation, or change in laboratory supervisor, or occupant, or both. A regularly scheduled removal of unwanted material as required by section 33-24-03-69 does not qualify as a laboratory clean-out.
7. "Laboratory worker" means a person who handles chemicals, or unwanted material, or both, in a laboratory and may include, but is not limited to, faculty, staff, postdoctoral fellows, interns, researchers, technicians, supervisors or managers, and principal investigators. A person does not need to be paid or otherwise compensated for work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.
8. "Nonprofit research institute" means an organization that conducts research as its primary function and files as a nonprofit organization under the tax code of 26 United States code 501(c)(3).

9. "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in subsection 5 of section 33-24-02-18 for reactivity.
10. "Teaching hospital" means a hospital that trains students to become physicians, nurses, or other health or laboratory personnel.
11. "Trained professional" means a person who has completed the applicable hazardous waste training requirements of section 33-24-05-07 for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with paragraph 3 of subdivision e of subsection 4 of section 33-24-03-12 for small quantity generators and conditionally exempt small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.
12. "Unwanted material" means any chemical, mixtures of chemicals, products of experiments, or other material from a laboratory that is no longer needed, wanted, or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to section 33-24-02-02, or a hazardous waste pursuant to section 33-24-02-03. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material", as allowed by paragraph 1 of subdivision a of subsection 1 of section 33-24-03-67, the equally effective term has the same meaning and is subject to the same requirements as "unwanted material" under sections 33-24-03-60 through 33-24-03-77.
13. "Working container" means a small container (for example, two gallons or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-62. Applicability of sections 33-24-03-60 through 33-24-03-77.**

1. Large quantity generators and small quantity generators. Sections 33-24-03-60 through 33-24-03-77 provide alternative requirements to the requirements in section 33-24-03-02 and subsection 3 of section 33-24-03-12 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to sections 33-24-03-60 through 33-24-03-77, provided that the eligible academic entity completes the notification requirements of section 33-24-03-64.
2. Conditionally exempt small quantity generators. Sections 33-24-03-60 through 33-24-03-77 provide alternative requirements to the conditional exemption in subsection 2 of section 33-24-02-05 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to sections 33-24-03-60 through 33-24-03-77, provided that the eligible academic entity completes the notification requirements of section 33-24-03-64.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-63. Complying with sections 33-24-03-60 through 33-24-03-77 is optional for eligible academic entities.**

1. Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with sections 33-24-03-60 through 33-24-03-77 with respect to the eligible academic entity's laboratories, as an alternative to complying with the requirements of section 33-24-03-02 and subsection 3 of section 33-24-03-12.
2. Conditionally exempt small quantity generators. Eligible academic entities have the option of complying with sections 33-24-03-60 through 33-24-03-77 with respect to the eligible academic entity's laboratories, as an alternative to complying with the conditional exemption of subsection 2 of section 33-24-02-05.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-64. Notification by an eligible academic entity electing to comply with sections 33-24-03-60 through 33-24-03-77.**

1. An eligible academic entity must notify the department, in writing, using the identification form that the eligible academic entity is electing to be subject to the requirements of sections 33-24-03-60 through 33-24-03-77 for all the laboratories owned by the eligible academic entity under the same identification number. An eligible academic entity that is a conditionally exempt small quantity generator and does not have an identification number must notify that the eligible academic entity is electing to be subject to the requirements of sections 33-24-03-60 through 33-24-03-77 for all the laboratories owned by the eligible academic entity that are onsite, as defined by section 33-24-01-04. An eligible academic entity must submit a separate notification for each identification number (or site, for conditionally exempt small quantity generators) that is electing to be subject to the requirements of sections 33-24-03-60 through 33-24-03-77, and must submit the identification form before the eligible academic entity begins operating under sections 33-24-03-60 through 33-24-03-77.
2. When submitted the identification form, the eligible academic entity must, at a minimum, fill out the following fields on the form:
  - a. Reason for submittal.
  - b. Identification number (except for conditionally exempt small quantity generators).
  - c. Site name.
  - d. Site location information.
  - e. Site land type.
  - f. North American industry classification system (NAICS) codes for the site.
  - g. Site mailing address.
  - h. Site contact person.
  - i. Operator and legal owner of the site.
  - j. Type of regulated waste activity.
  - k. Certification.

3. An eligible academic entity must keep a copy of the notification on file at the eligible academic entity for as long as eligible academic entity's laboratories are subject to sections 33-24-03-60 through 33-24-03-77.
4. A teaching hospital that is not owned by a college or university must keep a copy of the teaching hospital's formal written affiliation agreement with a college or university on file at the teaching hospital for as long as the teaching hospital's laboratories are subject to sections 33-24-03-60 through 33-24-03-77.
5. A nonprofit research institute that is not owned by a college or university must keep a copy of the nonprofit research institute's formal written affiliation agreement with a college or university on file at the nonprofit research institute for as long as the nonprofit research institute's laboratories are subject to sections 33-24-03-60 through 33-24-03-77.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-65. Notification by an eligible academic entity electing to withdraw from complying with sections 33-24-03-60 through 33-24-03-77.**

1. An eligible academic entity must notify the department, in writing, using the identification form, that it is electing to no longer be subject to the requirements of sections 33-24-03-60 through 33-24-03-77 for all the laboratories owned by the eligible academic entity under the same identification number and that the eligible academic entity will comply with the requirements of section 33-24-03-02 and subsection 3 of section 33-24-03-12 for small quantity generators and large quantity generators. An eligible academic entity that is a conditionally exempt small quantity generator and does not have an identification number must notify that the eligible academic entity is withdrawing from the requirements of sections 33-24-03-60 through 33-24-03-77 for all the laboratories owned by the eligible academic entity that are onsite and that the eligible academic entity will comply with the conditional exemption in subsection 2 of section 33-24-02-05. An eligible academic entity must submit a separate notification (identification form) for each identification number (or site, for conditionally exempt small quantity generators) that is withdrawing from the requirements of sections 33-24-03-60 through 33-24-03-77 and must submit the identification form before the eligible academic entity begins operating under the requirements of section 33-24-03-02 and subsection 3 of section 33-24-03-12 for small quantity generators and large quantity generators, or subsection 2 of section 33-24-02-05 for conditionally exempt small quantity generators.
2. When submitting the identification form, the eligible academic entity must, at a minimum, fill out the following fields on the form:
  - a. Reason for submittal.
  - b. Identification number (except for conditionally exempt small quantity generators).
  - c. Site name.
  - d. Site location information.
  - e. Site land type.
  - f. North American industry classification system (NAICS) codes for the site.
  - g. Site mailing address.
  - h. Site contact person.

i. Operator and legal owner of the site.

j. Type of regulated waste activity.

k. Certification.

3. An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-66. Requirements of sections 33-24-03-60 through 33-24-03-77.**

An eligible academic entity that chooses to be subject to sections 33-24-03-60 through 33-24-03-77 is not required to have interim status or a hazardous waste permit for the accumulation of unwanted material and hazardous waste in an eligible academic entity's laboratories, provided the laboratories comply with the provisions of sections 33-24-03-60 through 33-24-03-77, and the eligible academic entity has a laboratory management plan in accordance with section 33-24-03-75 that describes how the laboratories owned by the eligible academic entity will comply with the requirements of sections 33-24-03-60 through 33-24-03-77.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-67. Labeling and management standards for containers of unwanted material in laboratories.**

An eligible academic entity must manage containers of unwanted material while in the laboratory in accordance with the requirements in this section.

1. Label unwanted material as follows:

a. The following information must be affixed or attached to the container:

(1) The words "unwanted material" or another equally effective term that is to be used consistently by the eligible academic entity and that is identified in part 1 of the laboratory management plan; and

(2) Sufficient information to alert emergency responders to the contents of the container. Examples of information that would be sufficient to alert emergency responders to the contents of the container include, but are not limited to:

(a) The name of the chemicals; and

(b) The type or class of chemical, such as organic solvents or halogenated organic solvents.

b. The following information may be affixed or attached to the container, but must at a minimum be associated with the container:

(1) The date that the unwanted material first began accumulating in the container; and

(2) Information sufficient to allow a trained professional to properly identify whether an unwanted material is a solid and hazardous waste and to assign the proper hazardous waste codes, pursuant to section 33-24-03-02. Examples of information

that would allow a trained professional to properly identify whether an unwanted material is a solid or hazardous waste include, but are not limited to:

- (a) The name or description of the chemical contents, or both, or composition of the unwanted material, or, if known, the product of the chemical reaction;
- (b) Whether the unwanted material has been used or is unused; and
- (c) A description of the manner in which the chemical was produced or processed, if applicable.

2. Management of containers in the laboratory. An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

- a. Containers are maintained and kept in good condition and damaged containers are replaced, overpacked, or repaired; and
  - b. Containers are compatible with their contents to avoid reactions between the contents and the container; and are made of, or lined with, material that is compatible with the unwanted material so that the container's integrity is not impaired, and
  - c. Containers must be kept closed at all times, except:
    - (1) When adding, removing, or bulking unwanted material; or
    - (2) A working container may be open until the end of the procedure or work shift, or until it is full, whichever comes first, at which time the working container must either be closed or the contents emptied into a separate container that is then closed; or
    - (3) When venting of a container is necessary.
- (a) For the proper operation of laboratory equipment, such as with in-line collection of unwanted materials from high performance liquid chromatographs; or
  - (b) To prevent dangerous situations, such as buildup of extreme pressure.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-68. Training.**

An eligible academic entity must provide training to all individuals working in a laboratory at the eligible academic entity, as follows:

1. Training for laboratory workers and students must be commensurate with their duties so they understand the requirements in sections 33-24-03-60 through 33-24-03-77 and can implement them.
2. An eligible academic entity can provide training for laboratory workers and students in a variety of ways, including, but not limited to:
  - a. Instruction by the professor or laboratory manager before or during an experiment;

b. Formal classroom training;

c. Electronic or written training, or both;

d. On-the-job training; or

e. Written or oral exams.

3. An eligible academic entity that is a large quantity generator must maintain documentation for the durations specified in subsection 5 of section 33-24-05-07 demonstrating training for all laboratory workers that is sufficient to determine whether laboratory workers have been trained. Examples of documentation demonstrating training can include, but are not limited to, the following:

a. Sign-in or attendance sheets for training sessions, or both;

b. Syllabus for training sessions;

c. Certificate of training completion; or

d. Test results.

4. A trained professional must:

a. Accompany the transfer of unwanted material and hazardous waste when the unwanted material and hazardous waste is removed from the laboratory; and

b. Make the hazardous waste determination, pursuant to section 33-24-03-02, for unwanted material.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-69. Removing containers of unwanted material from the laboratory.**

1. Removing containers of unwanted material on a regular schedule. An eligible academic entity must either:

a. Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed six months; or

b. Remove containers of unwanted material from each laboratory within six months of each container's accumulation start date.

2. The eligible academic entity must specify in part I of its laboratory management plan whether the eligible academic entity will comply with subdivision a or b of subsection 1 for the regular removal of unwanted material from the eligible academic entity's laboratories.

3. The eligible academic entity must specify in part II of its laboratory management plan how the eligible academic entity will comply with subdivision a or b of subsection 1 and develop a schedule for regular removals of unwanted material from the eligible academic entity's laboratories.

4. Removing containers of unwanted material when volumes are exceeded.

a. If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous unwanted material) in excess of fifty-five gallons before the regularly scheduled removal, the eligible academic entity must ensure that all containers of

unwanted material in the laboratory (including reactive acutely hazardous unwanted material):

(1) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container) with the date that fifty-five gallons is exceeded; and

(2) Are removed from the laboratory within ten calendar days of the date that fifty-five gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.

b. If a laboratory accumulates more than one quart of reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:

(1) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container) with the date that one quart is exceeded; and

(2) Are removed from the laboratory within ten calendar days of the date that one quart was exceeded, or at the next regularly scheduled removal, whichever comes first.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-70. Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory.**

1. Large quantity generators and small quantity generators. An eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to section 33-24-03-02, for unwanted material in any of the following areas:

a. In the laboratory before the unwanted material is removed from the laboratory, in accordance with section 33-24-03-71.

b. Within four calendar days of arriving at an onsite central accumulation area, in accordance with section 33-24-03-72.

c. Within four calendar days of arriving at an onsite interim status or permitted treatment, storage, or disposal facility, in accordance with section 33-24-03-73.

2. Conditionally exempt small quantity generators. An eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to section 33-24-03-02, for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with section 33-24-03-71.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-71. Hazardous waste determination in the laboratory before the unwanted material is removed.**

If an eligible academic entity makes the hazardous waste determination, pursuant to section 33-24-03-02, for unwanted material in the laboratory, the eligible academic entity must comply with the following:

1. A trained professional must make the hazardous waste determination, pursuant to section 33-24-03-02, before the unwanted material is removed from the laboratory.
2. If an unwanted material is a hazardous waste, the eligible academic entity must:
  - a. Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory;
  - b. Write the appropriate hazardous waste codes on the label that is associated with the container (or the label that is affixed or attached to the container) before the hazardous waste is transported offsite; and
  - c. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to subsections 3 and 4 of section 33-24-02-05, in the calendar month that the hazardous waste determination was made.
3. A trained professional must accompany all hazardous waste that is transferred from the laboratory, or laboratories, to an onsite central accumulation area or onsite interim status or permitted treatment, storage, or disposal facility.
4. When hazardous waste is removed from the laboratory:
  - a. Large quantity generators and small quantity generators must ensure it is taken directly from the laboratory, or laboratories, to an offsite central accumulation area, or onsite interim status or permitted treatment, storage, or disposal facility, or transported offsite.
  - b. Conditionally exempt small quantity generators must ensure it is taken directly from the laboratory, or laboratories, to any of the types of facilities listed in subdivision c of subsection 6 of section 33-24-02-05 for acute hazardous waste, or subdivision c of subsection 7 of section 33-24-02-05 for hazardous waste.
5. An unwanted material that is a hazardous waste is subject to all applicable provisions of article 33-24, North Dakota hazardous waste management rules, when it is removed from the laboratory.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-72. Hazardous waste determination at an onsite central accumulation area.**

If an eligible academic entity makes the hazardous waste determination, pursuant to section 33-24-03-02, for unwanted material at an onsite central accumulation area, the eligible academic entity must comply with the following:

1. A trained professional must accompany all unwanted material that is transferred from the laboratory, or laboratories, to an onsite central accumulation area.
2. All unwanted material removed from the laboratory, or laboratories, must be taken directly from the laboratory, or laboratories, to the onsite central accumulation area.
3. The unwanted material becomes subject to the generator accumulation requirements of subsection 1 of section 33-24-03-12 for large quantity generators or subsections 4 through 6 of section 33-24-03-12 for small quantity generators as soon as the unwanted material arrives in the central accumulation area, except for the "hazardous waste" labeling requirements of subdivision c of subsection 1 of section 33-24-03-12.

4. A trained professional must determine, pursuant to section 33-24-03-02, if the unwanted material is a hazardous waste within four calendar days of the unwanted material's arrival at the onsite central accumulation area.
5. If the unwanted material is a hazardous waste, the eligible academic entity must:
  - a. Write the words "hazardous waste" on the container label that is affixed or attached to the container, within four calendar days of arriving at the onsite central accumulation area and before the hazardous waste may be removed from the onsite central accumulation area; and
  - b. Write the appropriate hazardous waste codes on the container label that is associated with the container (or on the label that is affixed or attached to the container) before the hazardous waste may be treated, or disposed of onsite or transported offsite; and
  - c. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to subsections 3 and 4 of section 33-24-02-05 in the calendar month that the hazardous waste determination was made; and
  - d. Manage the hazardous waste according to all applicable provisions of article 33-24, North Dakota hazardous waste management rules.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-73. Hazardous waste determination at an onsite interim status or permitted treatment, storage, or disposal facility.**

If an eligible academic entity makes the hazardous waste determination, pursuant to section 33-24-03-02, for unwanted material at an onsite interim status or permitted treatment, storage, or disposal facility, the eligible academic entity must comply with the following:

1. A trained professional must accompany all unwanted material that is transferred from the laboratory, or laboratories, to an onsite interim status or permitted treatment, storage, or disposal facility.
2. All unwanted material removed from the laboratory, or laboratories, must be taken directly from the laboratory, or laboratories, to the onsite interim status or permitted treatment, storage, or disposal facility.
3. The unwanted material becomes subject to the terms of the eligible academic entity's hazardous waste permit or interim status as soon as it arrives in the onsite treatment, storage, or disposal facility.
4. A trained professional must determine, pursuant to section 33-24-03-02, if the unwanted material is a hazardous waste within four calendar days of the unwanted material's arrival at the onsite interim status or permitted treatment, storage, or disposal facility.
5. If the unwanted material is a hazardous waste, the eligible academic entity must:
  - a. Write the words "hazardous waste" on the container label that is affixed or attached to the container within four calendar days of arriving at the onsite interim status or permitted treatment, storage, or disposal facility and before the hazardous waste may be removed from the onsite interim status or permitted treatment, storage, or disposal facility; and

- b. Write the appropriate hazardous waste codes on the container label that is associated with the container (or on the label that is affixed or attached to the container) before the hazardous waste may be treated or disposed onsite, or transported offsite; and
- c. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to subsections 3 and 4 of section 33-24-02-05 in the calendar month that the hazardous waste determination was made; and
- d. Manage the hazardous waste according to all applicable provisions of article 33-24, North Dakota hazardous waste management rules.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-74. Laboratory clean-outs.**

- 1. One time per twelve-month period for each laboratory, an eligible academic entity may choose to conduct a laboratory clean-out that is subject to all the applicable requirements of sections 33-24-03-60 through 33-24-03-77, except that:
  - a. If the volume of unwanted material in the laboratory exceeds fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), as required by section 33-24-03-69. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within thirty calendar days from the start of the laboratory clean-out; and
  - b. For the purposes of onsite accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product (listed in sections 33-24-02-15 through 33-24-02-19, or exhibiting one or more characteristics in sections 33-24-02-10 through 33-24-02-14) generated solely during the laboratory clean-out toward its hazardous waste generator status, pursuant to subsections 3 and 4 of section 33-24-02-05. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward hazardous waste generator status, pursuant to subsections 3 and 4 of section 33-24-02-05, if it is determined to be hazardous waste; and
  - c. For the purposes of offsite management, an eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator status under subdivision b, and if the eligible academic entity generates more than one kilogram per month of acute hazardous waste, or one hundred kilograms per month of hazardous waste (for example, the conditionally exempt small quantity generator limits of section 33-24-02-05), the hazardous waste is subject to all applicable hazardous waste regulations when the hazardous waste is transported offsite; and
  - d. An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of three years from the date the clean-out ends; and

2. For all other laboratory clean-outs conducted during the same twelve-month period, an eligible academic entity is subject to all the applicable requirements of sections 33-24-03-60 through 33-24-03-77, including, but not limited to:
  - a. The requirement to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), as required by section 33-24-03-69; and
  - b. The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator status, pursuant to subsections 3 and 4 of section 33-24-02-05.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-03-75. Laboratory management plan.**

An eligible academic entity must develop and retain a written laboratory management plan, or revise an existing written plan. The laboratory management plan is a site-specific document that describes how the eligible academic entity will manage unwanted materials in compliance with sections 33-24-03-60 through 33-24-03-77. An eligible academic entity may write one laboratory management plan for all the laboratories owned by the eligible academic entity that have chosen to be subject to sections 33-24-03-60 through 33-24-03-77, even if the laboratories are located at sites with different identification numbers. The laboratory management plan must contain two parts with a total of nine elements identified in subsections 1 and 2. In part I of the eligible academic entity's laboratory management plan, an eligible academic entity must describe the eligible academic entity's procedures for each of the elements listed in subsection 1. An eligible academic entity must implement and comply with the specific provisions that the eligible academic entity develops to address the elements in part I of the laboratory management plan. In part II of the eligible academic entity's laboratory management plan, an eligible academic entity must describe the eligible academic entity's best management practices for each of the elements listed in subsection 2. The specific actions taken by an eligible academic entity to implement each element in part II of the eligible academic entity's laboratory management plan may vary from the procedures described in the eligible academic entity's laboratory management plan, without constituting a violation of sections 33-24-03-60 through 33-24-03-77. An eligible academic entity may include additional elements and best management practices in part II of the eligible academic entity's laboratory management plan if the eligible academic entity chooses.

1. The eligible academic entity must implement and comply with the specific provisions of part I of the eligible academic entity's laboratory management plan. In part I of the eligible academic entity's laboratory management plan, an eligible academic entity must:
  - a. Describe procedures for container labeling in accordance with subsection 1 of section 33-24-03-67, as follows:
    - (1) Identifying whether the eligible academic entity will use the term "unwanted material" on the containers in the laboratory. If not, identify an equally effective term that will be used in lieu of "unwanted material" and consistently by the eligible academic entity. The equally effective term, if used, has the same meaning and is subject to the same requirements as "unwanted material".
    - (2) Identifying the manner in which information that is "associated with the container" will be imparted.

b. Identify whether the eligible academic entity will comply with subdivisions a or b of subsection 1 of section 33-24-03-69 for regularly scheduled removals of unwanted material from the laboratory.

2. In part II of laboratory management plan, an eligible academic entity must:

a. Describe intended best practices for container labeling and management (see the required standards at section 33-24-03-67).

b. Describe intended best practices for providing training for laboratory workers and students commensurate with their duties (subsection 1 of section 33-24-03-68).

c. Describe intended best practices for providing training to ensure safe onsite transfers of unwanted material and hazardous waste by trained professionals (subdivision a of subsection 4 of section 33-24-03-68).

d. Describe intended best practices for removing unwanted material from the laboratory, including:

(1) For regularly scheduled removals. Develop a regular schedule for identifying and removing unwanted materials from its laboratories (subdivisions a and b of subsection 1 of section 33-24-03-69).

(2) For removals when maximum volumes are exceeded:

(a) Describe intended best practices for removing unwanted materials from the laboratory within ten calendar days when unwanted materials have exceeded the unwanted materials maximum volumes (subsection 4 of section 33-24-03-69).

(b) Describe intended best practices for communicating that unwanted materials have exceeded the unwanted materials maximum volumes.

e. Describe intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process (section 33-24-03-02, and sections 33-24-03-70 through 33-24-03-73).

f. Describe intended best practices for laboratory clean-outs, if the eligible academic entity plans to use the incentives for laboratory clean-outs provided in section 33-24-03-74, including:

(1) Procedures for conducting laboratory clean-outs (subdivisions a through c of subsection 1 of section 33-24-03-74).

(2) Procedures for documenting laboratory clean-outs (subdivision d of subsection 1 of section 33-24-03-74).

g. Describe intended best practices for emergency prevention, including:

(1) Procedures for emergency prevention, notification, and response, appropriate to the hazards in the laboratory; and

(2) A list of chemicals that the eligible academic entity has, or is likely to have, that become more dangerous when the chemicals exceed their expiration date, or as they degrade, or both; and

(3) Procedures to safely dispose of chemicals that become more dangerous when the chemicals exceed their expiration date, or as they degrade, or both; and

(4) Procedures for the timely characterization of unknown chemicals.

3. An eligible academic entity must make the eligible academic entity's laboratory management plan available to laboratory workers, students, or any others at the eligible academic entity who request the laboratory management plan.
4. An eligible academic entity must review and revise the eligible academic entity's laboratory management plan, as needed.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-76. Unwanted material that is not solid waste or hazardous waste.**

1. If an unwanted material does not meet the definition of solid waste in section 33-24-02-02, the unwanted material is no longer subject to sections 33-24-03-60 through 33-24-03-77, or to article 33-24, North Dakota hazardous waste management rules.
2. If an unwanted material does not meet the definition of hazardous waste in section 33-24-02-03, the unwanted material is no longer subject to sections 33-24-03-60 through 33-24-03-77, or to article 33-24, North Dakota hazardous waste management rules, but must be managed in compliance with any other application rules, or conditions, or both.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-77. Nonlaboratory hazardous waste generated at an eligible academic entity.**

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under sections 33-24-03-60 through 33-24-03-77; and

1. Remains subject to the generator requirements of section 33-24-03-02 and subsection 3 of section 33-24-03-12 for large quantity generators and small quantity generators (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of chapter 33-24-03, with respect to that hazardous waste; or
2. Remains subject to the conditional exemption of subsection 2 of section 33-24-02-05 for conditionally exempt small quantity generators, with respect to that hazardous waste.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-03-78. [Reserved].**

**33-24-03-79. [Reserved].**

**33-24-03-80. [Reserved].**

| 33-24-03-81. [Reserved].

| 33-24-03-82. [Reserved].

| 33-24-03-83. [Reserved].

| 33-24-03-84. [Reserved].

| 33-24-03-85. [Reserved].

**APPENDIX I**  
**UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS**  
(Environmental Protection Agency Forms 8700-22 and 8700-22A and Their Instructions)

United States Environmental Protection Agency Form 8700-22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.
2. State and federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to use this form (8700-22) and, if necessary, the continuation sheet (form 8700-22A) for both interstate and intrastate transportation of hazardous waste.
3. State regulations also require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage and disposal facilities to complete the following information:

\*\*\*\*\*

- a. State regulations under section 33-24-03-16 (additional reporting) requires the generator to provide the department with a signed copy of the manifest when first signed by the generator and transporter and as signed by and received from the designated facility or alternate facility.

\*\*\*\*\*

**GENERATORS**

~~**Item 1. Generator's state/environmental protection agency identification number -- Manifest document number**~~

~~—Enter the generator's state/Environmental Protection Agency twelve-digit identification number and clear the unique five-digit number assigned to this manifest (for example, 00001) by the generator.~~

~~**Item 2. Page 1 of \_\_\_\_\_**~~

~~—Enter the total number of pages used to complete this manifest, for example, the first page (Environmental Protection Agency Form 8700-22) plus the number of continuation sheets (Environmental Protection Agency Form 8700-22A), if any.~~

~~**Item 3. Generator's name and mailing address**~~

~~—Enter the name and mailing address of the generator. The address should be the location that will manage the returned manifest items.~~

~~**Item 4. Generator's telephone number**~~

~~—Enter a telephone number where an authorized agent of the generator may be reached in the event of any emergency.~~

~~**Item 5. Transporter 1 company name**~~

~~—Enter the company name of the first transporter who will transport the waste.~~

~~**Item 6. State/environmental protection agency identification number**~~

— Enter the state/Environmental Protection Agency twelve-digit identification number of the first transporter identified in item 5.

**Item 7. Transporter 2 company name**

— If applicable, enter the company name of the second transporter who will transport the waste. If more than two transporters are used to transport the waste, use a continuation sheet(s) (Environmental Protection Agency Form 8700-22A) and list the transporters in the order they will be transporting the waste.

**Item 8. State/environmental protection agency identification number**

— If applicable, enter the state/Environmental Protection Agency twelve-digit identification number of the second transporter identified in item 7.

— **Note.** If more than two transporters are used, enter each additional transporter's company name and state/Environmental Protection Agency twelve-digit identification number in items 24-27 on the continuation sheet (Environmental Protection Agency Form 8700-22A). Each continuation sheet has space to record two additional transporters. Every transporter used between the generator and the designated facility must be listed.

**Item 9. Designated facility name and site address**

— Enter the company name and site address of the facility designated to receive the waste listed on this manifest. The address must be the site address, which may differ from the company mailing address.

**Item 10. State/environmental protection agency identification number**

— Enter the state/Environmental Protection Agency twelve-digit identification number of the designated facility identified in item 9.

**Item 11. United States department of transportation description [including proper shipping name, hazard class, and identification number (UN/NA)]**

— Enter the United States Department of Transportation Proper Shipping name, Hazard Class, and Identification Number (UN/NA) for each waste as identified in 49 CFR 171 through 177.

— **Note.** If additional space is needed for waste descriptions, enter these additional descriptions in item 28 on the continuation sheet (Environmental Protection Agency Form 8700-22A).

**Item 12. Containers (Number and Type)**

— Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

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**Table I. Types of Containers**

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DM	=	Metal drums, barrels, kegs
DW	=	Wooden drums, barrels, kegs
DF	=	Fiberboard or plastic drums, barrels, kegs
TP	=	Tanks portable
TT	=	Cargo tanks (tank trucks)

- TC = Tank cars
  - DT = Dump truck
  - CY = Cylinders
  - CM = Metal boxes, cartons, cases (including rollofs)
  - CW = Wooden boxes, cartons, cases
  - CF = Fiber or plastic boxes, cartons, cases
  - BA = Burlap, cloth, paper or plastic bags
- 

**Item 13. Total quantity**

— Enter the total quantity of waste described on each line.

**Item 14. Unit (weight/volume)**

— Enter the appropriate abbreviation from Table II (below) for the unit of measure.

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**Table II. Units of Measure**

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- G = Gallons (liquids only)
  - P = Pounds
  - T = Tons (2,000 pounds)
  - Y = Cubic yards
  - L = Liters (liquids only)
  - K = Kilograms
  - M = Metric tons (1,000 kilograms)
  - N = Cubic meters
- 

**Item 15. Special handling instructions and additional information**

— Generators may use this space to indicate special transportation treatment, storage, or disposal information or bill of lading information. States may not require additional, new, or different information in this space. For international shipments, generators must enter in this space the point of departure (city and state) for those shipments destined for treatment, storage, or disposal outside the jurisdiction of the United States.

**Item 16. Generator's certification**

— The generator must read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space below. If another mode in addition to the highway mode is used, enter the appropriate additional mode (for example, and rail) in the space below.

— In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification are also certifying that they have complied with the waste minimization requirements.

~~—Generators may preprint the words "on behalf of" in the signature block or may handwrite this statement in the signature block prior to signing the generator certifications.~~

~~—**Note.** All of the above information except the handwritten signature required in item 16 may be preprinted.~~

~~\* \* \* \* \*~~

## **TRANSPORTERS**

### **Item 17. Transporter 1 acknowledgment of receipt of materials**

~~—Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.~~

### **Item 18. Transporter 2 acknowledgment of receipt of materials**

~~—Enter, if applicable, the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.~~

~~—**Note.** International shipments—Transporter responsibilities:~~

~~Exports—Transporters must sign and enter the date the waste left the United States in item 15 of Form 8700-22.~~

~~Imports—Shipments of hazardous waste regulated by Article 33-24 and transported into the United States from another country must upon entry be accompanied by the Uniform Hazardous Waste Manifest. Transporters who transport hazardous waste into the United States from another country are responsible for completing the manifest (Section 33-24-04-01).~~

## **OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES**

### **Item 19. Discrepancy indication space**

~~—The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any significant discrepancy between the waste described on the manifest and the waste actually received at the facility.~~

~~—Owners and operators of facilities located in unauthorized states (for example, the United States Environmental Protection Agency administers the hazardous waste management program) who cannot resolve significant discrepancies within 15 days of receiving the waste must submit to their regional administrator (see list below) a letter with a copy of the manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72 and 265.72).~~

~~—Owners and operators of facilities located in authorized states (for example, those states that have received authorization from the United States Environmental Protection Agency to administer the hazardous waste program) should contact their state agency for information on state discrepancy report requirements.~~

### **Environmental Protection Agency Regional Administrators**

Regional Administrator  
United States Environmental Protection Agency  
Region I, J. F. Kennedy Federal Building  
Boston, MA 02203

~~Regional Administrator  
United States Environmental Protection Agency  
Region II, 26 Federal Plaza  
New York, NY 10278~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region III, 6th and Walnut Streets  
Philadelphia, PA 19106~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region IV, 345 Courtland Street NE  
Atlanta, GA 30365~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region V, 230 South Dearborn Street  
Chicago, IL 60604~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region VI, 1201 Elm Street  
Dallas, TX 75270~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region VII, 324 East Eleventh Street  
Kansas City, MO 64106~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region VIII, Denver Place, Suite 500  
999 Eighteenth Street  
Denver, CO 80202-2466~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region IX, 215 Fremont Street  
San Francisco, CA 94105~~

~~Regional Administrator  
United States Environmental Protection Agency  
Region X, 1200 Sixth Avenue  
Seattle, WA 98101~~

~~**Item 20. Facility owner or operator: certification of receipt of hazardous materials covered by this manifest except as noted in item 19**~~

~~— Print or type the name of the person accepting the waste on behalf of the owner or operator of the facility. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.~~

~~— Items A-K are not required by federal regulations for intrastate or interstate transportation. However, states may require generators and owners or operators of treatment, storage, or disposal facilities to complete some or all of items A-K as part of state manifest reporting requirements.~~

~~Generators and owners and operators of treatment, storage, or disposal facilities are advised to contact state officials for guidance on completing the shaded areas of the manifest.~~

~~Read all instructions before completing this form.~~

~~This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.~~

~~This form must be used as a continuation sheet to United States Environmental Protection Agency Form 8700-22 if:~~

~~More than two transporters are to be used to transport the waste.~~

~~More space is required for the United States Department of Transportation description and related information in item 11 of United States Environmental Protection Agency Form 8700-22.~~

~~—State regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the Uniform Hazardous Waste Manifest (Environmental Protection Agency Form 8700-22) and, if necessary, this continuation sheet (Environmental Protection Agency Form 8700-22A) for both interstate and intrastate transportation.~~

## **GENERATORS**

### **Item 21. Generator's state/environmental protection agency identification number -- Manifest document number**

~~—Enter the generator's state/Environmental Protection Agency twelve-digit identification number and the unique five-digit number assigned to this manifest (for example, 00001) as it appears in item 1 on the first page of the manifest.~~

### **Item 22. Page \_\_\_\_\_**

~~—Enter the page number of this continuation sheet.~~

### **Item 23. Generator's name**

~~—Enter the generator's name as it appears in item 3 on the first page of the manifest.~~

### **Item 24. Transporter -- Company name**

~~—If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Each continuation sheet will record the names of two additional transporters.~~

### **Item 25. State/environmental protection agency identification number**

~~—Enter the state/Environmental Protection Agency twelve-digit identification number of the transporter described in item 24.~~

### **Item 26. Transporter -- Company name**

~~—If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each continuation sheet will record the names of two additional transporters.~~

### **Item 27. State/environmental protection agency identification number**

~~—Enter the state/Environmental Protection Agency twelve-digit identification number of the transporter described in item 26.~~

~~**Item 28. United States department of transportation description including proper shipping name, hazardous class, and identification number (UN/NA)**~~

~~—Refer to item 11.~~

~~**Item 29. Containers (number and type)**~~

~~—Refer to item 12.~~

~~**Item 30. Total quantity**~~

~~—Refer to item 13.~~

~~**Item 31. Unit weight/volume)**~~

~~—Refer to item 14.~~

~~**Item 32. Special handling instructions**~~

~~—Generators may use this space to indicate special transportation, treatment, storage, or disposal information or bill of lading information. States are not authorized to require additional, new, or different information in this space.~~

~~\* \* \* \* \*~~

~~**TRANSPORTERS**~~

~~**Item 33. Transporter – Acknowledgment of receipt of materials**~~

~~—Enter the same number of the transporter as identified in item 24. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 24. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.~~

~~**Item 34. Transporter – Acknowledgment of receipt of materials**~~

~~—Enter the same number as identified in item 26. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 26. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.~~

~~\* \* \* \* \*~~

~~**OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES**~~

~~**Item 35. Discrepancy indication space**~~

~~—Refer to item 19.~~

~~—Items L-R are not required by federal regulations for intrastate or interstate transportation. However, states may require generators and owners or operators of treatment, storage, or disposal facilities to complete some or all of items L-R as part of state manifest reporting requirements. Generators and owners and operators of treatment, storage, or disposal facilities are advised to contact state officials for guidance on completing the shaded areas of the manifest.~~

The following statement must be included with each uniform hazardous waste manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: thirty minutes for generators, ten minutes for transporters, and twenty-five minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing, and transmitting the form. Any correspondence regarding the Paperwork Reduction Act burden statement for the manifest must be sent to the director of the collection strategies division in environmental protection agency's office of information collection at the following address: United States Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Do not send the completed form to this address.

## **I. Instructions for generators**

### **Item 1. Generator's identification number**

Enter the generator's environmental protection agency twelve digit identification number, or the state generator identification number if the generator site does not have an environmental protection agency identification number.

### **Item 2. Page 1 of \_\_\_**

Enter the total number of pages used to complete this manifest (for example, the first page (environmental protection agency form 8700-22) plus the number of continuation sheets (environmental protection agency form 8700-22A), if any).

### **Item 3. Emergency response phone number**

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;
2. Reach a phone that is monitored twenty-four hours a day at all times the waste is in transportation (including transportation related storage); and
3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup or incident mitigation, or both, information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

NOTE: Emergency response phone number information should only be entered in item 3 when there is one phone number that applies to all the waste materials described in item 9b. If a situation (for example, consolidated shipments) arises where more than one emergency response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in item 9b.

### **Item 4. Manifest tracking number**

This unique tracking number must be preprinted on the manifest by the forms printer.

### **Item 5. Generator's mailing address, phone number, and site address**

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or the generator's authorized agent may be reached to provide instructions in the

event the designated, or alternate, or both, (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

**Item 6. Transporter 1 company name and identification number**

Enter the company name and environmental protection agency identification number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

**Item 7. Transporter 2 company name and identification number**

If applicable, enter the company name and environmental protection agency identification number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here. If more than two transporters are needed, use a continuation sheet or sheets (environmental protection agency form 8700– 22A).

**Item 8. Designated facility name, site address, and identification number**

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the environmental protection agency twelve digit identification number of the facility.

**Item 9. United States department of transportation description (including proper shipping name, hazard class or division, identification number, and packing group)**

**Item 9a. If the wastes identified in item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this item next to the corresponding hazardous material identified in item 9b.**

**Item 9b. Enter the United States department of transportation proper shipping name, hazard class or division, identification number (UN/NA) and packing group for each waste as identified in 49 CFR 172. Include technical name or names and reportable quantity references, if applicable.**

NOTE: If additional space is needed for waste descriptions, enter these additional descriptions in item 27 on the continuation sheet (environmental protection agency form 8700–22A). Also, if more than one emergency response phone number applies to the various wastes described in either item 9b or item 27, enter applicable emergency response phone numbers immediately following the shipping descriptions for those items.

**Item 10. Containers (number and type)**

Enter the number of containers for each waste and the appropriate abbreviation from table I (below) for the type of container.

**Table I. - Types of Containers**

<u>BA</u>	<u>≡</u>	<u>Burlap, cloth, paper, or plastic bags</u>
<u>CF</u>	<u>≡</u>	<u>Fiber or plastic boxes, cartons, cases</u>
<u>CM</u>	<u>≡</u>	<u>Metal boxes, cartons, cases (including roll-offs)</u>
<u>CW</u>	<u>≡</u>	<u>Wooden boxes, cartons, cases</u>
<u>CY</u>	<u>≡</u>	<u>Cylinders</u>
<u>DF</u>	<u>≡</u>	<u>Fiberboard or plastic drums, barrels, kegs</u>
<u>DM</u>	<u>≡</u>	<u>Metal drums, barrels, kegs</u>
<u>DT</u>	<u>≡</u>	<u>Dump truck</u>
<u>DW</u>	<u>≡</u>	<u>Wooden drums, barrels, kegs</u>
<u>HG</u>	<u>≡</u>	<u>Hopper or gondola cars</u>

TC = Tank cars  
TP = Portable tanks  
TT = Cargo tanks (tank trucks)

**Item 11. Total quantity**

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow the generator to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

**Item 12. Units of measure (weight or volume)**

Enter, in designated boxes, the appropriate abbreviation from table II (below) for the unit of measure.

**Table II - Units of Measure**

G = Gallons (liquids only)  
K = Kilograms  
L = Liters (liquids only)  
M = Metric tons (1000 kilograms)  
N = Cubic meters  
P = Pounds  
T = Tons (2000 pounds)  
Y = Cubic yards

NOTE: Tons, metric tons, cubic meters, and cubic yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

**Item 13. Waste codes**

Enter up to six federal and state waste codes to describe each waste stream identified in item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

**Item 14. Special handling instructions and additional information.**

1. Generators may enter any special handling or shipment specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in item 12.
2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are reshipped under a second manifest; and the specification of polychlorinated biphenyl waste descriptions and polychlorinated biphenyl out of service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

## **Item 15. Generator's or offeror's certifications**

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of Resource Conservation and Recovery Act are also certifying that they have complied with the waste minimization requirements. The generator's certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, or placarded, or both, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the primary exporter, I certify that the contents of this consignment conform to the terms of the attached environmental protection agency acknowledgment of consent". When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.
2. Generator or offeror personnel may preprint the words, "on behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator or offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

NOTE: All of the above information except the handwritten signature required in item 15 may be preprinted.

## **II. Instructions for international shipment block**

### **Item 16. International shipments**

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the United States customs when exporting the waste across United States borders.

## **III. Instructions for transporters**

### **Item 17. Transporters' acknowledgments of receipt**

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters. If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

NOTE: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the international shipments block. Transporters carrying exports may also have responsibilities to enter information in the international shipments block. See above instructions for item 16.

## **IV. Instructions for owners and operators of treatment, storage, and disposal facilities**

## **Item 18. Discrepancy**

### **Item 18a. Discrepancy indication space**

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by subsection 2 of section 33-24-05-39) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in subsections 3, 4, and 5 of section 33-24-02-07.
2. For rejected loads and residues (subsections 4, 5, and 6 of section 33-24-05-39 or the applicable requirements of subsection 5 of section 33-24-06-16), check the appropriate box if the shipment is a rejected load (for example, rejected by the designated or alternate facility, or both, and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in item 14, the special handling block and additional information block of the additional manifests.
3. Owners or operators of facilities located in unauthorized states (for example, states in which the environmental protection agency administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within fifteen days of receiving the waste must submit to their regional administrator a letter with a copy of the manifest at issue describing the discrepancy and attempts to reconcile it (subsection 3 of section 33-24-05-39 and the applicable requirements of subsection 5 of section 33-24-06-16).
4. Owners or operators of facilities located in authorized states (for example, those states that have received authorization from the environmental protection agency to administer the hazardous waste management program) should contact their state agency for information on where to report discrepancies involving "significant differences" to state officials.

### **Item 18b. Alternate facility (or generator) for receipt of full load rejections**

Enter the name, address, phone number, and environmental protection agency identification number of the alternate facility which the rejecting treatment, storage, or disposal facility has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting treatment, storage, or disposal facility may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

### **Item 18c. Alternate facility (or generator) signature**

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial treatment, storage, or disposal facility.

### **Item 19. Hazardous waste report management method codes**

Enter the most appropriate hazardous waste report management method code for each waste listed in item 9. The hazardous waste report management method code is to be entered by the first treatment, storage, or disposal facility that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the treatment, storage, or disposal facility.

**Item 20. Designated facility owner or operator certification of receipt (except as noted in item 18a)**

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the manifest by signing and entering the date of receipt or rejection where indicated. Since the facility certification acknowledges receipt of the waste except as noted in the discrepancy space in item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in item 18a. Fully rejected wastes may be forwarded or returned using item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the manifest by signing and entering the date they received or rejected the waste in item 18c. Partially rejected wastes and residues must be reshipped under a new manifest, to be initiated and signed by the rejecting treatment, storage, or disposal facility as offeror of the shipment.

**Manifest continuation sheet**

Instructions - continuation sheet, environmental protection agency form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used - press down hard.

This form must be used as a continuation sheet to form 8700-22 if:

1. More than two transporters are to be used to transport the waste; or
2. More space is required for the United States department of transportation descriptions and related information in item 9 of environmental protection agency form 8700-22. State and federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (environmental protection agency form 8700-22) and, if necessary, this continuation sheet (environmental protection agency form 8700-22A) for both interstate and intrastate transportation.

**Item 21. Generator's identification number**

Enter the generator's environmental protection agency twelve digit identification number or, the state generator identification number if the generator site does not have an environmental protection agency identification number.

**Item 22. Page \_\_\_ -**

Enter the page number of this continuation sheet.

**Item 23. Manifest tracking number**

Enter the manifest tracking number from item 4 of the manifest form to which this continuation sheet is attached.

**Item 24. Generator's name -**

Enter the generator's name as it appears in item 5 on the first page of the manifest.

**Item 25. Transporter - company name**

If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter

after the word "transporter" the order of the transporter. For example, transporter three company name. Also, enter the environmental protection agency twelve digit identification number of the transporter described in item 25.

**Item 26. Transporter - company name**

If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "transporter" the order of the transporter. For example, transporter four company name. Each continuation sheet can record the names of two additional transporters. Also enter the environmental protection agency twelve digit identification number of the transporter named in item 26.

**Item 27. United States department of transportation description including proper shipping name, hazardous class, and identification number (UN/NA)**

For each row enter a sequential number under item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for item 9 of the manifest for the information to be entered.

**Item 28. Containers (number and type)**

Refer to the instructions for item 10 of the manifest for information to be entered.

**Item 29. Total quantity**

Refer to the instructions for item 11 of the manifest form.

**Item 30. Units of measure (weight or volume)**

Refer to the instructions for item 12 of the manifest form.

**Item 31. Waste codes**

Refer to the instructions for item 13 of the manifest form.

**Item 32. Special handling instructions and additional information**

Refer to the instructions for item 14 of the manifest form.

**Transporters**

**Item 33. Transporter - acknowledgment of receipt of materials**

Enter the same number of the transporter as identified in item 25. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 25. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**Item 34. Transporter - acknowledgment of receipt of materials**

Enter the same number of the transporter as identified in item 26. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 26. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**Owner and operators of treatment, storage, or disposal facilities**

**Item 35. Discrepancy indication space**

Refer to item 18. This space may be used to more fully describe information on discrepancies identified in item 18a of the manifest form.

**Item 36. Hazardous waste report management method codes**

For each field here, enter the sequential number that corresponds to the waste materials described under item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

## CHAPTER 33-24-04

### 33-24-04-01. Scope.

1. This chapter establishes standards which apply to persons transporting hazardous waste within this state if the transportation requires a manifest under chapter 33-24-03.
2. This chapter does not apply to onsite transportation of hazardous waste by generators or by owners or by operators of permitted hazardous waste management facilities.
3. A transporter of hazardous waste must also comply with chapter 33-24-03 if the transporter:
  - a. Transports hazardous waste into this state from abroad; or
  - b. Mixes hazardous waste of different department of transportation shipping descriptions by placing them into a single container.

[NOTE: The transporter in complying with these requirements does not become the generator of the waste.]

4. ~~[Reserved]~~A transporter of hazardous waste subject to manifesting requirements of chapter 33-24-03, or subject to the requirements of sections 33-24-05-700 through 33-24-05-799, that is being imported from or exported to any of the countries listed in subdivision a of subsection 1 of section 33-24-03-25 for purposes of recovery is subject to sections 33-24-04-01 through 33-24-04-03 and to all other relevant requirements of sections 33-24-03-50 through 33-24-03-59, including section 33-24-03-54 for movement documents.
5. Persons responding to an explosives or munitions emergency in accordance with subparagraph d of paragraph 1 of subdivision g of subsection 6 of section 33-24-05-01 or paragraph 4 of subdivision g of subsection 6 of section 33-24-05-01 or 40 CFR 265.1(c)(11)(i) (D) or (iv) as incorporated by reference in subsection 5 of section 33-24-06-16, and item 4 of subparagraph a and subparagraph c of paragraph 9 of subdivision b of subsection 2 of section 33-24-06-01, are not required to comply with the standards of chapter 33-24-03.
6. Section 33-24-05-823 identifies how the requirements of this ~~part~~chapter apply to military munitions classified as solid waste under section 33-24-05-822.

**History:** Effective January 1, 1984; amended effective December 1, 1991; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-04-04. The manifest system.

1. Transporters subject to manifesting requirements.
  - a. Manifest requirement. A transporter may not accept hazardous waste from a generator unless ~~it is accompanied by~~the transporter is also provided with a manifest signed in accordance with the provisions of subsections 1 through 7 of section 33-24-03-04~~33-24-03-07~~, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33-24-03-04, and signed with a valid and enforceable electronic signature as described in subsection 9 of section 33-24-03-07.
  - b. Exports. In the case of exports other than those subject to sections 33-24-03-50 through 33-24-03-59, a transporter may not accept such waste from a primary exporter or other person ~~(1)~~ if the transporter knows the shipment does not conform to the environmental

protection agency acknowledgment of consent; and ~~(2) unless, in addition to a manifest signed in accordance with provisions of section 33-24-03-04, such waste is also accompanied by an environmental protection agency acknowledgment of consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment))~~by the generator as provided in this section, the transporter shall also be provided with an environmental protection agency acknowledgment of consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of sections 33-24-03-50 through 33-24-03-59, a transporter may not accept hazardous waste without a tracking document that includes all information required by section 33-24-03-54.

- c. Compliance date for form revisions. The revised manifest form and procedures in sections 33-24-01-04, 33-24-02-07, 33-24-04-04, and 33-24-04-05, shall not apply until September 5, 2006 or article 33-24 is amended and effective, but not prior to September 5, 2006. The manifest form and procedures in sections 33-24-01-04, 33-24-02-07, 33-24-04-04, and 33-24-04-05, contained in Article 33-24, amended December 1, 2003, shall be applicable until September 5, 2006, or when amended, but not after September 5, 2006.
- d. Use of electronic manifest. Legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33-24-03-04, and used in accordance with this section in lieu of environmental protection agency forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, carry, provide, give, use, or retain a manifest.
- (1) Any requirement in these rules to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.
  - (2) Any requirement in these rules to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.
  - (3) Any requirement in these rules for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.
  - (4) Any requirement in these rules for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency inspector or authorized department representative.
  - (5) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the environmental protection agency system for which the transporter bears no responsibility.

- e. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.
- f. Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:
- (1) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph 3 of subdivision d, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for the transporter and all subsequent waste handler files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.
  - (2) On each printed copy, the transporter shall include a notation in the special handling and additional description space (item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.
  - (3) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.
  - (4) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.
- g. Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgment of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph 3 of subdivision d. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner or operator of the designated facility has signed this printed manifest copy with the owner or operator's ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.
- h. Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by the environmental protection agency for the origination or processing of each electronic manifest. The environmental protection agency shall maintain and update from time-to-time the schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The schedule of electronic

manifest user fees shall be published by the environmental protection agency as an appendix to 40 CFR Part 262.

2. Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.
3. The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter shall ensure that a copy of the environmental protection agency acknowledgment of consent also accompanies the hazardous waste.
4. A transporter who delivers a hazardous waste to another transporter or to the designated facility must:
  - a. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;
  - b. Retain one copy of the manifest in accordance with section 33-24-04-06; and
  - c. Give remaining copies of the manifest to the accepting transporter or designated facility.
5. The requirements of subsections 3, 4, and 6 do not apply to water (bulk shipment) transporters if:
  - a. The hazardous waste is delivered by water (bulk shipment) to the designated facility;
  - b. A shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for exports, and environmental protection agency acknowledgment of consent accompanies the hazardous waste;
  - c. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;
  - d. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and
  - e. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with section 33-24-04-06.
6. For shipments involving rail transportation, the requirements of subsections 3, 4, and 5 do not apply and the following requirements do apply:
  - a. When accepting hazardous waste from nonrail transporter, the initial rail transporter must:
    - (1) Sign and date the manifest acknowledging acceptance of the hazardous waste;
    - (2) Return a signed copy of the manifest to the nonrail transporter;
    - (3) Forward at least three copies of the manifest to:
      - (a) The next nonrail transporter, if any; or
      - (b) The designated facility, if the shipment is delivered to that facility by rail; or
      - (c) The last rail transporter designated to handle the waste in the United States; and

- (4) Retain one copy of the manifest and rail shipping paper in accordance with section 33-24-04-06;
  - b. Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for exports, an environmental protection agency acknowledgment of consent accompanies the hazardous waste at all times;
 

[NOTE: Intermediate rail transporters are not required to sign either the manifest or shipping paper.]
  - c. When delivering hazardous waste to the designated facility, a rail transporter must:
    - (1) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and
    - (2) Retain a copy of the manifest or signed shipping paper in accordance with section 33-24-04-06;
  - d. When delivering hazardous waste to a nonrail transporter, a rail transporter must:
    - (1) Obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and
    - (2) Retain a copy of the manifest in accordance with section 33-24-04-06; and
  - e. Before accepting hazardous waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.
7. Transporters who transport hazardous waste out of the United States must:
- a. ~~Indicate on the manifest the date the hazardous waste left the United States~~Sign and date the manifest in the international shipment's block to indicate the date that the shipment left the United States;
  - b. ~~Sign the manifest and retain one copy in accordance with subsection 3 of section 33-24-04-06~~Retain one copy in accordance with subsection 4 of section 33-24-04-06;
  - c. Return a signed copy of the manifest to the generator; and
  - d. Give a copy of the manifest to a United States customs official at the point of departure from the United States.
8. A transporter transporting hazardous waste from a generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those in section 33-24-04-06 provided that:
- a. The waste is being transported pursuant to a reclamation agreement as provided in subsection 5 of section 33-24-03-04;
  - b. The transporter records, on a log or shipping paper, the following information for each shipment:
    - (1) The name, address, and identification number of the generator of the waste;
    - (2) The quantity of waste accepted;

- (3) All department of transportation required shipping information; and
- (4) The date the waste is accepted;
- c. The transporter carries this record when transporting waste to the reclamation facility; and
- d. The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

9. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 1994; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-04-05. Compliance with the manifest.**

- 1. The transporter must deliver the entire quantity of hazardous waste which the transporter has accepted from a generator or a transporter to:
  - a. The designated facility listed on the manifest;
  - b. The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery;
  - c. The next designated transporter; or
  - d. The place outside the United States designated by the generator.

- 2. If the hazardous waste cannot be delivered in accordance with subsection 1, because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

3. If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

- a. For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with section 33-24-04-06, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in subdivisions a through f of subsection 5 or subdivisions a through f of subsection 6 of section 33-24-05-39 or the applicable requirements of subsection 5 of section 33-24-06-16.
- b. For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the

manifest in accordance with section 33-24-04-06, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with subdivisions a through f of subsection 5 of section 33-24-05-39 or the applicable requirements of subsection 5 of section 33-24-06-16.

**History:** Effective January 1, 1984; amended effective January 1, 1994; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**CHAPTER 33-24-05**  
**STANDARDS FOR TREATMENT, STORAGE, AND DISPOSAL FACILITIES AND FOR THE**  
**MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF**  
**HAZARDOUS WASTE MANAGEMENT FACILITIES**

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33-24-05-399 [Reserved]

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33-24-05-402	Standards - Process Vents
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33-24-05-408	[Reserved]
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33-24-05-410	[Reserved]
33-24-05-411	[Reserved]
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33-24-05-416	[Reserved]
33-24-05-417	[Reserved]
33-24-05-418	[Reserved]
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[AIR EMISSION STANDARDS FOR EQUIPMENT LEAKS](#)

33-24-05-420	Applicability to Air Emission Standards for Equipment Leaks
33-24-05-421	Definitions as Used in Sections 33-24-05-420 Through <del>33-24-05-435</del> <a href="#">33-24-05-449</a>
33-24-05-422	Standards - Pumps in Light Liquid Service
33-24-05-423	Standards - Compressors
33-24-05-424	Standards - Pressure Relief Devices in Gas or Vapor Service
33-24-05-425	Standards - Sampling Connection Systems
33-24-05-426	Standards - Open-Ended Valves or Lines
33-24-05-427	Standards - Valves in Gas or Vapor Service or in Light Liquid Service
33-24-05-428	Standards - Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors
33-24-05-429	Standards - Delay of Repair
33-24-05-430	Standards - Closed-Vent Systems and Control Devices
33-24-05-431	Alternative Standards for Valves in Gas or Vapor Service or Light Liquid Service - Percentage of Valves Allowed to Leak
33-24-05-432	Alternative Standard for Valves in Gas or Vapor Service or in Light Liquid Service - Skip Period Leak Detection and Repair
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33-24-05-438	[Reserved]
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33-24-05-447	[Reserved]

33-24-05-448 [Reserved]  
33-24-05-449 [Reserved]

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33-24-05-450 Applicability to Air Emission Standards for Tanks, Surface Impoundments, and Containers  
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33-24-05-456 Standards - Containers  
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### DRIP PADS

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### BOILERS AND INDUSTRIAL FURNACES

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### STANDARDS FOR THE MANAGEMENT OF USED OIL

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## UNIVERSAL WASTE

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### LOW-LEVEL MIXED WASTES

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**33-24-05-01. Purpose, scope, and applicability.**

1. The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste.
2. The standards in this chapter apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this chapter or chapter 33-24-02.
3. The requirements of this chapter apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an underground injection control program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by chapter 33-24-06.
4. The requirements of this chapter apply to the owner or operator of a publicly owned treatment works which treats, stores, or disposes of hazardous waste only to the extent they are included in a hazardous waste permit by rule granted to such a person under chapter 33-24-06.
5. The requirements of this chapter apply to recyclable materials used in a manner constituting disposal, hazardous waste burned for energy recovery, recyclable materials utilized for precious metal recovery, and spent lead acid batteries being reclaimed.
6. The requirements of this chapter do not apply to:
  - a. The owner or operator of a facility permitted, licensed, or registered by the department to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under section 33-24-02-05.
  - b. The owner or operator of a facility managing recyclable materials described in subdivisions b, c, and d of subsection 1 of section 33-24-02-06 (except to the extent they are referred to in sections 33-24-05-600 through 33-24-05-689 or sections 33-24-05-201 through 33-24-05-209, sections 33-24-05-230 through 33-24-05-249, or sections 33-24-05-525 through 33-24-05-549).
  - c. A generator accumulating waste onsite in compliance with section 33-24-03-12.
  - d. A farmer disposing of pesticide containers from the farmer's own use in compliance with section 33-24-03-40.

- e. The owner or operator of a totally enclosed treatment facility, as defined in section 33-24-01-04.
- f. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in section 33-24-01-04, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 high total organic carbon subcategory defined in section 33-24-05-280, table treatment standards for hazardous wastes, or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator must comply with the requirements set out in subsection 2 of section 33-24-05-08.
- g. Immediate response activities.
  - (1) Except as provided in paragraph 2, a person engaged in treatment or containment activities during immediate response to any of the following situations:
    - (a) A discharge of hazardous waste.
    - (b) An imminent and substantial threat of a discharge of hazardous waste.
    - (c) A discharge of material which, when discharged, becomes a hazardous waste.
    - (d) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 33-24-01-04.
  - (2) An owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of sections 33-24-05-15 through 33-24-05-36.
  - (3) Any person who is covered by paragraph 1 and continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and chapters 33-24-06 and 33-24-07.
  - (4) In the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of that person's official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.
- h. A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of section 33-24-03-08 at a transfer facility for a period of ten days or less.
- i. The addition of absorbent material to waste in a container (as defined in section 33-24-01-04) or the addition of waste to absorbent material in a container provided that these actions occur at the time waste is first placed in a container and subsection 2 of section 33-24-05-08 and sections 33-24-05-90 and 33-24-05-91 are complied with.

- j. Universal waste handlers and universal waste transporters (as defined in section 33-24-01-04) handling the wastes listed below. These handlers are subject to regulation under sections ~~33-24-05-701~~33-24-05-700 through ~~33-24-05-765~~33-24-05-799, when handling the below listed universal wastes:
  - (1) Batteries as described in section 33-24-05-702;
  - (2) Pesticides as described in section 33-24-05-703;
  - (3) Mercury containing ~~devices~~equipment as described in section 33-24-05-704; and
  - (4) Lamps as described in section 33-24-05-705.
- 7. The requirements of this chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in sections 33-24-05-250 through ~~33-24-05-300~~33-24-05-299.
- 8. Subsection ~~21~~ of section 33-24-05-09 applies only to facilities subject to regulation under sections 33-24-05-89 through ~~33-24-05-317~~33-24-05-190 and sections 33-24-05-300 through ~~33-24-05-303~~33-24-05-309.
- 9. Section 33-24-05-825 identifies when the requirements of this ~~part~~chapter apply to the storage of military munitions classified as solid waste under section 33-24-05-822. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in article 33-24.
- 10. The requirements of sections 33-24-05-02 through 33-24-05-36 and section 33-24-05-58 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing, or disposing of hazardous wastes that are not remediation wastes. In these cases, sections 33-24-05-02 through 33-24-05-36 and section 33-24-05-58 do apply to the facility subject to the traditional hazardous waste permit.) Instead of the requirements of sections 33-24-05-02 through 33-24-05-36, owners or operators of remediation waste management sites must:
  - a. Obtain an identification number by applying to the department using environmental protection agency form 8700-12, or equivalent state form;
  - b. Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to chapter 33-24-05, and must be kept accurate and up to date;
  - c. Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the department that:
    - (1) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and
    - (2) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site will not cause a violation of the requirements of this article;

- d. Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. If a hazard is imminent or has already occurred, the owner or operator must take remedial action immediately;
- e. Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of sections 33-24-05-01 through 33-24-05-190, 3-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819, and on how to respond effectively to emergencies;
- f. Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive, and incompatible waste;
- g. For remediation waste management sites subject to regulation under sections 33-24-05-89 through 33-24-05-190 and sections 33-24-05-300 through ~~33-24-05-303~~33-24-05-309, the owner or operator must design, construct, operate, and maintain a unit within a one hundred-year floodplain to prevent washout of any hazardous waste by a one hundred-year flood, unless the owner or operator can meet the demonstration of subsection 21 of section 33-24-05-09;
- h. Not place any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, or underground mine or cave;
- i. Develop and maintain a construction quality assurance program for all surface impoundments, waste piles, and landfill units that are required to comply with subsections 3 and 4 of section 33-24-05-119, subsections ~~32~~ and ~~43~~ of section 33-24-05-131, and subsections 3 and 4 of section 33-24-05-177 at the remediation waste management site, according to the requirements of section 33-24-05-10;
- j. Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;
- k. Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;
- l. Develop, maintain, and implement a plan to meet the requirements in subdivisions b through f, i, and j; and

- m. Maintain records documenting compliance with subdivisions a through l.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-03. Required notices.**

1. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the department and the environmental protection agency in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to sections 33-24-03-50 through 33-24-03-59 must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the office of enforcement and compliance assurance, office of federal activities, international compliance assurance division (2254A), environmental protection agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; the state; and to the competent authorities of all other countries concerned within three working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter; to the competent authority of the country of export; to the environmental protection agency's office of enforcement and compliance assurance at the above address, and the state, by mail, email without a digital signature followed by mail, or fax followed by mail.
2. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator shall notify the new owner or operator in writing of the requirements in this chapter and chapter 33-24-06.
3. The owner or operator of a facility that receives hazardous waste from an offsite source (except where the owner or operator is also the generator) shall inform the generator in writing that the owner or operator has the appropriate permit for, and will accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-04. General waste analysis.**

1. Waste analysis requirements.
  - a. Before an owner or operator treats, stores, or disposes of any hazardous wastes, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this chapter or a permit issued under chapter 33-24-06.
  - b. The analysis may include data developed under chapter 33-24-02 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes. (Comment: For example, the facility's records of analyses performed on the waste before the effective date of these rules, or studies conducted on hazardous

wastes generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with subdivision a ~~of subsection 1~~. The owner or operator of an offsite facility may arrange for the generator of the hazardous waste to supply part of the information required by subdivision a ~~of subsection 1~~, except as otherwise specified in subsections 2 and 3 of section 33-24-05-256. If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this section.)

- c. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:
    - (1) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and
    - (2) For offsite facilities when the results of the inspection required in subdivision d indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.
  - d. The owner or operator of an offsite facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.
2. The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with subsection 1. The owner or operator must keep this plan at the facility. At a minimum, the plan must specify:
- a. The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters, i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection 1.
  - b. The test methods which will be used to test for these parameters.
  - c. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
    - (1) One of the sampling methods described in appendix I of chapter 33-24-02; or
    - (2) An equivalent sampling method.
  - d. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.
  - e. For offsite facilities the waste analysis that hazardous waste generators have agreed to supply.
  - f. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in sections 33-24-05-08, 33-24-05-145, 33-24-05-183, 33-24-05-256, subsection 4 of section 33-24-05-404, subsection 4 of section 33-24-05-433, and section 33-24-05-453.
  - g. For surface impoundments exempted from land disposal restrictions under subsection 1 of section 33-24-05-253, the procedures and schedules for:
    - (1) The sampling of impoundment contents;
    - (2) The analyses of test data; and

- (3) The annual removal of residues which are not delisted under section 33-24-01-08 or which exhibit a characteristic of hazardous waste and either:
  - (a) Do not meet applicable treatment standards of sections 33-24-05-280 through 33-24-05-289; or
  - (b) Where no treatment standards have been established;
    - [1] Such residues are prohibited from land disposal under section 33-24-05-272 or Resource Conservation and Recovery Act section 3004(b); or
    - [2] Such residues are prohibited from land disposal under subsection 6 of section 33-24-05-273.
- h. For owners and operators seeking an exemption to the air emission standards of sections 33-24-05-450 through 33-24-05-474 in accordance with section 33-24-05-452:
  - (1) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.
  - (2) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from offsite, that is used as the basis for knowledge of the waste.
3. For offsite facilities, the waste analysis plan required in subsection 2 must also specify the procedures which will be used to inspect and analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:
  - a. The procedures which will be used to determine the identity of each movement of waste managed at the facility.
  - b. The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.
  - c. The procedures that the owner or operator of an offsite landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-06. General inspection requirements.**

1. The owner or operator shall inspect the facility for malfunctions and deterioration, operator errors, and discharges which may be causing or may lead to release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.
2. Schedule requirements.

- a. The owner or operator shall develop and follow a written schedule for inspecting all monitoring equipment, safety, and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.
  - b. The owner or operator shall keep this schedule at the facility.
  - c. The schedule must identify the types of problems, for example, malfunctions or deterioration, which are to be looked for during the inspection, for example, inoperative sump pump, leaking fitting, eroding dike, etc.
  - d. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of ~~possible~~ deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or ~~any~~ operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in sections 33-24-05-93, 33-24-05-106, 33-24-05-108, 33-24-05-120, 33-24-05-132, 33-24-05-150, 33-24-05-165, 33-24-05-178, 33-24-05-302, 33-24-05-403, 33-24-05-422, 33-24-05-423, 33-24-05-428, and 33-24-05-453 through 33-24-05-459, where applicable.
3. The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.
  4. The owner or operator shall record inspections in an inspection log or summary. The owner or operator shall keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-07. Personnel training.**

1. Initial training requirements.
  - a. Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of these rules. The owner or operator shall ensure that this program includes all the elements described in the document required under subdivision c of subsection 4.
  - b. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.
  - c. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

- (1) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment.
- (2) Key parameters for automatic waste feed cutoff systems.
- (3) Communications or alarm systems.
- (4) Response to fires or explosions.
- (5) Response to ground water contamination incidents.
- (6) Shutdown of operations.

d. For facility employees that receive emergency response training pursuant to occupational safety and health administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

2. Facility personnel shall successfully complete the program required in subsection 1 within six months after January 1, 1984, or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after January 1, 1984, may not work in unsupervised positions until they have completed the training requirements of subsection 1.
3. Facility personnel shall take part in an annual review of the initial training required in subsection 1.
4. The owner or operator shall maintain the following documents and records at the facility:
  - a. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.
  - b. A written job description for each position listed under subdivision a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of facility personnel assigned to each **personposition**.
  - c. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subdivision a.
  - d. Records that document that the training or job experience required under subsections 1, 2, and 3 has been given to, and completed by, facility personnel.
5. Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-08. General requirements for ignitable, reactive, or incompatible wastes.**

1. The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including, but not limited to: open flames, smoking, cutting and welding, hot

surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flames to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive wastes.

2. Where specifically required by other sections of this chapter, the ~~treatment, storage, or disposal of~~owner or operator of a facility that treats, stores, or disposes ignitable or reactive waste, ~~and the mixture or commingling of~~ mixes incompatible wastes, or incompatible wastes and other materials, must ~~be conducted so that it does not~~take precautions to prevent reactions which:
  - a. Generate extreme heat or pressure, fire or explosion, or violent reaction;
  - b. Produce uncontrolled toxic mists, fumes, dust, or gases in sufficient quantity to threaten human health or the environment;
  - c. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
  - d. Damage the structural integrity of the device or facility; or
  - e. Through other like means threaten human health or the environment.
3. When required to comply with subsection 1 or 2, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature data, from trial tests (for example, bench scale or pilot scale tests), waste analysis (as specified in section 33-24-05-04), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

**History:** Effective January 1, 1984; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-10. Construction quality assurance program.**

#### **1. Construction quality assurance program.**

- a. A construction quality assurance ~~(CQA)~~ program is required for all surface impoundment, waste pile, and landfill units that are required to comply with subsections 3 and 4 of section 33-24-05-119, subsections ~~32~~ and ~~43~~ of section 33-24-05-131, and subsections 3 and 4 of section 33-24-05-177. The program must ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program must be developed and implemented under the direction of a construction quality assurance officer who is a registered professional engineer.
- b. The construction quality assurance program must address the following physical components, where applicable:
  - (1) Foundations;
  - (2) Dikes;
  - (3) Low-permeability soil liners;
  - (4) Geomembranes (flexible membrane liners);
  - (5) Leachate collection and removal systems and leak detection systems; and

- (6) Final cover systems.
2. **Written construction quality assurance plan.** The owner or operator of units subject to the construction quality assurance program under subsection 1 must develop and implement a written construction quality assurance plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The construction quality assurance plan must include:
- a. Identification of applicable units and a description of how they will be constructed.
  - b. Identification of key personnel in the development and implementation of the construction quality assurance plan and construction quality assurance officer qualifications.
  - c. A description of inspection and sampling activities for all unit components identified in subdivision b of subsection 1, including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description must cover: sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under section 33-24-05-40.
3. **Contents of program.**
- a. The construction quality assurance program must include observations, inspections, tests, and measurements sufficient to ensure:
    - (1) Structural stability and integrity of all components of the unit identified in subdivision b of subsection 1;
    - (2) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (for example, pipes) according to design specifications; and
    - (3) Conformity of all materials used with design and other material specifications under sections 33-24-05-119, 33-24-05-131, and 33-24-05-177.
  - b. The construction quality assurance program must include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of subparagraph b of paragraph 1 of subdivision a of subsection 3 of section 33-24-05-119, subparagraph b of paragraph 1 of subdivision a of subsection 3 of section 33-24-05-131, and subparagraph b of paragraph 1 of subdivision a of subsection 3 of section 33-24-05-177 in the field. Compliance with the hydraulic conductivity requirements must be verified by using in situ testing on the constructed test fill. The department may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of subparagraph b of paragraph 1 of subdivision a of subsection 3 of section 33-24-05-119, subparagraph b of paragraph 1 of subdivision a of subsection 3 of section 33-24-05-131, and subparagraph b of paragraph 1 of subdivision a of subsection 3 of section 33-24-05-177 in the field.
4. **Certification.** Waste shall not be received in a unit subject to section 33-24-05-10 until the owner or operator has submitted to the department by certified mail or hand delivery a certification signed by the construction quality assurance officer that the approved construction quality assurance plan has been successfully carried out and that the unit meets the

requirements of subsection 3 or 4 of section 33-24-05-119, subsection ~~3-2~~ or ~~43~~ of section 33-24-05-131, or subsection 3 or 4 of section 33-24-05-177; and the procedure in paragraph 2 of subdivision b of subsection 12 of section 33-24-06-04 has been completed. Documentation supporting the construction quality assurance officer's certification must be furnished to the department upon request.

**History:** Effective January 1, 1994; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-20. Arrangements with local authorities.**

1. The owner or operator shall attempt to make the following arrangements, as appropriate for the types of waste handled at the facility and the potential need for the services of these organizations:
  - a. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated ~~hazardous~~ ~~hazards~~, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.
  - b. Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority.
  - c. Agreements with state emergency response teams, emergency response contractors, and equipment suppliers.
  - d. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
2. Where state or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

**History:** Effective January 1, 1984; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-27. Content of contingency plan.**

1. The contingency plan must describe the actions facility personnel must take to comply with sections 33-24-05-26 and 33-24-05-31 in response to fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous constituents to air, soil, or surface water at the facility.
2. If the owner or operator has already prepared [a spill prevention, control, and countermeasures plan in accordance with 40 CFR part 112, or some other emergency or contingency plan](#), the owner or operator need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with these requirements. [The owner or operator may develop one contingency plan which meets all regulatory requirements. The department recommends that the plan be based on the national response team's integrated contingency plan guidance \("one plan"\). When modifications are made to nonhazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.](#)

3. The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to section 33-24-05-20.
4. The plan must list names, addresses, and telephone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date. Where more than one is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
5. The plan must include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment, where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
6. The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

**History:** Effective January 1, 1984; [amended effective January 1, 2016.](#)

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-31. Emergency procedures.**

1. When there is an imminent or actual emergency situation, the emergency coordinator, or the coordinator's designee when the emergency coordinator is on call, shall immediately:
  - a. Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel.
  - b. Notify appropriate state or local agencies with designated response roles if their help is needed.
2. When there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.
3. Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion, for example, the effects of any toxic irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosions.
4. If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the emergency coordinator shall report the coordinator's findings as follows:
  - a. If the coordinator's assessment indicates that evacuation of local areas may be advisable, the coordinator shall immediately notify appropriate local authorities. The coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

- b. The coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area or the national response center (using their twenty-four-hour toll-free number 800-424-8802). The report must include:
  - (1) Name and telephone number of reporter.
  - (2) Name and address of facility.
  - (3) Time and type of incident, for example, release, fire.
  - (4) Name and quantity of materials involved, to the extent known.
  - (5) The extent of injuries, if any.
  - (6) The possible hazard to human health or the environment, outside the facility.
5. During an emergency, the emergency coordinator shall take all reasonable measures to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.
6. If the facility stops operations in response to a fire, an explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
7. Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.
8. The emergency coordinator shall ensure that, in the affected areas of the facility:
  - a. No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
  - b. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
9. ~~The owner or operator shall notify the department and other appropriate state and local authorities, that the facility is in compliance with subsection 8 before operations are resumed in the affected areas of the facility.~~
- ~~10.~~ The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, the owner or operator must submit a written report on the incident to the department. The report must include:
  - a. Name, address, and telephone number of the owner or operator.
  - b. Name, address, and telephone number of the facility.
  - c. Date, time, and type of incident, for example, fire, explosion.
  - d. Name and quantity of materials involved.
  - e. The extent of injuries, if any.
  - f. An assessment of actual or potential hazards to human health or the environment, where this is applicable.

- g. Estimated quantity and disposition of recovered material that resulted from the incident.

**History:** Effective January 1, 1984; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-37. Applicability of manifest system, recordkeeping, and reporting requirements.**

1. Sections 33-24-05-37 through 33-24-05-46 apply to owners and operators of both onsite and offsite facilities except as section 33-24-05-01 provides otherwise. Sections 33-24-05-38, 33-24-05-39, and 33-24-05-43 do not apply to owners and operators of onsite facilities that do not receive any hazardous waste from offsite sources, and to owners and operators of offsite facilities with respect to waste military munitions exempted from manifest requirements under subsection 1 of section 33-24-05-823. Subsection 2 of section 33-24-05-40 only applies to permittees who treat, store, or dispose of hazardous waste onsite where such wastes were generated.
2. The revised manifest form and procedures in sections 33-24-01-04, 33-24-02-07, 33-24-05-37, 33-24-05-38, 33-24-05-39, and 33-24-05-43, shall not apply until September 5, 2006, or article 33-24 is amended and effective, but not prior to September 5, 2006. The manifest form and procedures in sections 33-24-01-04, 33-24-02-07, 33-24-05-37, 33-24-05-38, 33-24-05-39, and 33-24-05-43, contained in article 33-24, amended December 1, 2003, shall be applicable until September 5, 2006, or when amended, but not prior to September 5, 2006.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-38. Use of manifest system.**

1. ~~If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or the owner's or operator's agent, shall:~~
  - a. ~~Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received.~~Hazardous waste accompanied by a manifest, the owner or operator, or the owner's or operator's agent shall sign and date the manifest as indicated in subdivision b to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.
  - b. ~~Note any significant discrepancies in the manifest, as defined in subsection 1 of section 33-24-05-39, on each copy of the manifest.~~A hazardous waste shipment accompanied by a manifest, the owner or operator, or the owner's or operator's agent, shall:
    - (1) Sign and date, by hand, each copy of the manifest;
    - (2) Note any discrepancies in the manifest, as defined in subsection 1 of section 33-24-05-39, on each copy of the manifest;
    - (3) Immediately give the transporter at least one copy of the signed manifest;
    - (4) Within thirty days after the delivery, send a copy (page 3) of the manifest to the generator;

(5) Within thirty days of delivery, send the top copy (page 1) of the manifest to the e-manifest system for purposes of data entry and processing. In lieu of mailing this copy to the environmental protection agency, the owner or operator may transmit to the environmental protection agency system an image file of page 1 of the manifest, or both a data string file and the image file corresponding to page 1 of the manifest. Any data or image files transmitted to the environmental protection agency under this paragraph must be submitted in data file and image file formats that are acceptable to the environmental protection agency and that are supported by the environmental protection agency's electronic reporting requirements and by the electronic manifest system; and

(6) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

~~c. Immediately give the transporter at least one copy of the signed manifest.~~Hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming the environmental protection agency's consent to the import of hazardous waste to the department and to the following address within thirty days of delivery: office of enforcement and compliance assurance, office of federal activities, international compliance assurance division (2254A), environmental protection agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.

~~d. Within thirty days after the delivery, send a copy of the manifest to the generator.~~

~~e. Retain at the facility a copy of each manifest for at least three years from the date of delivery.~~

2. If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator's certification, and signatures), the owner or operator, or the owner's or operator's agent, shall:

a. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the shipping paper was received;

b. Note any significant discrepancies (as defined in subsection 1 of section 33-24-05-39) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

c. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper: (if the manifest has not been received);

d. Within thirty days after the delivery, send a copy of the ~~manifest to the generator; however, if the manifest has not been received within thirty days after delivery, the owner or operator, or the owner's or operator's agent, must sign and date the shipping paper and return it to the generator.~~signed and dated manifest, or a signed and dated copy of the shipping paper (if the manifest has not been received within thirty days after delivery) to the generator; and

e. Retain at the facility a copy of each shipping paper (if signed in lieu of the manifest at the time of delivery) and manifest for at least three years from the date of delivery.

3. If a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of chapter 33-24-03.

4. Within three working days of the receipt of a shipment subject to sections 33-24-03-50 through 33-24-03-59, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the exporter, to the office of enforcement and compliance assurance, office of federal activities, international compliance assurance division (2254A), environmental protection agency, 1200 Pennsylvania Avenue, Washington, D.C. 20460, the state, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three years from the date of signature.
5. A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under the state's hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.
6. Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33-24-03-04, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, provide, use, or retain a manifest.
  - a. Any requirement in these rules for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.
  - b. Any requirement in these rules to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.
  - c. Any requirement in these rules for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.
  - d. Any requirement in these rules for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency inspector or authorized department representative.
  - e. No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.
7. An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.
8. Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

- a. Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in item 20 (designated facility certification of receipt) and note any discrepancies in item 18 (discrepancy indication space) of the paper replacement manifest;
- b. The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;
- c. Within thirty days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and
- d. The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

9. Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least three years from the date of delivery of the waste.

10. Imposition of user fee for electronic manifest use. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by the environmental protection agency for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by the environmental protection agency for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under paragraph 5 of subdivision b of subsection 1. The environmental protection agency shall maintain and update from time-to-time the schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The schedule of electronic manifest user fees shall be published by the environmental protection agency as an appendix to 40 CFR 262.

11. Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-39. Manifest discrepancies.**

1. ~~Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvents substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper. Significant discrepancies in quantity are:~~
  - a. For bulk wastes, variations greater than ten percent in weight. Significant differences (as defined by subsection 2) between the quantity or type of hazardous waste designated on

the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

- b. ~~For batch wastes, any variation in piece count, such as a discrepancy of one drum in a truckload.~~Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or
- c. Container residues, which are residues that exceed the quantity limits for empty containers set forth in subsections 3, 4, and 5 of section 33-24-02-07.

2. ~~Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, for example, with telephone conversations. If the discrepancy is not resolved within fifteen days after receiving the waste, the owner or operator shall immediately submit to the department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.~~Significant differences in quantity are: For bulk waste, variations greater than ten percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

3. Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (for example, with telephone conversations). If the discrepancy is not resolved within fifteen days after receiving the waste, the owner or operator must immediately submit to the department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

4. Rejected wastes or container residue.

a. Upon rejecting waste or identifying a container residue that exceeds the quantity limits for empty containers set forth in subsections 3, 4, and 5 of section 33-24-02-07, the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within sixty days of the rejection or the container residue identification.

b. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, the facility must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under subsection 5 or 6.

5. Except as provided in subdivision g, for full or partial load rejections and residues that are to be sent offsite to an alternate facility, the facility is required to prepare a new manifest in accordance with subsection 1 of section 33-24-03-04 and the following instructions:

a. Write the generator's identification number in item 1 of the new manifest. Write the generator's name and mailing address in item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for item 5.

b. Write the name of the alternate designated facility and the facility's identification number in the designated facility block (item 8) of the new manifest.

- c. Copy the manifest tracking number found in item 4 of the old manifest to the special handling and additional information block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.
- d. Copy the manifest tracking number found in item 4 of the new manifest to the manifest reference number line in the discrepancy block of the old manifest (item 18a).
- e. Write the department of transportation description for the rejected load or the residue in item 9 (United States department of transportation description) of the new manifest and write the container types, quantity, and volume or volumes of waste.
- f. Sign the generator's or offeror's certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled, and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in item 5 of the new manifest.
- g. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing item 18b of the original manifest and supplying the information on the next destination facility in the alternate facility space. The facility must retain a copy of this manifest for the facility's records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with subdivisions a through f.

6. Except as provided in subdivision g, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with subsection 1 of section 33-24-03-04 and the following instructions:

- a. Write the facility's identification number in item 1 of the new manifest. Write the facility's name and mailing address in item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for item 5 of the new manifest.
- b. Write the name of the initial generator and the generator's identification number in the designated facility block (item 8) of the new manifest.
- c. Copy the manifest tracking number found in item 4 of the old manifest to the special handling and additional information block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.
- d. Copy the manifest tracking number found in item 4 of the new manifest to the manifest reference number line in the discrepancy block of the old manifest (item 18a).
- e. Write the department of transportation description for the rejected load or the residue in item 9 (United States department of transportation description) of the new manifest and write the container types, quantity, and volume or volumes of waste.
- f. Sign the generator's or offeror's certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled, and is in proper condition for transportation.
- g. For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing items 18a and 18b of the manifest and supplying the generator's information in the alternate facility space. The facility must retain a copy for the facility's records and then give the remaining copies of the manifest to the transporter to accompany the shipment.

If the original manifest is not used, then the facility must use a new manifest and comply with subdivisions a through f and h.

h. For full or partial load rejections and container residues contained in nonempty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in subsections 1 and 2 of section 33-24-03-15.

7. If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for empty containers set forth in subsections 3, 4, and 5 of section 33-24-02-07 after the facility has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from item 4 of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within thirty days, send a copy of the amended manifest to the transporter and generator that received copies prior to the manifest being amended.

**History:** Effective January 1, 1984; amended effective July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-40. Operating record.**

1. The owner or operator shall keep a written operating record at the facility.
2. The following information must be recorded, as it becomes available, and maintained in the operating record ~~until closure of the facility~~ for three years unless noted as follows:
  - a. A description and the quantity of each hazardous waste received and the methods and dates of its treatment, storage, or disposal at the facility as required by appendix I. This information must be maintained in the operating record until closure of the facility.
  - b. The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram ~~of that shows~~ each cell or disposal area. For all facilities, this information must include ~~cross-reference~~ cross-references to ~~specific~~ manifest document numbers; if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.
  - c. Records and results of waste analysis and waste determinations performed as specified in sections 33-24-05-04, 33-24-05-08, 33-24-05-145, 33-24-05-183, subsection 1 of section 33-24-05-253, sections 33-24-05-256, 33-24-05-404, 33-24-05-433, and 33-24-05-453.
  - d. Summary reports and details of all incidents that require implementing the contingency plan as specified in subsection 10 of section 33-24-05-31.
  - e. Records and results of inspections as required by subsection 4 of section 33-24-05-06 (except these data need to be kept only three years).
  - f. Monitoring, testing, or analytical data, and corrective action where required by sections 33-24-05-47 through 33-24-05-58, sections 33-24-05-10, 33-24-05-104, 33-24-05-106, 33-24-05-108, 33-24-05-120, 33-24-05-126, 33-24-05-127, 33-24-05-132, 33-24-05-137, 33-24-05-138, ~~33-24-05-150~~, 33-24-05-164, 33-24-05-165, 33-24-05-167, 33-24-05-178, 33-24-05-179, 33-24-05-187, 33-24-05-188, 33-24-05-302, subsections 3 through 6 of section 33-24-05-404, section 33-24-05-405, subsections 4 through 9 of section

33-24-05-433, section 33-24-05-434, and sections 33-24-05-452 through 33-24-05-460. Maintain in the operating record for three years, except for records and results pertaining to ground water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

- g. For offsite facilities, notices to generators as specified in subsection 2 of section 33-24-05-03.
- h. All closure ~~and postclosure~~ cost estimates under subsection 1 of section 33-24-05-76 and for disposal facilities, all postclosure cost estimates under subsection 2 of section 33-24-05-76. This information must be maintained in the operating record until closure of the facility.
- i. A certification by the permittee no less often than annually that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that is generated to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage, or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment.
- j. Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to section 33-24-05-254, a petition pursuant to section 33-24-05-255, and the applicable notice required by a generator under subsection 1 of section 33-24-05-256. This information must be maintained in the operating record until closure of the facility.
- k. For an offsite treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under section 33-24-05-256.
- l. For an onsite treatment facility, the information contained in the notice except the manifest number, and the certification and demonstration, if applicable, required by the generator or the owner or operator under section 33-24-05-256.
- m. For an offsite land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator of a treatment facility under section 33-24-05-256.
- n. For an onsite land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under section 33-24-05-256.
- o. For an offsite storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under section 33-24-05-256.
- p. For an onsite storage facility, the information contained in the notice except the manifest number, and the certification and demonstration, if applicable, required by the generator or the owner or operator under section 33-24-05-256.
- q. Any records required under subdivision m of subsection 10 of section 33-24-05-01.
- r. Monitoring, testing, or analytical data where required by section 33-24-05-150 must be maintained in the operating record for five years.
- s. Certifications as required by subsection 6 of section 33-24-05-109 must be maintained in the operating record until closure of the facility.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-43. Unmanifested waste report.**

~~— If a facility accepts for treatment, storage, or disposal any hazardous waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described in subdivision b of subsection 5 of section 33-24-04-04 and if the waste is not excluded from the manifest requirement by section 33-24-02-05, then the owner or operator shall prepare and submit a single copy of a report to the department within fifteen days after receiving the waste. The report must be designated "Unmanifested Waste Report" and must include the following information:~~

~~1. The identification number, name, and address of the facility.~~

~~— 2. The date the facility received the waste.~~

~~— 3. The identification number, name, and address of the generator and the transporter, if available.~~

~~— 4. A description and the quantity of each unmanifested hazardous waste the facility received.~~

~~— 5. The method of treatment, storage, or disposal for each hazardous waste.~~

~~— 6. The certification signed by the owner or operator of the facility or the owner's or operator's authorized representative.~~

~~— 7. A brief explanation of why the waste was unmanifested, if known.~~ If a facility accepts for treatment, storage, or disposal any hazardous waste from an offsite source without an accompanying manifest, or without an accompanying shipping paper as described in subsection 5 of section 33-24-04-04 and if the waste is not excluded from the manifest requirement by this article, then the owner or operator shall prepare and submit a single copy of a report to the department within fifteen days after receiving the waste. The report must be designated "Unmanifested Waste Report" and must include the following information:

a. The identification number, name, and address of the facility;

b. The date the facility received the waste;

c. The identification number, name, and address of the generator and the transporter, if available;

d. A description and the quantity of each unmanifested hazardous waste the facility received;

e. The method of treatment, storage, or disposal for each hazardous waste;

f. The certification signed by the owner or operator of the facility or the owner's or operator's authorized representative; and

g. A brief explanation of why the waste was unmanifested, if known.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-47. Applicability of ~~ground water protection~~ releases from solid waste management units requirements.**

1. Applicability.
  - a. Except as provided in subsection 2, ~~the rules in this chapter~~ sections 33-24-05-47 through 33-24-05-58 apply to owners or operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in subdivision b of subsection 1 for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.
  - b. All solid waste management units must comply with the requirements in section 33-24-05-58. A surface impoundment, waste pile, and land treatment unit, or landfill that receives hazardous waste after July 26, 1982, (hereinafter referred to as a "regulated unit") must comply with the requirements of sections 33-24-05-48 through 33-24-05-57 in lieu of section 33-24-05-58 for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of section 33-24-05-58 apply to regulated units.
2. The owner's or operator's regulated unit or units, are not subject to regulation for releases into the uppermost aquifer under ~~this chapter~~ sections 33-24-05-47 through 33-24-05-58 if:
  - a. The owner or operator is exempted under section 33-24-05-01; or
  - b. ~~He~~ The owner or operator operates a unit which the department finds:
    - (1) Is an engineered structure;
    - (2) Does not receive or contain liquid waste or waste containing free liquids;
    - (3) Is designed and operated to exclude liquid, precipitation, and other run-on and runoff;
    - (4) Has both inner and outer layers of containment enclosing the waste;
    - (5) Has a leak detection system built into each containment layer;
    - (6) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods; and
    - (7) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period;
  - c. The department finds, pursuant to subsection 4 of section 33-24-05-167, that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of section 33-24-05-165 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this ~~section~~ subsection can only relieve an owner or operator of responsibility to meet the requirements of ~~this chapter~~ sections 33-24-05-47 through 33-24-05-58 during the postclosure care period;
  - d. The department finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure

period) and the postclosure care period specified under section ~~33-24-05-65~~33-24-05-66. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this ~~section~~subsection on assumptions that maximize the rate of liquid migration; or

- e. ~~He~~The owner or operator designs and operates a pile in compliance with subsection 3 of section 33-24-05-130.
3. The ~~ground water protection~~ requirements of sections 33-24-05-47 through 33-24-05-58 apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the ~~ground water protection~~ requirements of sections 33-24-05-47 through 33-24-05-58:
    - a. Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;
    - b. Apply during the postclosure care period under section ~~33-24-05-65~~33-24-05-66 if the owner or operator is conducting a detection monitoring program under section 33-24-05-55; or
    - c. Apply during the compliance period under section 33-24-05-53 if the owner or operator is conducting a compliance monitoring program under section 33-24-05-56 or a corrective action program under section 33-24-05-57.
  4. ~~Rules in this chapter~~Sections 33-24-05-47 through 33-24-05-58 may apply to miscellaneous units when necessary to comply with sections 33-24-05-301 through 33-24-05-303.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-48. Required programs.**

1. Owners and operators subject to the ground water protection requirements of sections 33-24-05-47 through 33-24-05-58 shall conduct a monitoring and response program as follows:
  - a. Whenever hazardous constituents under section 33-24-05-50 from a regulated unit are detected at a compliance point under section 33-24-05-52, the owner or operator must institute a compliance monitoring program under section 33-24-05-56. Detected is defined as statistically significant evidence of contamination as described in subsection 6 of section 33-24-05-55;
  - b. Whenever the ground water protection standard under section 33-24-05-49 is exceeded, the owner or operator must institute a corrective action program under section 33-24-05-57. Exceeded is defined as statistically significant evidence of increased contamination as described in subsection 4 of section 33-24-05-56;
  - c. Whenever hazardous constituents under section 33-24-05-50 from a regulated unit exceed concentration limits under section 33-24-05-51 in ground water between the compliance point under section 33-24-05-52 and the downgradient facility boundary property, the owner or operator shall institute a corrective action program under section 33-24-05-57; or

- d. In all other cases, the owner or operator shall institute a detection monitoring program under section 33-24-05-55.
2. The department will specify in the facility permit the specific elements of the monitoring and response program. The department may include one or more of the programs identified in subsection 1 in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the department will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

**History:** Effective January 1, 1984; amended effective December 1, 1991; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-50. Hazardous constituents.**

1. The department will specify in the facility permit the hazardous constituents to which the ground water protection standard of section 33-24-05-49 applies. Hazardous constituents are constituents identified in appendix V of chapter 33-24-02 that have been detected in ground water in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the department has excluded them under subsection 2.
2. The department will exclude an appendix V of chapter 33-24-02 constituent from the list of hazardous constituents specified in the facility permit if ~~it~~[the department](#) finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the department will consider the following:
  - a. Potential adverse effects on ground water quality, considering:
    - (1) The physical and chemical characteristics of the waste in the regulated units, including its potential for migration.
    - (2) The hydrogeological characteristics of the facility and surrounding land.
    - (3) The quantity of ground water and the direction of ground water flow.
    - (4) The proximity and withdrawal rates of ground water users.
    - (5) The current and future uses of ground water in the area.
    - (6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality.
    - (7) The potential for health risks caused by human exposure to waste constituents.
    - (8) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.
    - (9) The persistence and permanence of the potential adverse effect.
  - b. Potential adverse effects on hydraulically connected surface water quality, considering:
    - (1) The volume and physical and chemical characteristics of the waste in the regulated unit.

- (2) The hydrogeological characteristics of the facility and surrounding land.
  - (3) The quantity and quality of ground water, and the direction of ground water flow.
  - (4) The patterns of rainfall in the region.
  - (5) The proximity of the regulated unit to surface water.
  - (6) The current and future uses of surface water in the area and any water quality standards established for those surface waters.
  - (7) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.
  - (8) The potential for health risks caused by human exposure to waste constituents.
  - (9) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.
  - (10) The persistence and permanence of the potential adverse effects.
3. In making any determination under subsection 2 about the use of ground water in the area around the facility, the department will consider any identification of underground sources of drinking water and exempted aquifers made under provisions of the Safe Drinking Water Act and 40 CFR 144.8.

**History:** Effective January 1, 1984; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-51. Concentration limits.**

1. The department will specify in the facility permit concentration limits in the ground water for hazardous constituents established under section 33-24-05-50. The concentration of a hazardous constituent:
  - a. May not exceed the background level of that constituent in the ground water at the time that limit is specified in the permit;
  - b. For any of the constituents listed in table 1, may not exceed the respective value given in that table if the background level of the constituent is below the value given in table 1; or
  - c. May not exceed an alternate limit established by the department under subsection 2.

**Table 1. Maximum Concentration of Constituents for Ground Water Protection**

Constituent	Maximum Concentration mg/l
<a href="#">Arsenic</a>	<a href="#">0.05</a>
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10, 10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5, 8-dimethano naphthalene)	0.0002

Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-trichloro-2, 2-bis[p-methoxyphenyl] ethane)	0.1
Toxaphene (C <sub>10</sub> H <sub>10</sub> Cl <sub>8</sub> technical chlorinated camphene, 67-69% chlorine)	0.005
2,4-D (2,4-dichlorophenoxyacetic acid)	0.1
2,4,5-TP silvex (2,4,5-trichlorophen-oxy propionic acid)	0.01

2. The department will establish an alternate concentration limit for a hazardous constituent if ~~it~~ the department finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the department will consider the following factors:

- a. Potential adverse effects on ground water quality, considering:
  - (1) The physical and chemical characteristics of the waste in the regulated unit, including the potential for migration.
  - (2) The hydrogeological characteristics of the facility and surrounding land.
  - (3) The quantity of ground water and direction of ground water flow.
  - (4) The proximity and withdrawal rates of ground water users.
  - (5) Current and future uses of ground water in the area.
  - (6) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality.
  - (7) The potential for health risks caused by human exposure to waste constituents.
  - (8) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.
  - (9) The persistence and permanence of potential adverse effects.
- b. Potential adverse effects on hydraulically connected surface water quality, considering:
  - (1) The volume and physical and chemical characteristics of the waste in the regulated unit.
  - (2) The hydrogeological characteristics of the facility and surrounding land.
  - (3) The quantity and quality of ground water, and the direction of ground water flow.
  - (4) The patterns of rainfall in the region.
  - (5) The proximity of the regulated unit to surface waters.
  - (6) The current and future uses of surface waters in the area and any water quality standards established for those surface waters.
  - (7) Existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.
  - (8) The potential for health risks caused by human exposure to waste constituents.
  - (9) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

- (10) The persistence and permanence of the potential adverse effects.
3. In making any determination under subsection 2 about the use of ground water in the area around the facility the department will consider any identification of underground sources of drinking water and exempted aquifers made under provisions of the Safe Drinking Water Act and 40 CFR 144.8.

**History:** Effective January 1, 1984; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-54. General ground water monitoring requirements.**

The owner or operator shall comply with the following requirements for any ground water monitoring program developed to satisfy section 33-24-05-55, 33-24-05-56, or 33-24-05-57:

1. The ground water monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depth to yield ground water samples from the uppermost aquifer that:
  - a. Represent the quality of background ground water that has not been affected by leakage from a regulated unit. A determination of background ground water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:
    - (1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and
    - (2) Sampling at other wells will provide an indication of background ground water quality that is representative or more representative than that provided by the upgradient wells.
  - b. Represent the quality of ground water passing the point of compliance.
  - c. Allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.
2. If a facility contains more than one regulated unit, separate ground water monitoring systems are not required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the ground water in the uppermost aquifer.
3. All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground water samples. The annular space, i.e., the space between the borehole and well casing, above the sampling depth must be sealed to prevent contamination of samples and the ground water.
4. The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of ground water quality below the waste management area. At a minimum, the program must include procedures and techniques for:
  - a. Sample collection.
  - b. Sample preservation and shipment.

- c. Analytical procedures.
  - d. Chain of custody control.
5. The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents in ground water samples.
  6. The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.
  7. In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance points the number and kinds of samples collected to establish background must be appropriate for the form of statistical test employed following generally accepted statistical principles. The sample site must be as large as necessary to ensure with reasonable confidence that a contaminant released to ground water from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which must be specified in the unit permit upon approval by the department. This sampling procedure must be:
    - a. A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifers effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or
    - b. An alternate sampling procedure proposed by the owner or operator and approved by the department.
  8. The owner or operator will specify one of the following statistical methods to be used in evaluating ground water monitoring data for each hazardous constituent which, upon approval by the department, will be specified in the unit permit. The statistical test chosen must be conducted separately for each hazardous constituent in each well. Where practical quantification limits are used in any of the following statistical procedures to comply with subdivision e of subsection 9, the practical quantification limits must be proposed by the owner or operator and approved by the department. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in subsection 9.
    - a. A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance wells mean and the background mean levels for each constituent.
    - b. An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance wells median and the background median levels for each constituent.
    - c. A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
    - d. A control chart approach that gives control limits for each constituent.

- e. Another statistical test method submitted by the owner or operator and approved by the department.
9. Any statistical method chosen under subsection 8 ~~of section 33-24-05-54~~ for specification in the unit permit shall comply with the following performance standards, as appropriate:
- a. The statistical method used to evaluate ground water monitoring data must be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.
  - b. If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test must be done at a type one error level no less than one hundredth for each testing period. If a multiple comparisons procedure is used, the type one experiment wise error rate for each testing period must be no less than five hundredths; however, the type one error of no less than one hundredth for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
  - c. If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values must be proposed by the owner or operator and approved by the department if ~~he or she~~the department finds it to be protective of human health and the environment.
  - d. If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be proposed by the owner or operator and approved by the department if ~~he or she~~the department finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
  - e. The statistical method must account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit approved by the department under subsection 8 ~~of section 33-24-05-54~~ that is used in the statistical method must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
  - f. If necessary, the statistical method must include procedures to control or correct for seasonal and spacial variability as well as temporal correlation in the data.
10. Ground water monitoring data collected in accordance with subsection 7 including actual levels of constituents must be maintained in the facility operating record. The department will specify in the permit when the data must be submitted for review.

**History:** Effective January 1, 1984; amended effective December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-55. Detection monitoring program.**

An owner or operator required to establish a detection monitoring program under sections 33-24-05-47 through 33-24-05-58 shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor for indicator parameters (for example, specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. The department will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:
  - a. The types, quantities, and concentrations of constituents in wastes managed at the regulated unit.
  - b. The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area.
  - c. The detectability of indicator parameters, waste constituents, and reaction products in ground water.
  - d. The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the ground water background.
2. The owner or operator shall install a ground water monitoring system at the compliance point under section 33-24-05-52 which complies with subdivision b of subsection 1, and subsections 2 and 3, of section 33-24-05-54.
3. The owner or operator must conduct a ground water monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to subsection 1 in accordance with subsection 7 of section 33-24-05-54. The owner or operator must maintain a record of ground water analytical data as measured and in a form necessary for the determination of statistical significance under subsection 8 of section 33-24-05-54.
4. The department will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under subsection 1 in accordance with subsection 7 of section 33-24-05-54. ~~A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.~~
5. The owner or operator shall determine the ground water flow rate and direction in the uppermost aquifer at least annually.
6. The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to subsection 1 at a frequency specified under subsection 4.
  - a. In determining whether statistically significant evidence of contamination exists, the owner or operator must use the methods specified in the permit under subsection 8 of section 33-24-05-54. These methods must compare data collected at the compliance points to the background ground water quality data.
  - b. The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time at the completion of sampling. The department will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and availability of laboratory facilities to perform the analysis of ground water samples.
7. If the owner or operator determines pursuant to subsection 6 that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents

specified pursuant to subsection 1 at any monitoring well at the compliance point, the owner or operator must:

- a. Notify the department of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination.
- b. Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix ~~IX~~XII of chapter 33-24-05 are present, and if so, in what concentration. However, the department, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the appendix XII of chapter 33-24-05 list and other representative or related, or both, waste constituents.
- c. For any appendix ~~IX~~XII compounds found in the analysis pursuant to subdivision b ~~of subsection 7~~, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the department and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subdivision b of subsection 7 in subdivision b, the hazardous constituents found during this initial appendix ~~IX~~XII analysis will form the basis for compliance monitoring.
- d. Within ninety days, submit to the department an application for a permit modification to establish a compliance monitoring program meeting the requirements of section 33-24-05-56. The application must include the following information:
  - (1) An identification of the concentration ~~or of~~ any appendix ~~IX~~XII constituent detected in the ground water at each monitoring well at the compliance point.
  - (2) Any proposed changes to the ground water monitoring system at the facility necessary to meet the requirements of section 33-24-05-56.
  - (3) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of section 33-24-05-56.
  - (4) For each hazardous constituent detected at the compliance point, a proposed concentration limit under subdivision a or b of subsection 1 of section 33-24-05-51, or a notice of intent to seek an alternate concentration limit under subsection 2 of section 33-24-05-51.
- e. Within one hundred eighty days, submit to the department:
  - (1) All data necessary to justify an alternate concentration limit sought under subsection 2 of section 33-24-05-51; and
  - (2) An engineering feasibility plan for a corrective action program necessary to meet the requirements of section 33-24-05-57, unless:
    - (a) All hazardous constituents identified under subdivision b ~~of subsection 7~~ are listed in table 1 of section 33-24-05-51 and their concentrations do not exceed the respective values given in that table; or
    - (b) The owner or operator has sought an alternate concentration limit under subsection 2 of section 33-24-05-51 for every hazardous constituent identified under subdivision b ~~of subsection 7~~.

- f. If the owner or operator determines, pursuant to subsection 6, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to subsection 1 at any monitoring well at the compliance point, the owner or operator may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. The owner or operator may make a demonstration under this ~~section~~ subdivision in addition to, or in lieu of, submitting a permit modification application under subdivision d ~~of subsection 7~~; however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in subdivision d ~~of subsection 7~~ unless the demonstration made under this subdivision successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this subdivision, the owner or operator must:
- (1) Notify the department in writing within seven days of determining statistically significant evidence of contamination at the compliance point that the owner or operator intends to make a demonstration under this subdivision;
  - (2) Within ninety days, submit a report to the department which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;
  - (3) Within ninety days, submit to the department an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and
  - (4) Continue to monitor in accordance with the detection monitoring program established under this section.
8. If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, the owner or operator must, within ninety days, submit an application for a permit modification to make any appropriate changes to the program.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-56. Compliance monitoring program.**

An owner or operator who is required to establish a compliance monitoring program under ~~this chapter~~ sections 33-24-05-47 through 33-24-05-58 shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall monitor the ground water to determine whether regulated units are in compliance with the ground water protection standard under section 33-24-05-49. The department will specify the ground water protection standard in the facility permit, including:
  - a. A list of the hazardous constituents identified under section 33-24-05-50.
  - b. Concentration limits under section 33-24-05-51 for each of those hazardous constituents.
  - c. The compliance point under section 33-24-05-52.
  - d. The compliance period under section 33-24-05-53.

2. The owner or operator shall install a ground water monitoring system at the compliance point as specified under section 33-24-05-52. The ground water monitoring system must comply with subdivision b of subsection 1, and subsections 2 and 3, of section 33-24-05-54.
3. The department will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with subsections 7 and 8 of section 33-24-05-54.
  - a. The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with subsection 7 of section 33-24-05-54.
  - b. The owner or operator must record ground water analytical data as measured and in form necessary for the determination of statistical significance under subsection 8 of section 33-24-05-54 for the compliance period of the facility.
4. The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to subsection 1, at a frequency specified under subsection 6.
  - a. In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the methods specified in the permit under subsection 8 of section 33-24-05-54. The methods must compare data collected at the compliance points to a concentration limit developed in accordance with section 33-24-05-51.
  - b. The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The department will specify that time period and the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.
5. The owner or operator shall determine the ground water flow rate and direction in the uppermost aquifer at least annually.
6. The department will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with subsection 7 of section 33-24-05-54. ~~A sequence of at least four samples from each well, background and compliance wells, must be collected at least semiannually during the compliance period of the facility.~~
7. ~~The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in appendix IX at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to the procedures in subsection 6 of section 33-24-05-55. If the owner or operator finds appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the department within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then the owner or operator must report the concentrations of these additional constituents to the department within seven days after completion of the initial analysis and add them to the monitoring list.~~ Annually, the owner or operator must determine whether additional hazardous constituents from appendix XII, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in subsection 6 of section 33-24-05-55. To accomplish this, the owner

or operator must consult with the department to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling, the number of monitoring wells at the compliance point to undergo enhanced sampling, the number of samples to be collected from each of these monitoring wells, and the specific constituents from appendix XII for which these samples must be analyzed. If the enhanced sampling event indicates that appendix XII constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the department, and repeat the appendix XII analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the department within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then the owner or operator must report the concentrations of these additional constituents to the department within seven days after completion of the initial analysis and add them to the monitoring list.

8. If the owner or operator determines pursuant to subsection 4 that any concentration limits under section 33-24-05-51 are being exceeded at any monitoring well at the point of compliance, the owner or operator must:
  - a. Notify the department of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded.
  - b. Submit to the department an application for a permit modification to establish a corrective action program meeting the requirements of section 33-24-05-57 within one hundred eighty days, or within ninety days if an engineering feasibility study has been previously submitted to the department under subdivision e of subsection 87 of section 33-24-05-55. The application must, at a minimum, include the following information:
    - (1) A detailed description of corrective actions that will achieve compliance within the ground water protection standard specified in the permit under subsection 1.
    - (2) A plan for a ground water monitoring program that will demonstrate the effectiveness of the corrective action. Such a ground water monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.
9. If the owner or operator determines, pursuant to subsection 4, that the ground water concentration limits under this section are being exceeded at any monitoring well at the point of compliance, the owner or operator may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the ground water. In making a demonstration under this ~~section~~subsection, the owner or operator must:
  - a. Notify the department in writing within seven days that the owner or operator intends to make a demonstration under this subsection.
  - b. Within ninety days, submit a report to the department which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation.
  - c. Within ninety days, submit to the department an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility.
  - d. Continue to monitor in accordance with the compliance monitoring program established under this section.

10. If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, the owner or operator shall, within ninety days, submit an application for a permit modification to make any appropriate changes to the program.

~~11. The owner or operator shall assure that monitoring and corrective action measures necessary to achieve compliance with the ground water protection standard under section 33-24-05-49 are taken during the term of this permit.~~

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-57. Corrective action program.**

An owner or operator required to establish a corrective action program under sections 33-24-05-07 through 33-24-05-48 shall, at a minimum, discharge the following responsibilities:

1. The owner or operator shall take corrective action to ensure that regulated units are in compliance with the ground water protection standard under section 33-24-05-49. The department will specify the ground water protection standard in the facility permit including:
  - a. A list of the hazardous constituents identified under section 33-24-05-50.
  - b. Concentration limits under section 33-24-05-51 for each of those hazardous constituents.
  - c. The compliance point under section 33-24-05-52.
  - d. The compliance period under section 33-24-05-53.
2. The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.
3. The owner or operator shall begin corrective action within a reasonable time period after the ground water protection standard is exceeded. The department will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of subdivision b of subsection 9 of section 33-24-05-56.
4. In conjunction with a corrective action program, the owner or operator shall establish and implement a ground water monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under section 33-24-05-56 and must be as effective as that program in determining compliance with the ground water protection standard under section 33-24-05-49 and in determining the success of a corrective action program under subsection 5 where appropriate.
5. In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under section 33-24-05-50 that exceed concentration limits under section 33-24-05-51 in ground water:

- a. Between the compliance point under section 33-24-05-52 and the downgradient property boundary; and
  - b. Beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied. Onsite measures to address such releases will be determined on a case-by-case basis.
  - c. Corrective action measures under this ~~paragraph~~subsection must be initiated and completed within a reasonable period of time considering the extent of contamination.
  - d. Corrective action measures under this subsection may be terminated once the concentration of hazardous constituents under section 33-24-05-50 is reduced to levels below their respective concentration limits under section 33-24-05-51.
6. The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the ground water protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, the owner or operator shall continue that corrective action for as long as necessary to achieve compliance with the ground water protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if the owner or operator can demonstrate, based on data from the ground water monitoring program under subsection 4 that the ground water protection standard of section 33-24-05-49 has not been exceeded for a period of three consecutive years.
  7. The owner or operator shall report in writing to the department on the effectiveness of the corrective action program. The owner or operator shall submit these reports ~~semiannually~~annually.
  8. If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, the owner or operator shall, within ninety days, submit an application for a permit modification to make any appropriate changes to the program.

**History:** Effective January 1, 1984; amended effective January 1, 1994; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-58. Corrective action for solid waste management units.**

1. The owner or operator of a facility seeking a permit for the treatment, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.
2. Corrective action will be specified in the permit in accordance with this section and sections 33-24-05-550 through 33-24-05-559. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.
3. The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission

to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied. Onsite measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

4. This [section](#) does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

**History:** Effective October 1, 1986; amended effective January 1, 1994; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-59. Applicability of closure and postclosure requirements.**

Except as section 33-24-05-01 provides otherwise:

1. Sections 33-24-05-60 through 33-24-05-64 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; [and](#)
2. Sections 33-24-05-65 through 33-24-05-69 (which concern postclosure care) apply to the owners and operators of:
  - a. All hazardous waste disposal facilities;
  - b. Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in section 33-24-05-119 or 33-24-05-135;
  - c. Tank systems that are required under section 33-24-05-110 to meet the requirements for landfills; and
  - d. Containment buildings that are required under section 33-24-05-477 to meet the requirement for landfills.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 1994; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-61. Closure plan - Amendment of plan.**

1. **Written plan.**
  - a. The owner or operator of a hazardous waste management facility shall have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by paragraph 1 of subdivision a of subsection 3 of section 33-24-05-122 and paragraph 1 of subdivision a of subsection 3 of section 33-24-05-135 to have contingent closure plans. The plan must be submitted with the permit application, in accordance with subdivision m of subsection 2 of section 33-24-06-17, and approved by the department as part of the permit issuance procedure under chapter 33-24-07. In accordance with section 33-24-06-05, the approved closure plan will become a condition of any hazardous waste permit.

- b. The department's approval of the plan must ensure that the approved closure plan is consistent with sections 33-24-05-60 through 33-24-05-64 and the applicable requirements of sections 33-24-05-47 through 33-24-05-58, 33-24-05-97, 33-24-05-110, 33-24-05-122, 33-24-05-135, 33-24-05-151, 33-24-05-167, 33-24-05-180, 33-24-05-301, and 33-24-05-477. Until final closure is completed and certified in accordance with section 33-24-05-64, a copy of the approved plan and all approved revisions must be furnished to the department upon request, including requests by mail.
2. **Content of plan.** The plan must identify steps necessary to perform partial or final, or both, closure of the facility at any point during its active life. The closure plan must include, at least:
  - a. A description of how each hazardous waste management unit at the facility will be closed in accordance with section 33-24-05-60;
  - b. A description of how final closure of the facility will be conducted in accordance with section 33-24-05-60. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility;
  - c. An estimate of the maximum inventory of hazardous wastes ever onsite over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the types of the offsite hazardous waste management units to be used, if applicable;
  - d. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standards;
  - e. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closures satisfy the closure performance standards, including, but not limited to, ground water monitoring, leachate collection, and run-on and runoff control;
  - f. A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.);
  - g. For facilities that use trust funds or establish financial assurance under section 33-24-05-77 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure; and
  - h. A closure cost estimate.
3. **Amendment of plan.** The owner or operator must submit a written notification of, or request for, a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in chapters 33-24-06 and 33-24-07. The written notification or request must include a copy of the amended closure plan for review or approval by the department.

- a. The owner or operator may submit a written notification or request to the department for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.
- b. The owner or operator must submit a written notification of, or request for, a permit modification to authorize a change in the approved closure plan when:
  - (1) Changes in operating plans or facility design affect the closure plan;
  - (2) There is a change in the expected year of closure, if applicable; or
  - (3) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.
- c. The owner or operator shall submit a written request for a permit modification, including a copy of the amended closure plan for approval at least sixty days prior to the proposed change in facility design or operation, or no later than sixty days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification no later than thirty days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under paragraph 1 of subdivision a of subsection 3 of section 33-24-05-122 or paragraph 1 of subdivision a of subsection 3 of section 33-24-05-135 shall submit an amended closure plan to the department no later than sixty days from the date that the owner or operator or department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of section 33-24-05-180, or no later than thirty days from that date if the determination is made during partial or final closure. The department will approve, disapprove, or modify this amended plan in accordance with the procedures in chapters 33-24-06 and 33-24-07. In accordance with section 33-24-06-05, the approved closure plan will become a condition of the hazardous waste permit issued.
- d. The department may request modifications to the plan under the conditions described in subdivision b. The owner or operator shall submit the modified plan within sixty days of the department's request, or within thirty days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the department will be approved in accordance with procedures in chapters 33-24-06 and 33-24-07.

**4. Notification of partial closure and final closure.**

- a. The owner or operator shall notify the department in writing at least sixty days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall notify the department in writing at least forty-five days prior to the date on which the owner or operator expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator must notify the department in writing at least forty-five days prior to the date which the owner or operator expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.
- b. The date when the owner or operator "expects to begin closure" must be either no later than thirty days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can

demonstrate to the department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and the owner or operator has taken and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the department may approve an extension to this one-year limit.

- c. If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under North Dakota Century Code section 23-20.3-08, to cease receiving hazardous waste or to close, then the requirements of this [section subsection](#) do not apply. However, the owner or operator shall close the facility in accordance with the deadlines established in section 33-24-05-62.

5. **Removal of wastes and decontamination or dismantling of equipment.** Nothing in this section precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-62. Closure - Time allowed for closure.**

1. Within ninety days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of onsite, all hazardous wastes in accordance with the approved closure plan. The department may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that one or both of the following subdivisions apply:
  - a. The activities required to comply with this [section subsection](#) will, of necessity, take longer than ninety days to complete; or
  - b. All of the following apply:
    - (1) The hazardous waste management unit or facility has the capacity to receive additional hazardous waste;
    - (2) There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or the facility within one year;
    - (3) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and
    - (4) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.
2. The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within one hundred eighty days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The department may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that one or both of the following subdivisions apply:

- a. The partial or final closure activities will, of necessity, take longer than one hundred eighty days to complete; or
- b. All of the following apply:
  - (1) The hazardous waste management unit or facility has the capacity to receive additional hazardous waste;
  - (2) There is reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or the facility within one year;
  - (3) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and
  - (4) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility including compliance with all applicable permit requirements.
3. The demonstrations referred to in subsections 1 and 2 ~~of section 33-24-05-62~~ must be made as follows: The demonstrations in subsection 1 must be made at least thirty days prior to expiration of the ninety-day period in subsection 1; and the demonstration in subsection 2 must be made at least thirty days prior to the expiration of the one hundred eighty-day period in subsection 2.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-64. Certification of closure.**

Within sixty days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within sixty days of the completion of final closure, the owner or operator shall submit to the department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by ~~an independent registered~~ a qualified professional engineer. Documentation supporting the ~~independent registered~~ professional engineer's certification must be furnished to the department upon request until the department releases the owner or operator from the financial assurance requirements for closure under subsection 9 of section 33-24-05-77.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-65. Survey plat.**

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the department, a survey plot indicating the location and dimensions of ~~landfills~~ landfill cells, or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor, ~~the~~ The plat filed with a local zoning authority or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of

the hazardous waste disposal unit in accordance with the applicable regulations under sections 33-24-05-59 through ~~33-24-05-69~~33-24-05-73.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-66. Postclosure care and use of property.**

1. Postclosure care requirements.
  - a. Postclosure care for each hazardous waste management unit subject to the requirements of sections 33-24-05-66 through 33-24-05-69 must begin after completion of closure of the unit and continue for thirty years after that date and must consist of at least the following:
    - (1) Monitoring and reporting in accordance with the requirements of sections 33-24-05-47 through 33-24-05-58, sections ~~33-24-05-115~~33-24-05-118 through ~~33-24-05-186~~33-24-05-143, sections 33-24-05-160 through 33-24-05-190, and sections 33-24-05-300 through ~~33-24-05-303~~33-24-05-309; and
    - (2) Maintenance and monitoring of waste containment systems in accordance with the requirements of sections 33-24-05-47 through 33-24-05-58, sections ~~33-24-05-115~~33-24-05-118 through ~~33-24-05-186~~33-24-05-143, sections 33-24-05-160 through 33-24-05-190, and sections 33-24-05-300 through ~~33-24-05-303~~33-24-05-309.
  - b. Anytime preceding partial closure of a hazardous waste management unit subject to postclosure care requirements or final closure, or anytime during the postclosure period for a particular unit, the department may, in accordance with the permit modification procedures in chapters 33-24-06 and 33-24-07:
    - (1) Shorten the postclosure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the ~~owner or operator~~department finds that the reduced period is sufficient to protect human health and the environment (for example, leachate or ground water monitoring results, characteristics of the hazardous waste, application of advanced technology or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or
    - (2) Extend the postclosure care period applicable to the hazardous waste management unit or facility if the ~~owner or operator~~department finds that the extended period is necessary to protect human health or the environment (for example, leachate or ground water monitoring results indicate a potential for migration of hazardous waste at levels which may be harmful to human health or the environment).
2. The department may require, at partial and final closure, continuation of any of the security requirements of section 33-24-05-05 during part or all of the postclosure period when:
  - a. Hazardous wastes may remain exposed after completion of partial or final closure; or
  - b. Access by the public or domestic livestock may pose a hazard to human health.
3. Postclosure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the facility's monitoring systems, unless the department finds that the disturbance:

- a. Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
  - b. Is necessary to reduce a threat to human health or the environment.
4. All postclosure care activities must be in accordance with the provisions of the approved postclosure plan as specified in section 33-24-05-67.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-67. Postclosure plan - Amendment of plan.**

1. Written plan. The owner or operator of a hazardous waste disposal unit shall have a written postclosure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by paragraph 2 of subdivision a of subsection 3 of section 33-24-05-122 and paragraph 2 of subdivision a of subsection 3 of section 33-24-05-135 to have contingent postclosure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent postclosure plans under paragraph 2 of subdivision a of subsection 3 of section 33-24-05-122 and paragraph 2 of subdivision a of subsection 3 of section 33-24-05-135 shall submit a postclosure plan to the department within ninety days from the date that the owner or operator or department determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of sections 33-24-05-66 through 33-24-05-69. The plan must be submitted with the permit application in accordance with section 33-24-06-17, and approved by the department as part of the permit issuance procedure under chapter 33-24-07. In accordance with section 33-24-06-05, the approved postclosure plan will become a condition of any hazardous waste permit issued.
2. For each hazardous waste management unit subject to the requirements of this section, the postclosure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:
  - a. A description of the planned monitoring activities and frequencies at which they will be performed to comply with sections 33-24-05-47 through 33-24-05-58, sections ~~33-24-05-115~~[33-24-05-118](#) through ~~33-24-05-186~~[33-24-05-143](#), [sections 33-24-05-160 through 33-24-05-190](#), and sections 33-24-05-300 through ~~33-24-05-303~~[33-24-05-309](#) during the postclosure care period;
  - b. A description of the planned maintenance activities, and frequencies at which they will be performed to ensure:
    - (1) The integrity of the cap and final cover or other containment systems in accordance with the requirements of sections 33-24-05-47 through 33-24-05-58, sections ~~33-24-05-115~~[33-24-05-118](#) through ~~33-24-05-186~~[33-24-05-143](#), [sections 33-24-05-160 through 33-24-05-190](#), and sections 33-24-05-300 through ~~33-24-05-303~~[33-24-05-309](#);
    - (2) The function of the monitoring equipment in accordance with the requirements of sections 33-24-05-47 through 33-24-05-58, sections ~~33-24-05-115~~[33-24-05-118](#) through ~~33-24-05-186~~[33-24-05-143](#), [sections 33-24-05-160 through 33-24-05-190](#), and sections 33-24-05-300 through ~~33-24-05-303~~[33-24-05-309](#); and
  - c. The name, address, and telephone number of the persons or office to contact about the hazardous waste disposal unit or facility during the postclosure care period.

3. Until final closure of the facility, a copy of the approved postclosure plan must be furnished to the department upon request, including request by mail. After final closure has been certified, the person or office specified in subdivision c of subsection 2 ~~of section 33-24-05-67~~ shall keep the approved postclosure plan during the remainder of the postclosure period.
4. The owner or operator must submit a written notification of, or request for, a permit modification to authorize a change in the approved postclosure plan in accordance with the applicable requirements in chapters 33-24-06 and 33-24-07. The written notification or request must include a copy of the amended postclosure plan for review or approval by the department.
  - a. The owner or operator may submit a written notification or request to the department for a permit modification to amend the postclosure plan at any time during the active life of the facility or during the postclosure care period.
  - b. The owner or operator must submit a written notification of, or request for, a permit modification to authorize a change in the approved postclosure plan whenever:
    - (1) Changes in operating plans or facility design affect the approved postclosure plan;
    - (2) There is a change in the expected year of final closure, if applicable; or
    - (3) Events which occur during the active life of the facility, including partial and final closures, affect the approved postclosure plan.
  - c. The owner or operator shall submit a written request for a permit modification at least sixty days prior to the proposed change in facility design or operation, or no later than sixty days after an unexpected event has occurred which has affected the postclosure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent postclosure plan under paragraph 2 of subdivision a of subsection 3 of section 33-24-05-122 and paragraph 2 of subdivision a of subsection 3 of section 33-24-05-135 shall submit a postclosure plan to the department no later than ninety days after the date that the owner or operator or department determine that the hazardous waste management unit must be closed as a landfill, subject to the requirements of section 33-24-05-180. The department will approve, disapprove, or modify this plan in accordance with the procedures in chapters 33-24-06 and 33-24-07. In accordance with section 33-24-06-05, the approved postclosure plan will become a permit condition.
  - d. The department may request modifications to the plan under the conditions described in subdivision b ~~of subsection 4 of section 33-24-05-67~~. The owner or operator shall submit the modified plan no later than sixty days after the department's request, or no later than ninety days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent postclosure plan. Any modifications requested by the department will be approved, disapproved, or modified in accordance with the procedures in chapters 33-24-06 and 33-24-07.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-68. Postclosure notices.**

1. No later than sixty days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the department a record of the type, location, and

quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous waste disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the hazardous wastes to the best of ~~his~~the owner's or operator's knowledge and in accordance with any records the owner or operator has kept.

2. Within sixty days of certification of closure of the first hazardous waste disposal unit and within sixty days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:
  - a. Record, in accordance with state law, a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that:
    - (1) The land has been used to manage hazardous waste;
    - (2) Use of the land is restricted under sections 33-24-05-59 through 33-24-05-73; and
    - (3) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by section 33-24-05-65 and subsection 1 ~~of section 33-24-05-68~~ have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the department; and
  - b. Submit a certification, signed by the owner or operator, that the owner or operator has recorded the notation specified in subdivision a of subsection 2, including a copy of the document in which the notation has been placed, to the department.
3. If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, the owner or operator shall request a modification to the postclosure permit in accordance with the applicable requirements in chapters 33-24-06 and 33-24-07. The owner or operator shall demonstrate that the removal of the hazardous waste will satisfy the criteria of subsection 3 of section 33-24-05-66. By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this article. If the owner or operator is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the department approve either:
  - a. The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or
  - b. In addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-69. Certification of completion of postclosure care.**

No later than sixty days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator shall submit to the department, by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and ~~an independent registered~~ a qualified professional

engineer. Documentation supporting the ~~independent registered~~ professional ~~engineer~~engineer's certification must be furnished to the department upon request until the department releases the owner or operator from the financial assurance requirements for postclosure care under subsection 9 of section 33-24-05-77.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-75. Definitions of terms used in ~~this chapter~~sections 33-24-05-74 through 33-24-05-88.**

1. "Closure plan" means the plan for closure prepared in accordance with the requirements of section 33-24-05-61.
2. "Current closure cost estimate" means the most recent of the closure cost estimates prepared in accordance with subsections 1, 2, and 3 of section 33-24-05-76.
3. "Current postclosure cost estimate" means the most recent of the postclosure cost estimates prepared in accordance with subsections 1, 2, and 3 of section 33-24-05-76.
4. "Parent corporation" means a corporation which directly owns at least fifty percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.
5. "Postclosure plan" means the plan for postclosure care prepared in accordance with the requirements of sections ~~33-24-05-65~~33-24-05-66 through ~~33-24-05-68~~33-24-05-69.
6. The following terms are used in the specifications for the financial tests for closure, postclosure care, and liability coverage. The definitions are intended to assist in the understanding of ~~this chapter~~these sections and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liability" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR part 144.62(a), (b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owners equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

7. In the liability insurance requirements, the terms "bodily injury" and "property damage" have the meanings given these terms by applicable state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage and liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in any way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage, neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

8. "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the department.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-76. Cost estimates for closure and postclosure care.**

#### **1. The cost estimates for closure.**

- a. The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in sections 33-24-05-60 through 33-24-05-64 and applicable closure requirements in sections 33-24-05-97, 33-24-05-110, 33-24-05-122, 33-24-05-135, 33-24-05-151, 33-24-05-167, 33-24-05-180, sections 33-24-05-301 through 33-24-05-303, and section 33-24-05-477.

- (1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see subsection 2 of section 33-24-05-61).
- (2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in subsection 4 of section 33-24-05-75.) The owner or operator may use costs for

onsite disposal if the owner or operator can demonstrate that onsite disposal capacity will exist at all times over the life of the facility.

- (3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.
  - (4) The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.
- b. During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instruments used to comply with section 33-24-05-77. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before submission of updated information to the department as specified in subdivision c of subsection 6 of section 33-24-05-77. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the United States department of commerce in its survey of current business as specified in paragraphs 1 and 2. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.
- (1) The first adjustment is made by multiplying the closure cost estimates by the inflation factor. The result is the adjusted closure cost estimate.
  - (2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimates by the latest inflation factor.
- c. During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than thirty days after the department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subdivision b.
- d. The owner or operator shall keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with subdivisions a and c and, when this estimate has been adjusted in accordance with subdivision b, the latest adjusted closure cost estimate.

## 2. **Cost estimate for postclosure care.**

- a. The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment, or landfill unit, or a surface impoundment or waste pile required under sections 33-24-05-122 and 33-24-05-135 to prepare a contingent closure and postclosure plan, shall have a detailed written estimate in current dollars, of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure rules in sections ~~33-24-05-65~~33-24-05-66 through 33-24-05-69, sections 33-24-05-122, 33-24-05-135, 33-24-05-167, 33-24-05-180, and 33-24-05-303.
- (1) The postclosure cost estimate must be based on the cost to the owner or operator of hiring a third party to conduct postclosure care activities. A third party is a party who is neither a parent or subsidiary of the owner or operator. (See definition of parent corporation in subsection 4 of section 33-24-05-75.)

- (2) The postclosure cost estimate is calculated by multiplying the annual postclosure cost estimate by the number of years of postclosure care required under section 33-24-05-66.
- b. During the active life of the facility, the owner or operator shall address the postclosure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instruments used to comply with section 33-24-05-77. For owners or operators using the financial test or corporate guarantee, the postclosure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in subdivision e of subsection 6 of section 33-24-05-77. The adjustment may be made by recalculating the postclosure cost estimate in current dollars or by using an inflation factor derived from the most recent implicit price deflator for gross national product published by the United States department of commerce in a survey of current business as specified in ~~subdivisions a and b of subsection 2 of section 33-24-05-77~~ paragraphs 1 and 2. The inflation factor is the result of dividing the latest annual published deflator by the deflator for the previous year.
    - (1) The first adjustment is made by multiplying the postclosure cost estimate by the inflation factor. The result is the adjusted postclosure cost estimate.
    - (2) Subsequent adjustments are made by multiplying the latest adjusted postclosure cost estimate by the latest inflation factor.
  - c. During the active life of the facility, the owner or operator shall revise the postclosure cost estimate within thirty days after the department has approved a request to modify the postclosure plan, if the change in the postclosure plan increases the cost of postclosure care. The revised postclosure cost estimate must be adjusted for inflation as specified in subdivision b.
  - d. The owner or operator shall keep the following at the facility during the operating life of the facility: ~~The~~the latest postclosure cost estimate prepared in accordance with subdivisions a and c ~~of subsection 2~~ and, when this estimate has been adjusted in accordance with subdivision d ~~of subsection 2~~, the latest adjusted postclosure cost estimate.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-77. Financial assurance for closure and postclosure care.**

In accordance with section 33-24-05-74, an owner or operator of each facility shall establish financial assurance for closure and postclosure of the facility. The owner or operator of a hazardous waste management unit subject to the postclosure requirements of section 33-24-05-76 shall establish financial assurance for postclosure care in accordance with the approved postclosure plan for the facility sixty days prior to the initial receipt of hazardous waste or the effective date of the regulations, whichever is later. The owner or operator shall choose from the options as specified in subsections 1 through 6.

#### **1. Closure and postclosure trust fund.**

- a. An owner or operator may satisfy the requirements of this section by establishing a closure and postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the department.

An owner or operator of the new facility shall submit the originally signed duplicate of the trust agreement to the department at least sixty days before the day on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee in this state and whose trust operations are regulated and examined by a federal agency or by the state department of financial institutions.

- b. The wording of the trust agreement must be identical to the wording specified in subdivision a of subsection 1 of section 33-24-05-81 and the trust agreement must be accompanied by a formal certification of acknowledgment (for example see subdivision b of subsection 1 of section 33-24-05-81). Schedule A of the trust agreement must be updated within sixty days after a change in the amount of the current closure and postclosure cost estimate covered by the agreement.
- c. Payments into the trust fund must be made annually by the owner or operator over the term of the initial hazardous waste permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the "pay-in period". The payments into the trust fund must be made as follows:
  - (1) For a new facility the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the department before the initial receipt of hazardous waste. The first payment must be at least equal to the current closure and postclosure cost estimate, except as provided in subsection 7, divided by the number of years in the pay-in period. Subsequent payments must be made no later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

Where CE is the current closure and postclosure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- (2) If an owner or operator establishes a trust fund as specified in 40 CFR part 265.143(a) or 265.145(a) of the federal hazardous waste regulations and the value of that trust fund is less than the current closure and postclosure cost estimate when a permit is awarded to the facility, the amount of the current closure and postclosure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in subdivision c. Payments must continue to be made no later than thirty days after each anniversary date of the first payment made pursuant to 40 CFR part 265. The amount of each payment must be determined by this formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

Where CE is the current closure and postclosure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- d. The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure and postclosure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision c.

- e. If the owner or operator establishes a closure and postclosure trust fund after having used one or more alternate mechanisms specified in this section (or in 40 CFR part 265.143 or 265.145), the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments were made according to the specifications of ~~this subsection~~ subdivision c.
- f. After the pay-in period is completed, when the current closure and postclosure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within sixty days after the change in the cost estimate shall either deposit an amount into the fund so that its value after the deposit at least equals the amount of the current closure and postclosure cost estimate or obtain other financial assurance as specified in this section to cover the difference.
- g. If the value of the trust fund is greater than the total amount of the current closure and postclosure cost estimate, the owner or operator may submit a written request to the department for release of the amount in excess of the current closure and postclosure cost estimate.
- h. If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the department for release of the amount in excess of the current closure and postclosure cost estimate covered by the trust fund.
- i. Within sixty days after receiving a request from the owner or operator for release of funds as specified in subdivision g or h, the department will instruct the trustee to release to the owner or operator such funds as the department specifies in writing.
- j. During the period of postclosure care, the department may approve a release of funds if the owner or operator demonstrates to the department that the value of the trust fund exceeds the remaining cost of the postclosure care.
- k. After beginning partial or final closure or during the postclosure care period, or both, an owner or operator or any other person authorized to perform partial or final closure or postclosure activities may request reimbursement for expenditures incurred during these activities by submitting itemized bills to the department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum cost of closing the facility over its remaining operating life. Within sixty days after receiving bills for partial or final closure or postclosure activities, the department will determine whether the expenditures are in accordance with the closure or postclosure plans or otherwise justified and if so, ~~it~~ the department will instruct the trustee to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, ~~it~~ the department may withhold reimbursement of such amounts as ~~it~~ the department deems prudent until ~~it~~ the department determines in accordance with subsection 9 that the owner or operator is no longer required to maintain financial assurance for final closure. If the department does not instruct the trustee to make such reimbursements, ~~it~~ the department will provide the owner or operator with a detailed written statement of reasons.
- l. The department will agree to termination of the trust when:
  - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or

- (2) The department releases the owner or operator from the requirements of this ~~section~~subsection in accordance with subsection 9.

**2. Surety bond guaranteeing payment into a closure and postclosure trust fund.**

- a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the department. An owner or operator of a new facility must submit the bond to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States department of treasury and be authorized to do business within this state. If the surety is using reinsurance, a treasury reinsurance form must be submitted with the bond or within forty-five days thereafter. If cosureties are being used, the original bond must reflect that fact.
- b. The wording of the surety bond must be identical to the wording specified in subsection 2 of section 33-24-05-81.
- c. The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the department. This standby trust fund must meet the requirements specified in subsection 1 except that:
  - (1) An originally signed duplicate of the trust agreement must be submitted to the department with the surety bond; and
  - (2) Until the standby trust fund is funded pursuant to the requirements of this ~~section~~subsection, the following are not required by this chapter:
    - (a) Payments into the trust fund as specified in subsection 1.
    - (b) Updating of schedule A of the trust agreement to show current closure and postclosure cost estimates.
    - (c) Annual evaluations as required by the trust agreement.
    - (d) Notices of nonpayment as required by the trust agreement.
- d. The bond must guarantee that the owner or operator will:
  - (1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;
  - (2) Fund the standby trust fund in an amount equal to the penal sum within fifteen days after an order to begin final closure is issued by the department or a United States district court or other court of competent jurisdiction; or
  - (3) Provide alternate financial assurance as specified in this section and obtain the department's written approval of the assurance provided within ninety days after receipt by both the owner or operator of a notice of cancellation of the bond from the surety.
- e. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

- f. The penal sum of the bond must be in an amount at least equal to the current closure and postclosure cost estimate, except as provided in subsection 7.
- g. Whenever the current closure and postclosure cost estimate increases to an amount greater than the penal sum, the owner or operator within sixty days after the increase must either cause the penal sum to be increased to an amount at least equal to the current closure and postclosure cost estimate and submit evidence of such increase to the department or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure and postclosure cost estimate decreases, the penal sum may be reduced to the amount of the current closure and postclosure cost estimate following written approval by the department.
- h. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of cancellation by both the owner or operator and the department as evidenced by the return receipts.
- i. The owner or operator may cancel the bond if the department has given prior written consent based on ~~its~~the department's receipt of evidence of alternate financial assurance as specified in this section.

**3. Surety bond guaranteeing performance of closure and postclosure care.**

- a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the department. An owner or operator of a new facility shall submit the bond to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those acceptable sureties on federal bonds in Circular 570 of the United States department of treasury and be authorized to do business within the state of North Dakota. If the surety is using reinsurance a treasury reinsurance form must be submitted with the bond or within forty-five days thereafter. If cosureties are being used, the original bond must reflect that fact.
- b. The wording of the surety bond must be identical to the wording specified in subsection 3 of section 33-24-05-81.
- c. The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the department. This standby trust fund must meet the requirements specified in subsection 1 except that:
  - (1) An originally signed duplicate of the trust agreement must be submitted to the department with the surety bond; and
  - (2) Until the standby trust fund is funded pursuant to the requirements of this ~~section~~subsection, the following are not required by this chapter:
    - (a) Payments into the trust fund as specified in subsection 1.
    - (b) Updating of schedule A of the trust agreement to show current closure and postclosure cost estimates.
    - (c) Annual valuations as required by the trust agreement.

(d) Notices of nonpayment as required by the trust agreement.

- d. The bond must guarantee that the owner or operator will:
- (1) Perform postclosure care and final closure in accordance with the postclosure and closure plan and other requirements of the permit for the facility when required to do so; or
  - (2) Provide alternate financial assurance as specified in this section and obtain the department's written approval of the assurance provided within ninety days after receipt by both the owner or operator and the department of a notice of cancellation of the bond from the surety.
- e. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the department that the owner or operator has failed to perform postclosure care or final closure in accordance with the closure or postclosure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform the postclosure care or final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.
- f. The penal sum of the bond must be in an amount at least equal to the current closure or postclosure cost estimate, or both.
- g. Whenever the current closure or postclosure cost estimate, or both, increases to an amount greater than the penal sum, the owner or operator within sixty days after the increase must either cause the penal sum to be increased to an amount at least equal to the current closure or postclosure cost estimate, or both, and submit evidence of such increase to the department or obtain other financial assurance as specified in this section. Whenever the current closure or postclosure cost estimate, or both, decreases the penal sum may be reduced to the amount of the current closure or postclosure cost estimate, or both, following written approval by the department.
- h. During the period of postclosure care, the department may approve a decrease in the penal sum if the owner or operator demonstrates to the department that the amount exceeds the remaining cost of postclosure care.
- i. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of this notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.
- j. The owner or operator may cancel the bond if the department has given prior written consent. The department will provide such written consent when:
- (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (2) The department releases the owner or operator from the requirements of this ~~section~~subsection in accordance with subsection 9.
- k. The surety will not be liable for deficiencies in the performance of closure or postclosure care by the owner or operator after the department releases the owner or operator from the requirements of this section in accordance with subsection 9.

4. **Closure and postclosure letter of credit.**

- a. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the department. An owner or operator of a new facility must submit the letter of credit to the department at least sixty days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit in this state and whose letters of credit operations are regulated and examined by a federal agency or by the state department of financial institutions.
- b. The wording of the letter of credit must be identical to the wording specified in subsection 4 of section 33-24-05-81.
- c. An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department. This standby trust fund must meet the requirements of the trust fund specified in subsection 1 except that:
  - (1) An originally signed duplicate of the trust agreement must be submitted to the department with the letter of credit.
  - (2) Unless the standby trust fund is funded pursuant to the requirements of this ~~section~~subsection the following are not required by this chapter:
    - (a) Payments into the trust fund as specified in subsection 1.
    - (b) Updating of schedule A of the trust agreement to show current or postclosure, or both, cost estimates.
    - (c) Annual valuations as required by the trust agreement; and
    - (d) Notices of nonpayment as required by the trust agreement.
- d. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date and providing the following information: The identification number, name, and address of the facility and the amount of funds assured for closure and postclosure care of the facility by the letter of credit.
- e. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless at least one hundred twenty days before the current expiration date, the issuing institution notifies both the owner or operator and the department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the owner or operator and the department have received notice as evidenced by the return receipts.
- f. The letter of credit must be issued in an amount at least equal to the current closure or postclosure, or both, cost estimate, except as provided in subsection 7.
- g. Whenever the current closure or postclosure or both, cost estimate, increases to an amount greater than the amount of the letter of credit during the operating life of the facility, the owner or operator within sixty days after the increase shall either cause the amount of the letter of credit to be increased so that it at least equals the current closure or postclosure, or both, cost estimate, and submit evidence of such increase to the

department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure or postclosure, or both, cost estimate decreases, the amount of the credit may be reduced to the amount of the current estimate following written approval by the department.

- h. During the period of postclosure care, the department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the department that the amount exceeds the remaining cost of postclosure care.
- i. Following a determination by the department that the owner or operator has failed to perform closure or postclosure care in accordance with the closure or postclosure plan or other permit requirements, the department may draw on the letter of credit.
- j. If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the department within ninety days after receipt by both the owner or operator and the department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department will draw on the letter of credit. The department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty days of any such extension, the department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the department.
- k. The department will return the letter of credit to the issuing institution when:
  - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (2) The department releases the owner or operator from requirements of this ~~section~~subsection in accordance with subsection 9.

## 5. Closure and postclosure insurance.

- a. An owner or operator may satisfy the requirements of this section by obtaining closure and postclosure insurance which conforms to the requirements of this subsection and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance in this state or eligible to provide insurance as an excess or surplus lines insurer in one or more states.
- b. The wording of the certificate of insurance must be identical to the wording specified in subsection 5 of section 33-24-05-81.
- c. The closure and postclosure insurance policy must be issued for a face amount of at least equal to the current closure or postclosure, or both, cost estimate, except as provided in subsection 7. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- d. The closure and postclosure insurance policy must guarantee that funds will be available to close the facility or perform postclosure final care, or both, when final closure or the postclosure period begins. The policy must also guarantee that once final closure or

postclosure begins the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy upon the direction of the department to such party or parties as the department specifies.

- e. After beginning partial or final closure or during the postclosure period, or both, an owner or operator or any other person authorized to perform closure or postclosure may request reimbursement for closure or postclosure expenditures by submitting itemized bills to the department. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum cost of closing the facility over its remaining operating life. Within sixty days after receiving bills for closure or postclosure activities, the department will determine whether the expenditures are in accordance with the partial or final closure or postclosure plan or otherwise justified and if so, the department will instruct the insurer to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the department may withhold reimbursement of such amounts as the department deems prudent until the department determines, in accordance with subsection 9, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the department does not instruct the insurer to make such reimbursement, the department will provide the owner or operator with a detailed written statement of reasons.
- f. The owner or operator shall maintain the policy in full force and effect until the department consents to termination of the policy by the owner or operator as specified in subdivision k. Failure to pay the premium without substitution of alternate financial assurance, as specified in this section, will constitute a significant violation of this chapter warranting such remedy as the department deems necessary. Such violation will be deemed to begin upon receipt by the department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- g. Each policy must contain a provision allowing assignment of the policy to a successor, owner, or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.
- h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the department. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of a notice by the department and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:
  - (1) The department deems the facility abandoned;
  - (2) The permit is terminated or revoked or a new permit is denied;
  - (3) Closure is ordered by the department or a state court or other court of competent jurisdiction;
  - (4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under United States Code title 11 (bankruptcy); or

(5) The premium due is paid.

- i. Whenever the current closure or postclosure, or both, cost estimate increases to an amount greater than the face amount of the policy, the owner or operator within sixty days after the increase must either cause the face amount to be increased to an amount at least equal to the current closure or postclosure, or both, cost estimate and submit evidence of such increase to the department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure or postclosure, or both, cost estimate decreases, the face amount may be reduced to the amount of the current closure or postclosure, or both, cost estimate following a written approval by the department.
- j. For postclosure insurance only, commencing on the date that liability to make payments pursuant to a postclosure policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy less any payments made, multiplied by an amount equivalent to eighty-five percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the United States treasury for twenty-six-week treasury securities.
- k. The department will give written consent to the owner or operator that ~~the owner or operator~~ the owner or operator may terminate the insurance policy when:
  - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (2) The department releases the owner or operator from the requirements of this ~~section~~ subsection in accordance with subsection 9.

**6. Financial test and corporate guarantee for closure and postclosure care.**

- a. An owner or operator may satisfy the requirements of this section by demonstrating that ~~he~~ the owner or operator passes a financial test as specified in this subsection. To pass this test, the owner or operator must meet the criteria of either paragraph 1 ~~of subdivision a of subsection 6~~ or paragraph 2 ~~of subdivision a of subsection 6~~.
  - (1) The owner or operator must have:
    - (a) Two of the following three ratios: A ratio of total liabilities to net worth less than two; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth; and a ratio of current assets to current liabilities greater than one and five-tenths;
    - (b) Net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimate;
    - (c) Tangible net worth of at least ten million dollars; and
    - (d) Assets in the United States amounting to at least ninety percent of owner's or operator's total assets or at least six times the sum of the current closure and postclosure cost estimates, and the current plugging and abandonment cost estimates.
  - (2) The owner or operator must have:

- (a) A current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
  - (b) Tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates;
  - (c) Tangible net worth of at least ten million dollars; and
  - (d) Assets located in the United States amounting to at least ninety percent of the owner's or operator's total assets or at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates.
- b. The phrase "current closure and postclosure cost estimates" as used in subdivision a-~~of subsection 6~~ refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (subsection 6 of section 33-24-05-81). The phrase "current plugging and abandonment cost estimates" as used in subdivision a-~~of subsection 6~~ refers to the cost estimates required to be shown in paragraphs 1 through 3 of the letter from the owner's or operator's chief financial officer (40 CFR [part 144.70\(f\)](#)).
- c. To demonstrate that the owner or operator meets the financial test, the owner or operator must submit the following items to the department:
- (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in subsection 6 of section 33-24-05-81;
  - (2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
  - (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
    - (a) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
    - (b) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.
- d. An owner or operator of a new facility must submit the items specified in subdivision c-~~of subsection 6~~ to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal.
- e. After the initial submission of items specified in subdivision c-~~of subsection 6~~, the owner or operator must send updated information to the department within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in subdivision c-~~of subsection 6~~.
- f. If the owner or operator no longer meets the requirements of subdivision a-~~of subsection 6~~, the owner or operator must send notice to the department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety days after the end of the fiscal year for which the

year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within one hundred twenty days after the end of each fiscal year.

- g. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision a ~~of subsection 6~~, require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision c ~~of subsection 6~~. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision a ~~of subsection 6~~, the owner or operator must provide alternate financial assurance specified in this section within thirty days after notification of such a finding.
- h. The department may disallow use of this test on the basis of qualification in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's statements (see paragraph 2 of subdivision c ~~of subsection 6~~). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within thirty days after notification of the disallowance.
- i. The owner or operator is no longer required to submit the items specified in subdivision c ~~of subsection 6 when~~:
  - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
  - (2) The department releases the owner or operator from the requirements of this ~~section~~ subsection in accordance with subsection 9.
- j. An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subdivisions a through h ~~of subsection 6~~ and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in subdivision a of subsection 8 of section 33-24-05-81. The certified copy of the guarantee must accompany the items sent to the department as specified in subdivision c ~~of subsection 6~~. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:
  - (1) If the owner or operator fails to perform final closure or postclosure, or both, of a facility covered by the corporate guarantee in accordance with the closure or postclosure, or both, plan and other permit requirements when required to do so, the guarantor will do so or establish a trust fund as specified in subsection 1 in the name of the owner or operator.
  - (2) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

- (3) If the owner or operator fails to provide alternate financial assurance as specified in this section and fails to obtain the written approval of such alternate assurance from the department within ninety days after receipt by both the owner or operator and the department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.
- k. Companies not required to submit an audited financial statement to the United States securities and exchange commission must have an auditor's opinion prepared by an auditor licensed in this state.
7. **The use of multiple financial mechanisms.** An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in this section, except that it is the combination of mechanisms, rather than the single mechanism which must provide financial assurance for an amount at least equal to the current closure or postclosure, or both, cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for closure or postclosure, or both, care of the facility.
8. **Use of a financial mechanism for multiple facilities.** An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the department must include a list showing for each facility the identification number, name, address, and the amount of funds for closure or postclosure, or both, care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or postclosure care of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for that facility unless the owner or operator agrees to the use of additional funds available under the mechanism.
9. **Release of the owner or operator from the requirements of this section.** Within sixty days after receiving certifications from the owner or operator and ~~an independent registered~~ qualified professional engineer that final closure or postclosure care, or both, has been completed in accordance with an approved closure or postclosure care plan, the department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure or postclosure care, or both, of the facility, unless the department has reason to believe that final closure or postclosure care, or both, has not been in accordance with the approved closure or postclosure care plans. The department shall provide the owner or operator a detailed written statement of any such reason to believe that closure or postclosure, or both, has not been in accordance with the approved closure or postclosure plans.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-79. Liability requirements.**

1. **Coverage for sudden accidental occurrences.** An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of facilities, must demonstrate financial

responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subdivision a, b, c, d, e, or f:

- a. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision.
  - (1) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in subsection 9 of section 33-24-05-81. The wording of the certificate of insurance must be identical to the wording specified in subsection 10 of section 33-24-05-81. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the department. If requested by the department, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the department at least sixty days before the day on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.
  - (2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.
- b. An owner or operator may meet the requirements of this [section subsection](#) by passing a financial test or using the guarantee for liability coverage as specified in subsections 6 and 7.
- c. An owner or operator may meet the requirements of this [section subsection](#) by obtaining a letter of credit for liability coverage as specified in subsection 8.
- d. An owner or operator may meet the requirements of this [section subsection](#) by obtaining a surety bond for liability coverage as specified in subsection 9.
- e. An owner or operator may meet the requirements of this [section subsection](#) by obtaining a trust fund for liability coverage as specified in subsection 10.
- f. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this [section subsection](#). If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subdivision, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurances as "excess" coverage.
- g. An owner or operator shall notify the department in writing within thirty days when:

- (1) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions a through f ~~of subsection 4~~; or
  - (2) A certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subdivisions a through f ~~of subsection 4~~; or
  - (3) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivisions a through f ~~of subsection 4~~.
2. **Coverage for nonsudden accidental occurrences.** An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars per occurrence with an annual aggregate of at least six million dollars, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least four million dollars per occurrence and eight million dollars annual aggregate. This liability coverage may be demonstrated as specified in subdivision a, b, c, d, e, or f ~~of subsection 2~~:
- a. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision.
    - (1) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in subsection 9 of section 33-24-05-81. The wording of the certificate of insurance must be identical to the wording specified in subsection 10 of section 33-24-05-81. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the department. If requested by the department, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.
    - (2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

- b. An owner or operator may meet the requirements of this ~~section~~ subsection by passing a financial test or using the guarantee for liability coverage as specified in subsections 6 and 7.
  - c. An owner or operator may meet the requirements of this ~~section~~ subsection by obtaining a letter of credit for liability coverage as specified in subsection 8.
  - d. An owner or operator may meet the requirements of this ~~section~~ subsection by obtaining a surety bond for liability coverage as specified in subsection 9.
  - e. An owner or operator may meet the requirements of this ~~section~~ subsection by obtaining a trust fund for liability coverage as specified in subsection 10.
  - f. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this subdivision, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.
  - g. An owner or operator shall notify the department in writing within thirty days when:
    - (1) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions a through ~~f-of subsection-2~~;
    - (2) A certification of valid claim for bodily injury or property damages caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subdivisions a through ~~f-of subsection-2~~; or
    - (3) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivisions a through ~~f-of subsection-2~~.
3. **Request for variance.** If an owner or operator can demonstrate to the satisfaction of the department that the levels of responsibility required by subsection 1 or 2 are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the department. The request for a variance must be submitted to the department as part of the permit application under chapter 33-24-06 for a facility that does not have a permit or pursuant to the procedures for permit modification under chapter 33-24-07 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the department to determine a level of financial responsibility other than that required by subsection 1 or 2. Any request for a

variance for a permitted facility will be treated as a request for permit modification under chapters 33-24-06 and 33-24-07.

4. **Adjustments by the department.** If the department determines that the levels of financial responsibility required by subsection 1 or 2 are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the department may adjust the level of financial responsibility required under subsection 1 or 2 as may be necessary to protect human health and the environment. This adjusted level will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not a surface impoundment, landfill, or land treatment facility, ~~it~~ the department may require that an owner or operator of the facility comply with subsection 2. An owner or operator shall furnish to the department within a reasonable time any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a type of facility that has a permit will be treated as a permit modification under chapters 33-24-06 and 33-24-07.
5. **Period of coverage.** Within sixty days after receiving certifications from the owner or operator and ~~an independent registered~~ a qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the department will notify the owner or operator in writing that ~~he~~ the owner or operator is no longer required by this section to maintain liability coverage for that facility, unless the department has reason to believe that closure has not been in accordance with the approved closure plan.
6. **Financial tests for liability coverage.**
  - a. An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator passes a financial test as specified in this ~~section~~ subsection. To pass this test the owner or operator must meet the criteria of paragraph 1 ~~of subdivision a of subsection 6~~ or paragraph 2 ~~of subdivision a of subsection 6~~:
    - (1) The owner or operator must have:
      - (a) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test;
      - (b) Tangible net worth of at least ten million dollars; and
      - (c) Assets in the United States amounting to either: (1) at least ninety percent of the owner's or operator's total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.
    - (2) The owner or operator must have:
      - (a) A current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's;
      - (b) Tangible net worth of at least ten million dollars;
      - (c) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

- (d) Assets in the United States amounting to either: (1) at least ninety percent of the owner's or operator's total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.
- b. The phrase "amount of liability coverage" as used in subdivision a ~~of subsection 6~~ refers to the annual aggregate amounts for which coverage is required under subsections 1 and 2.
- c. To demonstrate that the owner or operator meets this test, the owner or operator must submit the following three items to the department:
  - (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in subsection 7 of section 33-24-05-81. If an owner or operator is using the financial test to demonstrate both assurance for closure or postclosure care, as specified by subsection 6 of section 33-24-05-77, and liability coverage, the owner or operator must submit the letter specified in subsection 7 of section 33-24-05-81 to cover both forms of financial responsibility; a separate letter as specified in subsection 6 of section 33-24-05-81 is not required.
  - (2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
  - (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
    - (a) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts of such financial statements; and
    - (b) In connection with that procedure, no matters came to the accountant's attention which cause the accountant to believe that the specified data should be adjusted.
- d. An owner or operator of a new facility must submit the items specified in subdivision c ~~of subsection 6~~ to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal.
- e. After the initial submission of items specified in subdivision c ~~of subsection 6~~, the owner or operator must send updated information to the department within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in subdivision c ~~of subsection 6~~.
- f. If the owner or operator no longer meets the requirements of subdivision a ~~of subsection 6~~, the owner or operator must obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section. Evidence of liability coverage must be submitted to the department within ninety days after the end of the fiscal year for which the year-end financial data shows that the owner or operator no longer meets the test requirements.
- g. The department may disallow use of this test on the basis of qualifications and the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statement (see paragraph 2 of subdivision c ~~of subsection 6~~). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of

required liability coverage as specified in this section within thirty days after notification or disallowance.

**7. Guarantee for liability coverage.**

- a. Subject to subdivision b, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subdivisions a through f of subsection 6. The wording of the guarantee must be identical to the wording specified in subdivision b of subsection 8 of section 33-24-05-81. A certified copy of the guarantee must accompany the items sent to the department as specified in subdivision c of subsection 6. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the new guarantee.

If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of the coverage.

- b. The following applies:

- (1) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the attorneys general or insurance commissioners of (a) the state in which the guarantor is incorporated, and (b) each state in which a facility covered by the guarantee is located have submitted a written statement to the department that a guarantee executed as described in this section and subdivision b of subsection 8 of section 33-24-05-81 is a legally valid and enforceable obligation in that state.
- (2) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if (a) the non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principal place of business, and (b) the attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the department that a guarantee executed as described in this section and subdivision b of subsection 8 of section 33-24-05-81 is a legally valid and enforceable obligation in that state.

**8. Letter of credit for liability coverage.**

- a. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting a copy of the letter of credit to the department.

- b. The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.
- c. The wording of the letter of credit must be identical to the wording specified in subsection 11 of section 33-24-05-81.
- d. An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- e. The wording of the standby trust fund must be identical to the wording specified in subsection 14 of section 33-24-05-81.

9. **Surety bond for liability coverage.**

- a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this subsection and submitting a copy of the bond to the department.
- b. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the most recent circular 570 of the United States department of the treasury.
- c. The wording of the surety bond must be identical to the wording specified in subsection 12 of section 33-24-05-81.
- d. A surety bond may be used to satisfy the requirements of this section only if the attorneys general or insurance commissioners of (1) the state in which the surety is incorporated, and (2) each state in which a facility covered by the surety bond is located have submitted a written statement to the department that a surety bond executed as described in this section and in subsection 12 of section 33-24-05-81 is a legally valid and enforceable obligation in that state.

10. **Trust fund for liability coverage.**

- a. An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the department.
- b. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
- c. The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided or obtain other financial assurance as specified in this section to cover the difference. For purposes of this subdivision, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden or nonsudden occurrences, or both, required to be provided by the owner or

operator by this section, less the amounts of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

- d. The wording of the trust fund must be identical to the wording specified in subsection 13 of section 33-24-05-81.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-81. Wording of the instruments.**

1. Trust agreement and certification of acknowledgment.
  - a. A trust agreement for a trust fund as specified in section 33-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT, the "AGREEMENT" entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate trustee], [insert "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "TRUSTEE".

Whereas, the North Dakota State Department of Health, "DEPARTMENT" a regulatory agency of the state of North Dakota, has established certain regulations applicable to the GRANTOR requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure or postclosure, or both, care of the facility,

Whereas, the GRANTOR has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the GRANTOR acting through its duly authorized officers has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT and the TRUSTEE is willing to act as TRUSTEE,

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

#### **Section 1. Definitions.** As used in this AGREEMENT:

- (a) The term GRANTOR means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.
- (b) The term TRUSTEE means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities and Cost Estimate.** This AGREEMENT pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A for each facility list the identification number, name, and the current closure or postclosure, or both, cost estimates or portions thereof for which financial assurance is demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a trust fund, the FUND, for the benefit of the DEPARTMENT. The GRANTOR

and the TRUSTEE intend that no third party have access to the FUND, except as herein provided. The FUND is established initially as consisting of the property which is acceptable to the TRUSTEE and described in Schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND must be held by the TRUSTEE, IN TRUST, as herein provided. The TRUSTEE is not responsible, nor may it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payment for Closure and Postclosure Care.** The TRUSTEE shall make payments from the FUND as the DEPARTMENT shall direct, in writing, to provide for the payment of the cost of closure, and or postclosure care of the facilities covered by this AGREEMENT. The TRUSTEE shall reimburse the GRANTOR or other persons as specified by the DEPARTMENT from the FUND for closure and postclosure expenditures in such amounts as the DEPARTMENT shall direct in writing. In addition, the TRUSTEE shall refund to the GRANTOR such amounts as the DEPARTMENT specifies in writing. Upon refund such funds no longer constitute part of the FUND as defined herein.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND must consist of cash or securities acceptable to the TRUSTEE.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal and income of the FUND and keep the FUND invested as a single FUND without distinction between principal and income in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject however to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the GRANTOR or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be acquired or held unless they are securities or other obligations of a federal or state government;
- (b) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (c) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without, in any way, eliminating the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE is bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE must at all times show that all such securities are part of the FUND;
- (d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate capacity, or in any other banking institution affiliated with the TRUSTEE to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the FUND.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this TRUST, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements of the TRUSTEE, must be paid from the FUND.

**Section 10. Annual Valuation.** The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the TRUST. Any securities in the FUND must be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT, constitutes a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected to the extent permitted by law in acting upon the advice of counsel.

**Section 12. TRUSTEE Compensation.** The TRUSTEE is entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 13. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement is not effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE'S acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason, the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the TRUST in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section must be paid as provided in section 9.

**Section 14. Instructions to the TRUSTEE.** All orders, requests, and instructions by the GRANTOR to the TRUSTEE must be in writing, signed by such persons as are designated in the attached Exhibit A, or such other designees as the GRANTOR may designate by amendment to Exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE must be in writing, signed by an authorized DEPARTMENT representative and the TRUSTEE shall act and be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR or the DEPARTMENT, or both, except as provided for herein.

**Section 15. Notice of Nonpayment.** The TRUSTEE shall notify the GRANTOR and the DEPARTMENT by certified mail within ten days following the expiration of the thirty-day period after the anniversary of the establishment of the TRUST if no payment is received from the GRANTOR during that period. After the pay-in period is completed, the TRUSTEE is not required to send a notice of nonpayment.

**Section 16. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in section 16, this TRUST is irrevocable and continues until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to

exist. Upon termination of the TRUST, all remaining trust property, less final trust administration expenses, must be delivered to the GRANTOR.

**Section 18. Immunity and Indemnification.** The TRUSTEE may not incur personal liability of any nature in connection with any act or omission made in good faith in the administration of this TRUST or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE must be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

**Section 19. Choice of Law.** This AGREEMENT must be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 20. Interpretation.** As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT do not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto fixed and attested as of the date first above written: The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subdivision a of subsection 1 of North Dakota Administrative Code section 33-24-05-81 as such regulation was constituted on the date first above written.

[Signature of GRANTOR]

[Title]

[Attest:]

[Title]

[Seal]

[Signature of TRUSTEE]

[Attest:]

[Title]

[Seal]

- b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a trust fund as specified in subsection 1 of section 33-24-05-77.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such

instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

2. A surety bond guaranteeing payment into a trust fund as specified in subsection 2 of section 33-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]

Identification number, name, address, and closure or postclosure, or both, amount for each facility guaranteed by this bond [indicate closure and postclosure amounts separately]:

\_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota State Department of Health (hereinafter called the DEPARTMENT) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assignors jointly and severally: provided that where the SURETY(IES) are corporations acting as cosureties, we, the SURETIES, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each SURETY binds itself, jointly and severally with the PRINCIPAL, for the payment of such sum only as is set forth opposite the name of such SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23-20.3 to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure or closure and postclosure care as a condition of the permit, and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the PRINCIPAL shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amounts identified above for the facility,

Or, if the PRINCIPAL shall fund the standby trust fund in such amounts within fifteen days after an order to begin closure is issued by the DEPARTMENT or a state or other court of competent jurisdiction,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33-24-05, as applicable, and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date of notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above. Upon notification by the DEPARTMENT that the PRINCIPAL has failed to perform as guaranteed by this bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The liability of the SURETY(IES) shall not be discharged by any payment or any succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required]

The PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or postclosure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In witness whereof, the PRINCIPAL and SURETY(IES) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 2 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date this bond was executed.

PRINCIPAL  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]

CORPORATE SURETY(IES)  
[Name and address]  
State of Incorporation: \_\_\_\_\_  
Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and Title(s)]

[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$ \_\_\_\_\_

3. A surety bond guaranteeing performance of closure or postclosure care as specified in subsection 3 of section 33-24-05-77 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: \_\_\_\_\_

Effective Date: \_\_\_\_\_

PRINCIPAL: [Legal name and business address of owner or operator]

Type of organization: [Insert "Individual", "joint venture", "partnership", or "corporation"]

State of incorporation: \_\_\_\_\_

SURETY(IES): [Name(s) and business address(es)]

\_\_\_\_\_

Identification number, name, address and closure or postclosure, or both, amount(s) for each facility guaranteed by this bond.

[Indicate closure and postclosure amount separately]:

\_\_\_\_\_

Total penal sum of bond: \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know all persons by these presents, that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota State Department of Health (hereinafter called the DEPARTMENT), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally: Provided that, where the SURETY(IES) are corporations acting as cosureties, we the SURETIES bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and for all other purposes each SURETY binds itself jointly and severally with the PRINCIPAL for the payment of such sum only as is set forth opposite the name of each SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23-20.3 to have a permit to own or operate each hazardous waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure, or closure and postclosure care as a condition of the permit, and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are that if the PRINCIPAL shall faithfully perform closure, when required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And if the PRINCIPAL shall faithfully perform postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33-24-05 and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES) then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the closure requirements of North Dakota Administrative Code chapter 33-24-05 for a facility for which this bond guarantees performance of closure, the SURETY(IES) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the postclosure requirements of North Dakota Administrative Code chapter 33-24-05 for a facility for which this bond guarantees performance of postclosure care, the SURETY(IES) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility into a standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has failed to provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33-24-05 and obtain written approval of such assurance from the DEPARTMENT during the ninety days following receipt by both the PRINCIPAL and the DEPARTMENT of a notice of cancellation of the bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The SURETY(IES) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the SURETY(IES) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending the notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not

occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required].

PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or postclosure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In Witness Whereof, the PRINCIPAL and SURETY(IES) have executed this performance bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and the SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 3 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date this bond was executed.

PRINCIPAL  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

[CORPORATE SURETY(IES)]  
[Name and Address]  
State of Incorporation: \_\_\_\_\_  
Liability Limit: \$ \_\_\_\_\_  
[Signature(s)]  
[Name(s) and Title(s)]  
Corporate Seal:

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond Premium: \$ \_\_\_\_\_

4. A letter of credit as specified in subsection 4 of section 33-24-05-77 must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### IRREVOCABLE STANDBY LETTER OF CREDIT

Chief, Environmental Health Section North Dakota State Department of Health

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] United States Dollars \$ \_\_\_\_\_, available upon presentation by you of

- (1) You sight draft bearing reference to this letter of credit number \_\_\_\_\_, and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of North Dakota Century Code chapter 23-20.3".

This letter of credit is effective as of [date] and shall expire on [date] at least one year later, but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in subsection 4 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date shown immediately below.

[Signature(s) and Title(s) of Official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce", or "the Uniform Commercial Code"]

5. A certificate of insurance as specified in subsection 5 of section 33-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

Name and address of Insurer (hereinafter called the "INSURER"):

\_\_\_\_\_

Name and address of Insured (hereinafter called the "INSURED"):

\_\_\_\_\_

Facilities covered: [List for each facility: the identification number, name, address and amount of insurance for closure or the amount for postclosure care, or both. (These amounts for all facilities covered must cover the face amount shown below.)]

Face amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

The INSURER hereby certifies that it has issued to the INSURED the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and postclosure care" or "postclosure care"] for the facilities identified above. The INSURER further warrants

that such policy conforms in all respects with the requirements of subsection 5 of North Dakota Administrative Code section 33-24-05-77, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such rules is hereby amended to eliminate such inconsistency.

Whenever requested by the North Dakota State Department of Health (DEPARTMENT) the INSURER agrees to furnish to the DEPARTMENT a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in subsection 5 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date shown immediately below.

[Authorized signature for INSURER]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

[Date]

6. A letter from the chief financial officer, as specified in subsection 6 of section 33-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to North Dakota State Department of Health].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or postclosure costs, as specified in sections 33-24-05-74 through 33-24-05-88.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-88. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in sections 33-24-05-74 through 33-24-05-88, the closure or postclosure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in sections 33-24-05-74 through 33-24-05-88. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33-24-05-74 through 33-24-05-88 or equivalent or substantially equivalent state mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator of the following underground injective control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-05-77, ~~or of paragraph 1 of subdivision a of subsection 5 of section 33-24-05-77~~ are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-05-77, ~~or of paragraph 2 of subdivision a of subsection 5 of section 33-24-05-77~~ are used.]

**Alternative I**

- 1. Sum of current closure and postclosure cost estimate \$  
(total of all cost estimates shown in the five paragraphs above).
- \*2. Total liabilities (if any portion of the closure or postclosure cost estimate is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4). \$
- \*3. Tangible net worth. \$
- \*4. Net worth. \$
- \*5. Current assets. \$
- \*6. Current liabilities. \$
- 7. Net working capital (line 5 minus line 6). \$
- \*8. The sum of net income plus depreciation, depletion, and amortization. \$
- \*9. Total assets in United States (required only if less than 90% of firm's assets are located in the United States). \$

- |  |     |    |
|--|-----|----|
|  | Yes | No |
| 10. Is line 3 at least \$10 million?   |     |    |
| 11. Is line 3 at least 6 times line 1? |     |    |
| 12. Is line 7 at least 6 times line 1? |     |    |

- \*13. Are at least 90% of firm's assets located in the United States? If not, complete line 14.
- 14. Is line 9 at least 6 times line 1?
- 15. Is line 2 divided by line 4 less than 2.0?
- 16. Is line 8 divided by line 2 greater than 0.1?
- 17. Is line 5 divided by line 6 greater than 1.5?

**Alternative II**

- 1. Sum of current closure and postclosure cost estimates (total of all cost estimates shown in the five paragraphs above). \$
- 2. Current bond rating of most recent issuance of this firm and name of rating service. \$
- 3. Date of issuance of bond. \$
- 4. Date of maturity of bond. \$
- \*5. Tangible net worth (if any portion of the closure and postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line). \$
- \*6. Total assets in United States (required only if less than 90% of firm's assets are located in the United States). \$

Yes                      No

- 7. Is line 5 at least \$10 million?
- 8. Is line 5 at least 6 times line 1?
- \*9. Are at least 90% of firm's assets located in the United States? If not, complete line 10.
- 10. Is line 6 at least 6 times line 1?

I hereby certify that the wording of this letter is identical to the wording specified in subsection 6 of section 33-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

- 7. A letter from the chief financial officer, as specified in subsection 6 of section 33-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer:

[Address to North Dakota State Department of Health].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or postclosure care" if applicable] as specified in sections 33-24-05-74 through 33-24-05-88.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-88:

The firm identified above guarantees, through the guarantee specified in sections 33-24-05-74 through 33-24-05-88, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following five paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its identification number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or postclosure care or liability coverage is demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-88. The current closure and postclosure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. The firm identified above guarantees, through the guarantee specified in sections 33-24-05-74 through 33-24-05-88, the closure and postclosure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or postclosure care so guaranteed are shown for each facility: \_\_\_\_\_.

3. In states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure or postclosure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanisms specified in sections 33-24-05-74 through 33-24-05-88 or equivalent or substantially equivalent state mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator or guarantor of the following underground injective control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-05-79 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-05-79 are used.]

**Alternative I**

- |  |    |     |    |
|--|----|-----|----|
| 1.Amount of annual aggregate liability coverage to be demonstrated.                              | \$ |     |    |
| *2.Current assets.   | \$ |     |    |
| *3.Current liabilities.  | \$ |     |    |
| 4.Net working capital (line 2 minus line 3).   | \$ |     |    |
| *5.Tangible net worth.   | \$ |     |    |
| *6.If less than 90% of assets are located in the United States, give total United States assets. | \$ |     |    |
|  |    | Yes | No |
| 7.Is line 5 at least \$10 million?   |    |     |    |
| 8.Is line 4 at least 6 times line 1?   |    |     |    |
| 9.Is line 5 at least 6 times line 1?   |    |     |    |
| *10.Are at least 90% of assets located in the United States? If not, complete line 11.           |    |     |    |
| 11.Is line 6 at least 6 times line 1?  |    |     |    |

**Alternative II**

- |   |    |     |    |
|---|----|-----|----|
| 1.Amount of annual aggregate liability coverage to be demonstrated.   | \$ |     |    |
| 2.Current bond rating of most recent issuance and name of rating service.                                     |    |     |    |
| 3.Date of issuance of bond.   |    |     |    |
| 4.Date of maturity of bond.   |    |     |    |
| *5.Tangible net worth.  | \$ |     |    |
| *6.Total assets in United States (required only if less than 90% of assets are located in the United States). | \$ |     |    |
|   |    | Yes | No |
| 7.Is line 5 at least \$10 million?  |    |     |    |
| 8.Is line 5 at least 6 times line 1?  |    |     |    |
| 9.Are at least 90% of assets located in the United States? If not, complete line 10.                          |    |     |    |
| 10.Is line 6 at least 6 times line 1?   |    |     |    |

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-05-77 and paragraph 1 of subdivision a of subsection 6 of section 33-24-05-79 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-05-77 and paragraph 2 of subdivision a of subsection 6 of section 33-24-05-79 are used.]

**Alternative I**

- 1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above) \$
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$
- 3. Sum of lines 1 and 2. \$
- \*4. Total liabilities (if any portion of your closure or postclosure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6). \$
- \*5. Tangible net worth. \$
- \*6. Net worth. \$
- \*7. Current assets. \$
- \*8. Current liabilities. \$
- 9. Net working capital (line 7 minus line 8). \$
- \*10. The sum of net income plus depreciation, depletion, and amortization. \$
- \*11. Total assets in United States (required only if less than 90% of assets are located in the United States). \$

Yes No

- 12. Is line 5 at least \$10 million?
- 13. Is line 5 at least 6 times line 3?
- 14. Is line 9 at least 6 times line 3?
- \*15. Are at least 90% of assets located in the United States? If not, complete line 16.
- 16. Is line 11 at least 6 times line 3?
- 17. Is line 4 divided by line 6 less than 2.0?
- 18. Is line 10 divided by line 4 greater than 0.1?
- 19. Is line 7 divided by line 8 greater than 1.5?

**Alternative II**

- 1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above) \$
- 2. Amount of annual aggregate liability coverage to be demonstrated. \$
- 3. Sum of lines 1 and 2. \$
- 4. Current bond rating of most recent issuance and name of rating service.
- 5. Date of issuance of bond.
- 6. Date of maturity of bond.
- \*7. Tangible net worth (if any portion of the closure or postclosure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line). \$
- \*8. Total assets in the United States (required only if less than 90% of assets are located in the United States). \$

Yes

No

9. Is line 7 at least \$10 million?

10. Is line 7 at least 6 times line 3?

\*11. Are at least 90% of assets located in the United States? If not, complete line 12.

12. Is line 8 at least 6 times line 3?

I hereby certify that the wording of this letter is identical to the wording specified in subsection 7 of section 33-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

8. Corporate Guarantee

a. A corporate guarantee, as specified in subsection 6 of section 33-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Postclosure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33-24-05-75 to the DEPARTMENT.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 6 of section 33-24-05-77.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: identification number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by sections 33-24-05-59 through 33-24-05-73 for the closure and postclosure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the DEPARTMENT that in the event that [owner or operator] fails to perform [insert "closure", "postclosure care", or "closure and postclosure care"] of the above facility(ies) in accordance with the closure or postclosure plans and other permit or interim status requirements when required to do so, the guarantor shall do so or establish a trust fund as specified in sections 33-24-05-74 through 33-24-05-88, as applicable, in the name of [owner or operator] in the amount of the current closure or postclosure cost estimates as specified in sections 33-24-05-74 through 33-24-05-88.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate financial assurance as specified in sections 33-24-05-74 through 33-24-05-88, as applicable, in the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the DEPARTMENT by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure or postclosure care, the guarantor shall establish alternate financial assurance as specified in sections 33-24-05-74 through 33-24-05-88, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, ~~and~~ 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of sections 33-24-05-74 through 33-24-05-88 for the above-listed facilities, except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate closure and/or postclosure care coverage complying with section 33-24-05-77.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator] obtains, and the DEPARTMENT approves, alternate closure or postclosure, or both, care coverage complying with section 33-24-05-77 or 33-24-05-78 or both.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by the [owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in sections 33-24-05-74 through 33-24-05-88, as applicable, and obtain written approval of such assurance from the DEPARTMENT within ninety days after a notice of

cancellation by the guarantor is received by the DEPARTMENT from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the DEPARTMENT or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or postclosure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 8 of section 33-24-05-81 as such regulations were constituted on the date first above written.

Effective date: \_\_\_\_\_

[Name of guarantor] \_\_\_\_\_

[Authorized signature for guarantor] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Signature of witness or notary: \_\_\_\_\_

b. A guarantee, as specified in subsection 7 of section 33-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the state of \_\_\_\_\_" and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33-24-05-75", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 7 of section 33-24-05-79.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state.] This corporate guarantee satisfies Resource Conservation Recovery Act third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody, or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate liability coverage as specified in section 33-24-05-79, as

applicable, in the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the DEPARTMENT by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in section 33-24-05-79 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this AGREEMENT to take into account amendment or modification of the liability requirements set by section 33-24-05-79, provided that such modification shall become effective only if the DEPARTMENT does not disapprove the modification within thirty days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of section 33-24-05-79 for the above-listed facility(ies), except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate liability coverage complying with section 33-24-05-79.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee one hundred twenty days following receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$\_\_\_\_\_.

[Signatures] \_\_\_\_\_

Principal \_\_\_\_\_  
(Notary) Date \_\_\_\_\_  
[Signatures] \_\_\_\_\_  
Claimant(s) \_\_\_\_\_  
(Notary) Date \_\_\_\_\_

(b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in subdivision b of subsection 8 of section 33-24-05-81 as such regulations were constituted on the date shown immediately below.

Effective date: \_\_\_\_\_  
[Name of guarantor] \_\_\_\_\_  
[Authorized signature for guarantor] \_\_\_\_\_  
[Name of person signing] \_\_\_\_\_  
[Title of person signing] \_\_\_\_\_  
Signature of witness ~~of~~ notary: \_\_\_\_\_

9. A hazardous waste facility liability endorsement as required in section 33-24-05-79 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-24-05-79. The coverage applies at [list identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability] exclusive of legal defense costs.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):
  - (a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.
  - (b) The insurer is liable for the payment of amounts within any deductible applicable to this policy with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33-24-05-79.

- (c) When requested by the North Dakota State Department of Health (DEPARTMENT), the insurer agrees to furnish to the DEPARTMENT a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of this endorsement, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the DEPARTMENT.
- (e) Any other termination of this endorsement will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the DEPARTMENT, as evidenced by the return receipt.

Attached to and forming part of policy number \_\_\_\_\_ issued by [name of insurer] herein called the insurer of [address of insurer] to [name of insured] of [address] this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The effective date of said policy is \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in subsection 9 of North Dakota Administrative Code section 33-24-05-81, as such rule was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer]

[Address of representative]

- 10. A certificate of liability insurance as required in section 33-24-05-79 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE**

- 1. [Name of insurer, (the "insurer") of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-24-05-79. The coverage applies at [list identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number \_\_\_\_\_, issued on [date] the effective date of said policy is [date].
- 2. The insurer further certifies the following with respect to the insurance described in paragraph 1:

- (a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.
- (b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33-24-05-79.
- (c) When requested by the North Dakota State Department of Health (DEPARTMENT), the insurer agrees to furnish to the DEPARTMENT a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice, and only after the expiration of sixty days after a copy of such written notice is received by the DEPARTMENT.
- (e) Any other termination of the insurance will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the DEPARTMENT, as evidenced by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in subsection 7 of North Dakota Administrative Code section 33-24-05-81, as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance, in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer]

[Address of representative]

11. A letter of credit, as specified in subsection 8 of section 33-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit  
 Name and Address of Issuing Institution  
 North Dakota State Department of Health

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in the favor of ["any and all third-party liability claimants" or insert name of TRUSTEE of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] United States dollars \$\_\_\_\_\_ per occurrence and the annual aggregate amount of [in words] United States dollars \$\_\_\_\_\_, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] United States dollars \$\_\_\_\_\_ per occurrence, and the annual aggregate amount of [in words] United States dollars \$\_\_\_\_\_, for nonsudden accidental occurrences available upon presentation of a sight draft bearing

reference to this letter of credit No. \_\_\_\_\_, and [insert the following language if the letter of credit is being used without a standby trust fund]: (1) a signed certificate reading as follows:

#### Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's], hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$ [\_\_\_\_\_]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] \_\_\_\_\_

GRANTOR \_\_\_\_\_

[Signatures] \_\_\_\_\_

Claimant(s) \_\_\_\_\_

or (2) a valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify you, the DEPARTMENT, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

When this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage"."

We certify that the wording of this letter of credit is identical to the wording specified in subsection 11 of section 33-24-05-81 as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

12. A surety bond, as specified in subsection 9 of section 33-24-05-79, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], surety company(ies), of [Insert surety(ies) place of business].

Identification number, name, and address for each facility guaranteed by this bond:

	Sudden Accidental Occurrences	Nonsudden Accidental Occurrences
Penal Sum Per Occurrence	[Insert Amount]	[Insert Amount]
Annual Aggregate	[Insert Amount]	[Insert Amount]

Purpose: This is an AGREEMENT between the surety(ies) and the principal under which the surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

- (1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the United States environmental protection agency (EPA), particularly 40 CFR ["264.147" or "265.147"] (if applicable).

(3) Rules and regulations of the governing state agency [particularly section 33-24-05-79 and subsection 5 of section 33-24-06-16 of the North Dakota Administrative Code] (if applicable).

Conditions:

(1) The principal is subject to the applicable governing provisions that require the principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the principal will satisfy valid third-party liability claims, as described in condition 1.

(3) If the principal fails to satisfy a valid third-party liability claim, as described above, the surety(ies) becomes liable on this bond obligation.

(4) The surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$ [\_\_\_\_\_].

[Signature]  
Principal  
[Notary] [Date]  
[Signature(s)]  
Claimant(s)  
[Notary] [Date]

or (b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the surety(ies) furnish(es) notice to the DEPARTMENT forthwith of all claims filed and payments made by the surety(ies) under this bond.

(7) The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and the DEPARTMENT provided, however, the cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the principal and the DEPARTMENT, as evidenced by the return receipt.

(8) The principal may terminate this bond by sending written notice to the surety(ies) and to the DEPARTMENT.

(9) The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the principal and surety(ies) have executed this bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in subsection 12 of section 33-24-05-81, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: \$ \_\_\_\_\_

13. TRUST AGREEMENT

a. A TRUST AGREEMENT, as specified in subsection 10 of section 33-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT", entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate TRUSTEE], [insert, "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "TRUSTEE".

Whereas, the DEPARTMENT has established certain regulations applicable to the GRANTOR, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the GRANTOR, acting through its duly authorized officers, has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT, and the TRUSTEE is willing to act as TRUSTEE.

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

**Section 1. Definitions.** As used in this AGREEMENT:

(a) The term "GRANTOR" means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.

(b) The term "TRUSTEE" means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities.** This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a trust fund, hereinafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden or nonsudden, or both] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amount of \_\_\_\_\_ [up to \$1 million] per occurrence and \_\_\_\_\_ [up to \$2 million] annual aggregate for sudden accidental occurrences and \_\_\_\_\_ [up to \$3 million] per occurrence and \_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or AGREEMENT. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or AGREEMENT.

(b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

(A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert GRANTOR];

(2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert GRANTOR];

(4) Personal property in the care, custody, or control of [insert GRANTOR];

(5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the property, which is acceptable to the TRUSTEE, described in schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR, any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payment for Bodily Injury or Property Damage.** The TRUSTEE shall satisfy a third-party liability claim by making payments from the FUND only upon receipt of one of the following documents:

(a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF VALID CLAIM**

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR'S] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]  
Grantor

[Signatures]  
Claimant(s)

(b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND shall consist of cash or securities acceptable to the TRUSTEE.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the GRANTOR, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or a state government; and

(iii) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the FUND to any common commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without in any way limiting the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;

(d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate corporate capacity, or in any other banking institution affiliated with the TRUSTEE, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the FUND.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this trust, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements of the TRUSTEE shall be paid from the FUND.

**Section 10. Annual Valuations.** The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the trust. Any securities in the FUND shall

be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT shall constitute a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. TRUSTEE Compensation.** The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 13. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE'S acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the trust in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**Section 14. Instructions to the TRUSTEE.** All orders, requests, and instructions by the GRANTOR to the TRUSTEE shall be in writing, signed by such persons as are designated in the attached exhibit A or such other designees as the GRANTOR may designate by amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE shall be in writing, signed by the DEPARTMENT, or its designees, and the TRUSTEE shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the department, except as provided for herein.

**Section 15. Notice of Nonpayment.** If a payment for bodily injury or property damage is made under Section 4 of this trust, the TRUSTEE shall notify the GRANTOR of such payment and the amount(s) thereof within five working days. The GRANTOR shall, on or before the anniversary date of the establishment of the FUND following such notice, either make payments to the TRUSTEE in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the TRUSTEE that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the GRANTOR does not either make payments to the TRUSTEE or provide the TRUSTEE with such proof, the TRUSTEE shall within ten working days after the anniversary date of the establishment of the FUND provide a written notice of nonpayment to the DEPARTMENT.

**Section 16. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE, and the appropriate DEPARTMENT administrator if the GRANTOR ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE, and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the GRANTOR.

The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

**Section 18. Immunity and Indemnification.** The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

**Section 19. Choice of Law.** This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 20. Interpretation.** As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT shall not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subsection 13 of section 33-24-05-81, as such regulations were constituted on the date first above written.

[Signature of GRANTOR]  
[Title]

Attest:  
[Title]  
[Seal]

[Signature of TRUSTEE]  
Attest:  
[Title]  
[Seal]

b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a trust fund as specified in subsection 10 of section 33-24-05-79.

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of

[corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

14. Standby TRUST AGREEMENT

a. A standby TRUST AGREEMENT, as specified in subsection 8 of section 33-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT", entered into as of [date] by and between [name of the owner or operator] a [name of a state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate TRUSTEE], [insert, "incorporated in the state of \_\_\_\_\_" or "a national bank"], the "TRUSTEE".

Whereas the North Dakota State Department of Health has established certain regulations applicable to the GRANTOR, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the GRANTOR, acting through its duly authorized officers, has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT, and the TRUSTEE is willing to act as TRUSTEE.

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

**Section 1. Definitions.** As used in this AGREEMENT:

(a) The term "GRANTOR" means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.

(b) The term "TRUSTEE" means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

**Section 2. Identification of Facilities.** This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a standby trust fund, hereafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_\_ [up to \$1 million] per occurrence and \_\_\_\_\_ [up to \$2 million] annual aggregate for sudden accidental occurrences and \_\_\_\_\_ [up to \$3 million] per occurrence and \_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or AGREEMENT. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law, or any similar law.

(c) Bodily injury to:

(1) An employee [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

(A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert GRANTOR];

(2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;

(3) Property loaned ~~to~~by [insert GRANTOR];

(4) Personal property in the care, custody, or control of [insert GRANTOR];

(5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the proceeds of the letter of credit deposited into the FUND. Such proceeds and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR, any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

**Section 4. Payment for Bodily Injury or Property Damage.** The TRUSTEE shall satisfy a third-party liability claim by drawing on the letter of credit described in schedule B and by making payments from the FUND only upon receipt of one of the following documents:

(a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR'S] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$ [\_\_\_\_\_].

[Signatures] \_\_\_\_\_

Grantor \_\_\_\_\_

[Signatures] \_\_\_\_\_

Claimant(s) \_\_\_\_\_

(b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND shall consist of the proceeds from the letter of credit drawn upon by the TRUSTEE in accordance with the requirements of subsection 11 of section 33-24-05-81 and Section 4 of this AGREEMENT.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the GRANTOR, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or a state government; and
- (iii) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

**Section 8. Express Powers of TRUSTEE.** Without in any way limiting the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;
- (d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate corporate capacity, or in any other banking institution affiliated with the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the FUND.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this trust, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements to the TRUSTEE shall be paid from the FUND.

**Section 10. Advice of Counsel.** The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 11. TRUSTEE Compensation.** The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 12. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE'S acceptance of the appointment, the

TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the trust in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**Section 13. Instructions to the TRUSTEE.** All orders, requests, certifications of valid claims, and instructions to the TRUSTEE shall be in writing, signed by such persons as are designated in the attached exhibit A, or such other designees as the GRANTOR may designate by amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the DEPARTMENT, except as provided for herein.

**Section 14. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT if the GRANTOR ceases to exist.

**Section 15. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in Section 14, this trust shall be irrevocable and shall continue until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be paid to the GRANTOR.

The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternative financial assurance as specified in this section.

**Section 16. Immunity and Indemnification.** The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR and the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

**Section 17. Choice of Law.** This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 18. Interpretation.** As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT shall not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subsection 14 of section 33-24-05-81 as such regulations were constituted on the date first above written.

[Signature of GRANTOR]

[Title]

Attest:

[Title]

[Seal]

[Signature of TRUSTEE]

Attest:

[Title]

[Seal]

- b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a standby trust fund as specified in subsection 8 of section 33-24-05-79. State requirements may differ on the proper content of this acknowledgment.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-90. Condition of containers.**

If a container holding hazardous waste is not in good condition (for example, severe rusting, apparent structural defects) or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of ~~this chapter~~ [sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-525, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819.](#)

**History:** Effective January 1, 1984; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-103. Applicability of tank requirements.

The requirements of sections 33-24-05-103 through ~~33-24-05-114~~33-24-05-117 apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in subsections 1, 2, and 3 or in section 33-24-05-01.

1. Tank systems that are used to treat or store hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in section 33-24-05-106. To demonstrate the absence or presence of free liquids in the ~~stored/treated~~stored, treated, or both waste, the following test must be used: method ~~9095~~9095B (paint filter liquids test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05.
2. Tank systems, including sumps, as defined in section 33-24-01-04, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in subsection 1 of section 33-24-05-106.
3. Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in section 33-24-01-04 and regulated under sections 33-24-05-501 through ~~33-24-05-506~~33-24-05-524, must meet the requirements of sections 33-24-05-103 through 33-24-05-117.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-104. Assessment of existing tank system's integrity.

1. For each existing tank system that does not have secondary containment meeting the requirements of section 33-24-05-106, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in subsection 3, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by ~~an independent,~~a qualified, ~~registered~~ professional engineer, in accordance with subsection 4 of section 33-24-06-03, that attests to the tank system's integrity by ~~July 30, 1989~~[January 12, 1988](#).
2. This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the wastes to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, the assessment must ~~consist~~consider of the following:
  - a. Design standards, if available, according to which the tank and ancillary equipment were constructed;
  - b. Hazardous characteristics of the wastes that have been and will be handled;
  - c. Existing corrosion protection measures;
  - d. Documented age of the tank system if available (otherwise, an estimate of the age); and
  - e. Results of a leak test, internal inspection, or other tank integrity examination such that:
    - (1) For nonenterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank ~~and~~end deflection, vapor pockets, and high water table effects; and

- (2) For other than nonenterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by ~~an independent,~~ a qualified, ~~registered~~ professional engineer in accordance with subsection 4 of section 33-24-06-03, that addresses cracks, leaks, corrosion, and erosion.

[Note: The practices described in the American petroleum institute publication, guide for inspection of refinery equipment, chapter XIII, "Atmospheric and Low-Pressure Storage Tanks", fourth edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.]

3. Tank systems that store or treat materials that become hazardous waste subsequent to July 14, 1986, must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste.
4. If, as a result of the assessment conducted in accordance with subsection 1, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of section 33-24-05-109.

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-105. Design and installation of new tank systems or components.**

1. Owners or operators of new tank systems or components shall obtain and submit to the department, at time of submittal of part B application information, a written assessment, reviewed and certified by ~~an independent,~~ a qualified ~~registered~~ professional engineer, in accordance with subsection 4 of section 33-24-06-03, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the department to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:
  - a. Design standards according to which tanks or the ancillary equipment, or both, are constructed;
  - b. Hazardous characteristics of the waste to be handled;
  - c. For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:
    - (1) Factors affecting the potential for corrosion including, but not limited to:
      - (a) Soil moisture content;
      - (b) Soil pH;
      - (c) Soil sulfides level;
      - (d) Soil resistivity;
      - (e) Structure to soil potential;

- (f) Influence of nearby underground metal structures (for example, piping);
  - (g) Existence of stray electric current; and
  - (h) Existing corrosion protecting measures (for example, coating, cathodic protection); and
- (2) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:
- (a) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;
  - (b) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes);
  - (c) Electrical isolation devices such as insulating joints and flanges;

[Note: The practices described in the national association of corrosion engineers standard, "Recommended Practice (RP-02-85) Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and the American petroleum institute publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used, where applicable, as guidelines in providing corrosion protection for tank systems.]

- (d) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and
- (e) Design considerations to ensure that:
  - [1] Tank foundations will maintain the load of a full tank;
  - [2] Tank systems will be anchored to prevent floatation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of subsection 1 of section 33-24-05-09; and
  - [3] Tank systems will withstand the effects of frost heave.

2. The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or ~~an independent,~~ a qualified, ~~registered~~ professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, shall inspect the system for the presence of any of the following items:

- a. Weld breaks;
- b. Punctures;
- c. Scrapes of protective coating;
- d. Cracks;
- e. Corrosion; and

- f. Other structural damage or inadequate construction or installation.

All discrepancies must be remedied before the tank system is covered, enclosed, or placed in use.

3. New tank systems or components that are placed underground and that are backfilled must be provided with a backfill material that is of a noncorrosive, porous, homogenous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.
4. All new tanks and ancillary equipment must be tested for tightness prior to being covered, enclosed, or placed into use. If a tank system is found not to be tight, all repairs necessary to remedy the leaks in the system must be performed prior to the tank system being covered, enclosed, or placed into use.
5. Ancillary equipment must be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

[Note: The piping system installation procedures described in American petroleum institute publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems", or American national standards institute standard B31.3 "Petroleum Refinery Piping" and American national standards institute standard B31.4, "Liquid Petroleum Transportation Piping System", may be used where applicable, as guidelines for proper installation of piping systems.]

6. The owner or operator shall provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on information provided under subdivision c of subsection 1 or other corrosion protection if the department believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. Installation of a corrosion protection system that is field fabricated must be supervised by an independent corrosion expert to ensure proper installation.
7. The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of subsections 2 through 6, attesting that the tank system was properly designed and installed and that repairs, pursuant to subsections 2 and 4 were performed. These written statements must also include the certification statement as required in subsection 4 of section 33-24-06-03.

**History:** Effective January 1, 1984; amended effective December 1, 1988; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-106. Containment and detection of releases.**

1. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this section must be provided (except as provided in subsections 6 and 7):
  - a. For all new [and existing](#) tank systems or components, prior to [their](#) being put into service; [and](#)
  - b. ~~For all existing tank systems used to store or treat hazardous waste numbers F020, F021, F022, F023, F026, and F027 within one year after the effective date of these rules;~~

- ~~c. For those existing tank systems of known documented age within one year after the effective date of these rules or when the tank system has reached fifteen years of age, whichever comes later;~~
- ~~d. For those existing tank systems for which the age cannot be documented, within eight years of the effective date of these rules; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches fifteen years of age or within one year of the effective date of these rules, whichever comes later; and~~
- ~~e. For tank systems that store or treat materials that become hazardous wastes subsequent to January 12, 1987, within the time intervals required in subdivisions a through d, except that the date a material becomes a hazardous waste must be used in place of January 12, 1987.~~  
For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached fifteen years of age, whichever comes later.

2. Secondary containment systems must be:

- a. Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and
- b. Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

3. To meet the requirements of subsection 2, secondary containment systems must be at a minimum:

- a. Constructed of or lined with materials that are compatible with the waste or wastes to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, stress of installation, and the stress of daily operation (including stresses from nearby vehicular traffic);
- b. Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;
- c. Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment ~~or both~~ structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four hours, or at the earliest practicable time if the owner or operator can demonstrate to the department that the existing detection technologies or site conditions will not allow detection of a release within twenty-four hours; and
- d. Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four hours, or in as timely a manner as possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the department that removal of the released waste or accumulated precipitation cannot be accomplished within twenty-four hours. (Note: If the collected material is a hazardous waste under chapter 33-24-02, it is subject to management as a hazardous waste in accordance with all applicable requirements of

chapters 33-24-03 through 33-24-05. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a publicly owned treatment works, it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.)

4. Secondary containment for tanks must include one or more of the following devices:
  - a. A liner (external to the tank);
  - b. A vault;
  - c. A double-walled tank; or
  - d. An equivalent device as approved by the department.
5. In addition to the requirements of subsections 2, 3, and 4, secondary containment systems must satisfy the following requirements:
  - a. External liner systems must be:
    - (1) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;
    - (2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event;
    - (3) Free of cracks or gaps; and
    - (4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tanks (for example, capable of preventing lateral as well as vertical migration of the waste).
  - b. Vault systems must be:
    - (1) Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary;
    - (2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event;
    - (3) Constructed with chemical-resistant water stops in place at all joints (if any);
    - (4) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that will prevent migration of waste into the concrete;
    - (5) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:
      - (a) Meets the definition of ignitable wastes under section 33-24-02-11; or

- (b) Meets the definition of reactive wastes under section 33-24-02-13, and may form an ignitable or explosive vapor; and
    - (6) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.
  - c. Double-walled tanks must be:
    - (1) Designed as an integral structure (for example, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;
    - (2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and
    - (3) Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four hours, or at the earliest practical time if the owner or operator can demonstrate to the department, and the department concludes, that the existing detection technology or site conditions would not allow detection with a release within twenty-four hours. (Note: The provisions outlined in the steel tank institute's "standard for dual wall underground steel storage tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.)
6. Ancillary equipment must be provided with secondary containment (for example, trench, jacketing, double-walled piping) that meets the requirements of subsections 2 and 3 except for:
- a. Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;
  - b. Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;
  - c. Sealless or magnetic coupling pumps, and sealless valves, that are visually inspected for leaks on a daily basis; and
  - d. Pressurized aboveground piping systems with automatic shutoff devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.
7. The owner or operator may obtain a variance from the requirements of this section if the department finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituent into the ground water; or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with subdivision b, be exempted from secondary containment requirements of this section.
- a. In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the department will consider:
    - (1) The nature and quantity of the wastes;
    - (2) The proposed alternate design and operation;

- (3) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and ground water; and
  - (4) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.
- b. In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the department will consider:
- (1) The potential adverse effects on ground water, surface water, and land quality taking into account:
    - (a) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;
    - (b) The hydrogeological characteristics of the facility and surrounding land;
    - (c) The potential for health risks caused by human exposure to waste constituents;
    - (d) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
    - (e) The persistence and permanence of potential adverse effects;
  - (2) The potential adverse effects of a release on ground water quality, taking into account:
    - (a) The quantity and quality of ground water and the direction of ground water flow;
    - (b) The proximity and withdrawal rates of ground water users;
    - (c) The current and future uses of ground water in the area; and
    - (d) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water quality;
  - (3) The potential adverse effects of a release on surface water quality, taking into account:
    - (a) The quantity and quality of ground water and the direction of ground water flow;
    - (b) The patterns of rainfall in the region;
    - (c) The proximity of the tank system to surface waters;
    - (d) The current and future uses of surface waters in the area and any water quality standards established for those surface waters; and
    - (e) The existing quality of surface water, including other sources of contamination and cumulative impact on surface water quality; and
  - (4) The potential adverse effects of a release on the land surrounding the tank system, taking into account:
    - (a) The patterns of rainfall in the region; and

- (b) The current and future uses of the surrounding land.
  - c. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of subdivision a, at which a release of hazardous waste has occurred from the primary tank system, but has not migrated beyond the zone of engineering control (as established in the variance), must:
    - (1) Comply with the requirements of section 33-24-05-109, except subsection 4; and
    - (2) Decontaminate or remove contaminated soil to the extent necessary to:
      - (a) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and
      - (b) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and
    - (3) If contaminated soil cannot be removed or decontaminated in accordance with paragraph 2, comply with the requirements of subsection 2 of section 33-24-05-110.
  - d. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of subdivision a, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:
    - (1) Comply with the requirements of subsections 1, 2, 3, and 4 of section 33-24-05-109;
    - (2) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if ground water has been contaminated, the owner or operator shall comply with the requirements of subsection 2 of section 33-24-05-110;
    - (3) If repairing, replacing, or reinstalling the tank system, provides secondary containment in accordance with the requirements of ~~subsection~~subsections 1 through 6 or reapply for a variance from the secondary containment and meet the requirements for new tank systems in section 33-24-05-105 if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed and ground water or surface water has not been contaminated.
8. The following procedures must be followed in order to request a variance from secondary containment:
- a. The department must be notified in writing by the owner or operator that the owner or operator intends to conduct and submit a demonstration for a variance from secondary containment as allowed in subsection 7 according to the following schedule:
    - (1) For existing tank systems, at least twenty-four months prior to the date that secondary containment must be provided in accordance with subsection 1; or
    - (2) For new tank systems, at least thirty days prior to entering into a contract for installation;

- b. As part of the notification, the owner or operator shall also submit to the department a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration must address each of the factors listed in subdivision a or b of subsection 7;
  - c. The demonstration for a variance must be completed within one hundred eighty days after notifying the department of an intent to conduct the demonstration; and
  - d. If the department intends to grant a variance under this section:
    - (1) The department will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least thirty days from the date of the notice for the public to review and comment on the demonstration for a variance. The department also will hold a public hearing, in response to a request or at the department's discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least thirty days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.
    - (2) The department will approve or disapprove the request for a variance within ninety days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the ninety-day time period will begin when the department receives a complete demonstration, including all information necessary to make a final determination. If the public comment period is extended, the ninety-day time period will be similarly extended.
    - (3) If a variance is approved, the department will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.
9. All tank systems, until such time as secondary containment that meets the requirements of this section is provided, must comply with the following:
- a. For nonenterable underground tanks, a leak test that meets the requirements of subdivision e of subsection 2 of section 33-24-05-104 must be conducted at least annually;.
  - b. For other than nonenterable underground tanks, the owner or operator shall either conduct a leak test as in subdivision a or develop a schedule and procedure for an assessment of the overall condition of the tank system by ~~an independent,~~ a qualified, ~~registered~~ professional engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated ~~and, at a minimum, must be conducted annually;.~~

- c. For ancillary equipment, a leak test ~~for~~ other integrity assessment as approved by the department must be conducted by ~~an independent,~~ a qualified, ~~registered~~ professional engineer at least annually;.

[Note: The practices described in the American petroleum institute publication guide for inspection of refinery equipment, chapter XIII, "Atmospheric and Low-Pressure Storage Tanks", fourth edition 1981, may be used, where applicable, as guidelines for assessing the overall condition of the tank system.]

- d. The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with subdivisions a through c; ~~and~~.
- e. If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in subdivisions a through c, the owner or operator shall comply with the requirements of section 33-24-05-109.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-108. Inspections.**

1. The owner or operator shall develop and follow a schedule and procedure for inspecting overfill controls.
2. The owner or operator shall inspect at least once each operating day: data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

~~a. Overfill and spill control equipment (for example, waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;~~

~~b. Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;~~

~~c. Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and~~

~~d. The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).~~

[Note: Subsection 3 of section 33-24-05-06 requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Section 33-24-05-109 requires the owner or operator to notify the department within twenty-four hours of confirming a leak. Also, 40 CFR 302 may require the owner or operator to notify the national response center of a release.]

3. In addition, except as noted under subsection 4, the owner or operator must inspect at least once each operating day:
  - a. Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

b. The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

4. Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in subdivisions a and b of subsection 3. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

5. Ancillary equipment that is not provided with secondary containment, as described in subdivisions a through d of subsection 6 of section 33-24-05-106, must be inspected at least once each operating day.

6. The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

- a. The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and
- b. All sources of impressed current must be inspected or tested, or both, as appropriate, at least bimonthly (for example, every other month).

[Note: The practices described in the national association of corrosion engineers standard, "Recommended Practice P-028-85 Control of External Corrosion on Metallic, Buried, Partially Buried, or Submerged Liquid Storage Systems", and American petroleum institute publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", may be used where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

~~4.7.~~ The owner or operator shall document in the operating record of the facility an inspection of those items in subsections 1 through 3.

**History:** Effective January 1, 1984; amended effective December 1, 1988; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-109. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.**

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator shall satisfy the following requirements:

1. **Cessation of use; prevent flow or addition of wastes.** The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.
2. **Removal of waste from tank system or secondary containment system.**
  - a. If the release was from the tank system, the owner/operator shall, within twenty-four hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to

prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

- b. If the material released was to a secondary containment system, all released materials must be removed within twenty-four hours or in as timely a manner as is possible to prevent harm to human health and the environment.
3. **Containment of visible releases to the environment.** The owner/operator shall immediately conduct a visual inspection of the release and, based upon that inspection:
    - a. Prevent further migration of leak or spill to soils or surface water; and
    - b. Remove, and properly dispose of, any visible contamination of the soil or surface water.
  4. **Notifications, reports.**
    - a. Any release to the environment, except as provided in subdivision b ~~of subsection 4~~, must be reported to the department within twenty-four hours of its detection. The release should also be reported pursuant to 40 CFR 302.
    - b. A leak or spill of hazardous waste is exempted from the requirements of this ~~section~~subsection if it is:
      - (1) Less than or equal to a quantity of one pound; and
      - (2) Immediately contained and cleaned up.
    - c. Within thirty days of detection of a release to the environment, a report containing the following information must be submitted to the department:
      - (1) Likely route of migration of the release;
      - (2) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);
      - (3) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty days, these data must be submitted to the department as soon as they become available;
      - (4) Proximity to downgradient drinking water, surface water, and populated areas; and
      - (5) Description of response actions taken or planned.
  5. **Provision of secondary containment, repair, or closure.**
    - a. Unless the owner/operator satisfies the requirements of subdivisions b through d ~~of subsection 5~~, the tank system must be closed in accordance with section 33-24-05-110.
    - b. If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.
    - c. If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.
    - d. If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator shall provide the component

of the system from which the leak occurred with secondary containment that satisfies the requirements of section 33-24-05-106 before it can be returned to service unless the source of the leak is an aboveground portion of a leak system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of subsection 6 are satisfied. If a component is replaced to comply with the requirements of this subdivision, that component must satisfy the requirements for new tank systems or components in sections 33-24-05-105 and 33-24-05-106. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, (for example, the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with section 33-24-05-106 prior to being returned to use.

6. **Certification of major repairs.** If the owner/operator has repaired a tank system in accordance with subsection 5, and the repair has been extensive (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by ~~an independent,~~ a ~~qualified,~~ ~~registered,~~ professional engineer in accordance with subsection 4 of section 33-24-06-03 that the repaired system is capable of handling hazardous ~~waste~~ wastes without release for the intended life of the system. This certification must be ~~submitted to the department within seven days after returning the tank system to use~~ placed in the operating record and maintained until closure of the facility.

**History:** Effective January 1, 1984; amended effective December 1, 1988; July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-110. Closure and postclosure care.**

1. At closure of a tank system, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as a hazardous waste, unless subsection 4 of section 33-24-02-03 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in sections 33-24-05-59 through 33-24-05-88.
2. If the owner or operator demonstrates that not all contaminated soil can be practicably removed or decontaminated as required in subsection 1, then the owner or operator shall close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills under section 33-24-05-180. In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all the requirements for landfills specified in sections 33-24-05-59 through 33-24-05-88.
3. If an owner or operator has a tank system that does not have secondary containment that meets the requirements of subsections 2 through 6 of section 33-24-05-106 and has not been granted a variance from the secondary containment requirements in accordance with subsection 7 of section 33-24-05-106, then:
  - a. The closure plan for the tank system must include both a plan for complying with subsection 1 and a contingent plan for complying with subsection 2;
  - b. A contingent postclosure plan for complying with subsection 2 must be prepared and submitted as part of the permit application;

- c. The cost estimates calculated for closure and postclosure care must reflect the cost of complying with the contingent closure plan and the contingent postclosure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under subsection 1;
- d. Financial assurance must be based on the cost estimates in subdivision c ~~of subsection 3~~; and
- e. For the purposes of the contingent closure and postclosure plans, such a tank system is considered to be a landfill, and the contingent plans must meet all of the closure, postclosure, and financial responsibility requirements for landfills under sections 33-24-05-59 through 33-24-05-88.

**History:** Effective October 1, 1986; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-113. Waste analysis and trial tests.**

In addition to performing the waste analyses required by section 33-24-05-04, the owner or operator shall, whenever a tank system is to be used to treat chemically or to store a hazardous waste that is substantially different from waste previously treated or stored in that tank system or to be used to treat chemically a hazardous waste with a substantially different process than any previously used in that tank system:

1. Conduct waste analyses and trial treatment ~~for~~ storage tests (for example, bench scale or pilot-plant scale tests); or
2. Obtain written, documented information on similar wastes under similar operating conditions to show that the proposed treatment or storage will meet the requirements of subsection 1 of section 33-24-05-107.

**History:** Effective December 1, 1988; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-114. Special requirements for generators of between one hundred and one thousand kilograms per month that accumulate hazardous waste in tanks.**

1. The requirements of this section apply to small quantity generators of more than one hundred kilograms, but less than one thousand kilograms of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than one hundred eighty days (or two hundred seventy days if the generator must ship the waste greater than two hundred miles), and do not accumulate over six thousand kilograms onsite at any time.
2. Generators of between one hundred and one thousand kilograms per month hazardous waste shall comply with the following general operating requirements:
  - a. Treatment or storage of hazardous waste in tanks must comply with subsection 2 of section 33-24-05-08.
  - b. Hazardous wastes or treatment reagents may not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.
  - c. Uncovered tanks must be operated to ensure at least sixty centimeters [2 feet] of freeboard, unless the tank is equipped with a containment structure (for example, dike or

trench), a drainage control system, or a diversion structure (for example, standby tank) with a capacity that equals or exceeds the volume of the top sixty centimeters [2 feet] of the tank.

- d. Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (for example, waste feed cutoff system or bypass system to a standby tank).

[Note: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (for example, a malfunction in the treatment process, a crack in the tank, etc.).]

3. Generators of between one hundred and one thousand kilograms per month accumulating hazardous waste in tanks shall inspect, where present:
  - a. Discharge control equipment (for example, waste feed cutoff systems, bypass systems, and drainage systems) at least once each operating day to ensure that it is in good working order;
  - b. Data gathered from monitoring equipment (for example, pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;
  - c. The level of waste in the tank at least once each operating day to ensure compliance with [subdivision c of subsection 3 of section 33-24-05-1052](#);
  - d. The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and
  - e. The construction materials of, and the area immediately surrounding, discharge confinement structures (for example, dikes) at least weekly to detect erosion or obvious signs of leakage (for example, wet spots or dead vegetation).
4. Generators of between one hundred and one thousand kilograms per month accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

[Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with subsection 3 or 4 of section 33-24-02-03 that any solid waste removed from the owner's or operator's tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of chapters 33-24-03 through 33-24-06.]

5. Generators of between one hundred and one thousand kilograms per month shall comply with the following special requirements for ignitable or reactive waste:
  - a. Ignitable or reactive waste may not be placed in a tank, unless:
    - (1) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that (a) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive wastes under section 33-24-02-11 or 33-24-02-13, and (b) subsection 2 of section 33-24-05-08 is complied with;
    - (2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or
    - (3) The tank is used solely for emergencies.

- b. The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in tables 2-1 through 2-6 of the national fire protection association's "flammable and combustible liquids code" (1977 or 1981). (Incorporated by reference, see section 33-24-01-05.)
6. Generators of between one hundred and one thousand kilograms per month must comply with the following special requirements for incompatible wastes:
- a. Incompatible wastes, or incompatible wastes and materials, (see appendix III for examples) may not be placed in the same tank, unless subsection 2 of section 33-24-05-08 is complied with; and
  - b. Hazardous waste may not be placed in an unwashed tank which previously held an incompatible waste or material unless subsection 2 of section 33-24-05-08 is complied with.

**History:** Effective December 1, 1988; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-119. Design and operating requirements.**

1. Any surface impoundment that is not covered by subsection 3 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with subdivision a of subsection 1 of section 33-24-05-122. For impoundments that will be closed in accordance with subdivision b of subsection 1 of section 33-24-05-122, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:
  - a. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;
  - b. Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
  - c. Installed to cover all surrounding earth likely to be in contact with the waste or leachate.
2. The owner or operator may be exempted from the requirements of subsection 1 if the department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (as defined in section 33-24-05-50) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the department will consider:
  - a. The nature and quantity of the wastes;

- b. The proposed alternate design and operation;
  - c. The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and
  - d. All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.
3. The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in section 33-24-01-04 under "existing facility".
- a. Liner.
    - (1) The liner system must include:
      - (a) A top liner designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and postclosure care period; and
      - (b) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and postclosure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least three feet [91.44 centimeters] of compacted soil material with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second.
    - (2) The liners must comply with subdivisions a, b, and c of subsection 1.
  - b. The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and postclosure care period. The requirements for a leak detection system in this subdivision are satisfied by installation of a system that is, at a minimum:
    - (1) Constructed with a bottom slope of one percent or more;
    - (2) Constructed of granular drainage materials with a hydraulic conductivity of  $1 \times 10^{-1}$  centimeters per second or more and a thickness of twelve inches [30.5 centimeters] or more; or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-4}$  meters squared per second or more;
    - (3) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

- (4) Designed and operated to minimize clogging during the active life and postclosure care period; and
    - (5) Constructed with a sump or sumps and liquid removal methods (for example, pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump or sumps. The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.
  - c. The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.
  - d. The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.
4. The department may approve alternative design or operating practices to those specified in subsection 3 if the owner or operator demonstrates to the department that such design and operating practices, together with location characteristics:
  - a. Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal system specified in subsection 3; and
  - b. Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.
5. The double-liner requirement set forth in subsection 3 may be waived by the department for any monofill, if:
  - a. The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity ~~characteristics~~characteristic in section 33-24-02-14; and
  - b. The monofill meets the following:
    - (1) The monofill:
      - (a) Has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection 3 on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate postclosure requirements, including ground water monitoring and corrective action;

- (b) Is located more than one-quarter mile [.40 kilometer] from an "underground source of drinking water" (as that term is defined in 40 CFR section ~~144.3270.2~~); and
  - (c) Is in compliance with generally applicable ground water monitoring requirements for facilities with hazardous waste permits under Resource Conservation and Recovery Act section 3005(e)chapter 33-24-06; or
- (2) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.
6. The owner or operator of any replacement surface impoundment unit is exempt from subsection 3 if:
- a. The existing unit was constructed in compliance with the design standards of ~~sections 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act~~sections 33-24-05-118 through 33-24-05-143, 33-24-05-160 through 33-24-05-190, and the applicable requirements of subsection 5 of section 33-24-06-16; and
  - b. There is no reason to believe that the liner is not functioning as designed.
7. A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.
8. A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.
9. The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-123. Special requirements for ignitable or reactive waste.**

Ignitable or reactive waste may not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of sections 33-24-05-250 through 33-24-05-299; and:

- 1. The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:
  - a. The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under section 33-24-02-11 or 33-24-02-13; and
  - b. Subsection 2 of section 33-24-05-08 is complied with; or
- 2. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; or
- 3. The surface impoundment is used solely for emergencies.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-125. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.**

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this ~~section~~subsection, and in accordance, with all other applicable requirements of ~~this chapter sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819~~. The factors to be considered are:
  - a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or volatilize or escape into the atmosphere;
  - b. The attenuative properties of underlying and surrounding soils or other materials;
  - c. The mobilizing properties of other materials codisposed with these wastes; and
  - d. The effectiveness of additional treatment, design, or monitoring techniques.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

**History:** Effective July 1, 1997; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-126. Action leakage rate.**

1. The department shall approve an action leakage rate for surface impoundment units subject to subsection 3 or 4 of section 33-24-05-119. The action leakage rate is the maximum design flow rate that the leak detection system (~~LDS~~) can remove without the fluid head on the bottom liner exceeding one foot [.3048 meters]. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (for example, slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the leak detection system, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the leak detection system, and proposed response actions (for example, the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).
2. To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under subsection 4 of section 33-24-05-120 to an average daily flow rate (gallons per acre per day) for each sump. Unless the department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and if the unit is closed in accordance with subsection 2 of section 33-24-05-122, monthly during the postclosure care period when monthly monitoring is required under subsection 4 of section 33-24-05-120.

**History:** Effective July 1, 1997; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-127. Response actions.**

1. The owner or operator of surface impoundment units subject to subsection 3 or 4 of section 33-24-05-119 must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection 2.
2. If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:
  - a. Notify the department in writing of the exceedance within seven days of the determination;
  - b. Submit a preliminary written assessment to the department within fourteen days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
  - c. Determine to the extent practicable the location, size, and cause of any leak;
  - d. Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
  - e. Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and
  - f. Within thirty days after the notification that the action leakage rate has been exceeded, submit to the department the results of the analyses specified in subdivisions c, d, and e of ~~subsection 2~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the department a report summarizing the results of any remedial actions taken and actions planned.
3. To make the leak or remediation determinations, or both, in subdivisions c, d, and e of subsection 2, the owner or operator must:
  - a. Assess and conduct the following:
    - (1) Assess the source of liquids and amounts of liquids by source;
    - (2) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
    - (3) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
  - b. Document why such assessments are not needed.

**History:** Effective July 1, 1997; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-130. Applicability of waste pile requirements.

1. Sections 33-24-05-130 through 33-24-05-143 apply to owners or operators of facilities that store or treat hazardous waste in piles, except as section 33-24-05-01 provides otherwise.
2. Sections 33-24-05-130 through 33-24-05-143 do not apply to owners ~~or~~ and operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under sections 33-24-05-176 through ~~33-24-05-200~~33-24-05-190.
3. The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither runoff nor leachate is generated is not subject to regulation under section 33-24-05-131 or under sections 33-24-05-47 through 33-24-05-58, provided that:
  - a. Liquids or materials containing free liquids are not placed in the pile;
  - b. The pile is protected from surface water run-on by the structure or in some other manner;
  - c. The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and
  - d. The pile will not generate leachate through decomposition or other reactions.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-131. Design and operating requirements.

1. A waste pile (except for an existing portion of a waste pile ~~which qualifies for an exemption in accordance with subsection 2~~) must have:
  - a. A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility. The liner must be:
    - (1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;
    - (2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
    - (3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and
  - b. A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed one foot [.3048 meters]. The leachate collection and removal system must be:

- (1) Constructed of materials that are:
  - (a) Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and
  - (b) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and
- (2) Designed and operated to function without clogging through the scheduled closure of the waste pile.

2. ~~The department, on a case-by-case basis, may exempt an existing portion of a hazardous waste pile from subsection 1 if the owner or operator demonstrate that the owner's or operator's existing design or operating practices, together with the location of the facility, will prevent migration of any hazardous constituents into the ground water or surface water during the active life of the facility (including the closure period).~~

~~3. The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in section 33-24-01-04 under "existing facility".~~

a. Liners.

(1) The liner system must include:

- (a) A top liner designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and postclosure care period; and
- (b) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and postclosure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least three feet [91.44 centimeters] of compacted soil material with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second.

(2) The liners must comply with paragraphs 1, 2, and 3 of subdivision a of subsection 1.

b. The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and postclosure care period. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed one foot [.3048 meters]. The leachate collection and removal system must comply with paragraphs 3 and 4 of subdivision c ~~of subsection 3~~.

c. The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or

leachate during the active life and postclosure care period. The requirements for a leak detection system in this ~~paragraph~~subsection are satisfied by installation of a system that is, at a minimum:

- (1) Constructed with a bottom slope of one percent or more;
  - (2) Constructed of granular drainage materials with a hydraulic conductivity of  $1 \times 10^{-2}$  centimeters per second or more and a thickness of twelve inches [30.5 centimeters] or more; or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  square meters per second or more;
  - (3) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;
  - (4) Designed and operated to minimize clogging during the active life and postclosure care period; and
  - (5) Constructed with sumps and liquid removal methods (for example, pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump or sumps. The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.
- d. The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.
- e. The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

~~4.3.~~ The department may approve alternative design or operating practices to those specified in subsection ~~32~~ if the owner or operator demonstrates to the department that such design and operating practices, together with location characteristics:

- a. Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection ~~32~~; and
- b. Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

~~5.4.~~ Subsection ~~32~~ does not apply to monofills that are granted a waiver by the department in accordance with subsection 5 of section 33-24-05-119.

~~6.5.~~ The owner or operator of any replacement waste pile unit is exempt from subsection ~~32~~ if:

- a. The existing unit was constructed in compliance with the design standards of ~~section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act~~sections 33-24-05-118 through 33-24-05-143, 33-24-05-160 through 33-24-05-190, and the applicable requirements of subsection 5 of section 33-24-06-16; and
- b. There is no reason to believe that the liner is not functioning as designed.

~~7-6.~~ The owner or operator will be exempted from the requirements of subsection 1, if the department finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see section 33-24-05-50) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

- a. The nature and quantity of the waste;
- b. The proposed alternate design and operation;
- c. The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and ground water or surface water; and
- d. All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

~~8-7.~~ The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the pile during peak discharge from at least a twenty-five-year storm.

~~9-8.~~ The owner or operator must design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.

~~10-9.~~ Collection and holding facilities (for example, tanks or basins) associated with run-on and runoff control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

~~11-10.~~ If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the pile to control wind dispersal.

~~12-11.~~ The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 1994; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-132. Monitoring and inspection.**

1. During construction or installation, liners (except in the case of existing portions of piles exempt from subsection 1 of section 33-24-05-131) and cover systems (for example, membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections, for example, holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:

- a. Synthetic liners and covers must be inspected ~~by an independent, qualified professional~~ to ensure tight seams and joints and the absence of tears, punctures, or blisters; and
- b. Soil-based and admixed liners and covers must be inspected ~~by an independent, qualified professional~~ for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.

2. While a waste pile is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

a. Deterioration, malfunctions, or improper operation of run-on and runoff control systems;

~~b. The presence of liquids in leak detection systems where installed;~~

~~c. Proper functioning of wind dispersal control systems where present; and~~

~~d.c.~~ The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

3. An owner or operator required to have a leak detection system under subsection ~~32~~ of section 33-24-05-131 must record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

~~4. If, during the periodic removal of wastes from the pile and inspection of the underlying liner in accordance with subdivision b of subsection 1 of section 33-24-05-131, any deterioration, crack, or other condition is identified that is causing or could cause a leak, the owner or operator shall:~~

~~a. Notify the department of the condition in writing within seven days after detecting the condition; and~~

~~b. Repair or replace the liner (base) and obtain a certification from a qualified engineer that to the best of his knowledge and opinion the liner (base) has been repaired and leakage will not occur.~~

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 1994; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-135. Closure and postclosure care.**

1. At closure, the owner or operator must remove or decontaminate all waste residue, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless subsection 4 of section 33-24-02-03 applies.

2. If, after removing or decontaminating all residues and making all reasonable efforts to affect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection 1, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner or operator shall close the facility and perform postclosure care in accordance with the closure and postclosure care requirements that apply to landfills (section 33-24-05-180).

3. In addition:

a. The owner or operator of a waste pile that does not comply with the liner requirements of [subdivision a of](#) subsection ~~21~~ of section 33-24-05-131 and is not exempt from them in accordance with subsection 3 of section 33-24-05-130 or subsection ~~56~~ of section 33-24-05-131, shall:

(1) Include in the closure plan for the pile under section 33-24-05-61 both a plan for complying with subsection 1 and a contingent plan for complying with subsection 2 in case not all contaminated subsoil can be practicably removed at closure; and

- (2) Prepare a contingent postclosure plan under section 33-24-05-67 for complying with subsection 2 in case not all contaminated subsoil can be practicably removed at closure.
- b. The cost estimates calculated under section 33-24-05-76 for closure and postclosure care of a pile subject to this subsection must include the cost of complying with the contingent closure plan and the contingent postclosure plan in addition to the, but are not required to include the cost of expected closure under subsection 1.

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-136. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.**

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in waste piles that are not enclosed (as defined in subsection 3 of section 33-24-05-130) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this section subsection and in accord with all other applicable requirements of this chapter sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819. The factors to be considered are:
  - a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
  - b. The attenuative properties of underlying and surrounding soils or other materials;
  - c. The mobilizing properties of other materials codisposed with these wastes; and
  - d. The effectiveness of additional treatment, design, or monitoring techniques.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

**History:** Effective October 1, 1986; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-137. Action leakage rate.**

1. The department shall approve an action leakage rate for surface impoundment units subject to subsection ~~32~~ or ~~43~~ of section 33-24-05-131. The action leakage rate is the maximum design flow rate that the leak detection system (~~LDS~~) can remove without the fluid head on the bottom liner exceeding one foot [.3048 meters]. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (for example, slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the leak detection system, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the leak detection system, and proposed response actions (for example, the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

2. To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly flow rate from the monitoring data obtained under subsection 3 of section 33-24-05-132 to an average daily flow rate (gallons per acre per day) for each sump. Unless the department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period.

**History:** Effective January 1, 1994; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-138. Response actions.**

1. The owner or operator of waste pile units subject to subsection ~~32~~ or ~~43~~ of section 33-24-05-131 must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection 2.
2. If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:
  - a. Notify the department in writing of the exceedance within seven days of the determination;
  - b. Submit a preliminary written assessment to the department within fourteen days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
  - c. Determine to the extent practicable the location, size, and cause of any leak;
  - d. Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
  - e. Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and
  - f. Within thirty days after the notification that the action leakage rate has been exceeded, submit to the department the results of the analyses specified in subdivisions c, d, and e ~~of subsection 2~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the department a report summarizing the results of any remedial actions taken and actions planned.
3. To make the leak or remediation determinations, or both, in subdivisions c, d, and e of subsection 2, the owner or operator must:
  - a. Assess and conduct the following:
    - (1) Assess the source of liquids and amounts of liquids by source;
    - (2) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and
    - (3) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

- b. Document why such assessments are not needed.

**History:** Effective January 1, 1994; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-144. Applicability of incinerator requirements.**

1. Sections 33-24-05-144 through 33-24-05-159 apply to owners or operators of hazardous waste incinerators, except as section 33-24-05-01 provides otherwise.
2. Integration of the maximum achievable control technology standards.
  - a. Except as provided by subdivisions b, ~~c,~~ and through d, the standards of sections 33-24-05-144 through 33-24-05-159 do not apply to a new hazardous waste incineration unit that becomes subject to hazardous waste permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology requirements of 40 CFR part 63, subpart EEE by conducting a comprehensive performance test and submitting to the department a notification of compliance under 40 CFR sections 63.1207(j) and ~~63.1210(b)~~63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the maximum achievable control technology standards, hazardous waste permit conditions that were based on the standards of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.
  - b. The maximum achievable control technology standards do not replace the closure requirements of section 33-24-05-151 or the applicable requirements of sections 33-24-05-01 through 33-24-05-88 and sections 33-24-05-420 through 33-24-05-474.
  - c. The particulate matter standard of subsection 3 of section 33-24-05-147 remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard in~~under~~ 40 CFR ~~section~~sections 63.1206(b)(14) and 63.1219(e).
  - d. The following requirements remain in effect for startup, shutdown, and malfunction events if a permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from these events:
    - (1) Subsection 1 of section ~~33-24-05-100~~33-24-05-149 requiring that an incinerator operate in accordance with operating requirements specified in the permit; and
    - (2) Subsection 3 of section ~~33-24-06-100~~33-24-05-149 requiring compliance with emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.
3. After consideration of the waste analysis included with the permit application, and unless the department finds that the waste will pose a threat to human health or the environment when burned in an incinerator, the department may, on a case-by-case basis, exempt the applicant from some or all of the requirements of sections 33-24-05-144 through 33-24-05-159, except sections 33-24-05-145 and 33-24-05-151 if:
  - a. The waste to be burned is hazardous (either listed in or fails the characteristic tests in chapter 33-24-02) solely because it is:

- (1) Ignitable, or corrosive, or both; or
  - (2) Reactive for characteristic other than those in subdivisions d and e of subsection 1 of section 33-24-02-13, and will not be burned when other hazardous wastes are present in the combustion zone; and
- b. The waste contains insignificant concentrations of the hazardous constituents listed in appendix V of chapter 33-24-02.
4. The owner or operator of an incinerator may conduct trial burns subject only to the requirements of subsection 2 of section 33-24-06-19.
  5. If the waste to be burned is one which is described by subdivision a, b, c, or d of subsection 2 and contains insignificant concentrations of the hazardous constituents listed in appendix V of chapter 33-24-02, then the department may, in establishing permit conditions, exempt the applicant from all requirements of sections 33-24-05-144 through 33-24-05-159, except sections 33-24-05-145 (waste analysis) and 33-24-05-151 (closure), after consideration of the waste analysis included in the permit application, unless the department finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-147. Performance standards.**

An incinerator burning hazardous waste must be designed, constructed, and maintained so that when operated in accordance with operating requirements specified under section 33-24-05-149 it will meet the following performance standards:

1. a. Except as provided in subdivision b, an incinerator burning hazardous waste must achieve a destruction and removal efficiency of ninety-nine and ninety-nine one hundredths percent for each principal organic hazardous constituent designated (under section 33-24-05-146) in its permit for each waste feed. The destruction and removal efficiency is determined for each principal organic hazardous constituent from the following equation:

$$DRE = \frac{(W_{in} - W_{out})}{W_{in}} \times 100\%$$

where:

$W_{in}$  = mass feed rate of one principal organic constituent in the waste stream feeding the incinerator, and

$W_{out}$  = mass emission rate of the same principal organic hazardous constituent present in exhaust emissions prior to release to the atmosphere.

- b. An incinerator burning wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency of ninety-nine and nine thousand nine hundred and ninety-nine ten thousandths percent for each principal organic hazardous constituent designated (under section 33-24-05-146) in its permit. This performance must be demonstrated on principal organic hazardous constituents that are more difficult to

incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. Destruction and removal efficiency is determined for each principal organic hazardous constituent from the equation in subdivision a. ~~In addition, the owner or operator of the incinerator must notify the department of his or her intent to incinerate hazardous wastes F020, F021, F022, F023, F026, and F027.~~

2. An incinerator burning hazardous waste and producing stack emissions of more than one and eight-tenths kilograms per hour [4 pounds per hour] of hydrogen chloride must control hydrogen chloride emissions such that the rate of emission is no greater than the larger of either one and eight-tenths kilograms per hour or one percent of the hydrogen chloride in the stack gas prior to entering any pollution control equipment.
3. An incinerator burning hazardous waste must not emit particulate matter in excess of one hundred eighty milligrams per dry standard cubic meter [0.08 grains per dry standard cubic foot] when corrected for the amount of oxygen in the ~~stacks~~stack gas according to the formula:

$$P_C = P_M \times \frac{14}{21 - Y}$$

where:

$P_C$  = the corrected concentration of particulate matter,

$P_M$  = the measured concentration of particulate matter, and

$Y$  = the measured concentration of oxygen in the stack gas using the Orsat method for oxygen analysis of dry flue gas presented in 40 CFR, part 60, appendix A (method 3) of the federal air pollution control regulations. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the department will select an appropriate correction procedure to be specified in the facility permit.

4. For purposes of permit enforcement, compliance with the operating requirements specified in the permit under section 33-24-05-149 will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under section 33-24-06-12.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-148. Hazardous waste incinerator permits.**

1. The owner or operator of a hazardous waste incinerator may burn only waste specified in the permit and only under operating conditions specified for those wastes under section 33-24-05-149, except:
  - a. In approved trial burns under subsection 2 of section 33-24-06-19; or
  - b. Under exemptions created by section 33-24-05-144.

2. Other hazardous wastes may be burned only after operating conditions have been specified in a new permit or a permit modification as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with the permit application under subdivision w of subsection 2 of section 33-24-06-17.
3. The permit for a new hazardous waste incinerator must establish appropriate conditions for each of the applicable requirements of sections 33-24-05-144 through 33-24-05-159, including, but not limited to, allowable waste feeds ~~in~~and operating conditions necessary to meet the requirements of section 33-24-05-149, sufficient to comply with the following standards:
  - a. For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in subdivision b of this subsection, not to exceed a duration of seven hundred twenty hours operating time for treatment of hazardous waste, the operating requirements must be those most likely to ensure compliance with the performance standards of section 33-24-05-147, based on the department's engineering judgment. The department may extend the duration of this period once for up to seven hundred twenty additional hours when good cause for the extension is demonstrated by the applicant.
  - b. For the duration of the trial burn the operating requirements must be sufficient to demonstrate compliance with the performance standards of section 33-24-05-147 and must be in accordance with the approved trial burn plan.
  - c. For the period immediately following completion of the trial burn and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the department, the operating requirements must be those most likely to ensure compliance with performance standards of section 33-24-05-147 based on the department's engineering judgment.
  - d. For the remaining duration of the permit, the operating requirements must be those demonstrated in a trial burn or by alternative data specified in paragraph 3 of subdivision w of subsection 2 of section 33-24-06-17 as sufficient to ensure compliance with the performance standards of section 33-24-05-147.

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-150. Monitoring and inspections.**

1. The owner or operator shall conduct, at a minimum, the following monitoring while incinerating hazardous waste:
  - a. Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the permit must be monitored on a continuous basis;
  - b. Carbon monoxide must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere; and
  - c. Upon request by the department, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the performance standards of section 33-24-05-147.

2. The incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be completely inspected at least daily for leaks, spills, fugitive emissions, and signs of tampering.
3. The emergency waste feed cutoff system and associated alarms must be tested at least weekly to verify operability, unless the applicant demonstrates to the department that weekly inspections will unduly restrict or upset operations and that less frequent inspection will be adequate. At a minimum, operational testing must be conducted monthly.
4. This monitoring and inspection data must be recorded and the records must be placed in the operating ~~log~~record required by section 33-24-05-40 and maintained in the operating record for five years.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-161. Treatment program.**

1. An owner or operator subject to sections 33-24-05-160 through 33-24-05-175 shall establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The department will specify in the facility permit the elements of the treatment program, including:
  - a. The wastes that are capable of being treated at the unit based on a demonstration under section 33-24-05-162;
  - b. Design measures and operating practices necessary to maximize the success of degradation, transformation, and the immobilization processes in the treatment zone in accordance with subsection 1 of section 33-24-05-163; and
  - c. Unsaturated zone monitoring provisions meeting the requirements of section 33-24-05-165.
2. The department will specify in the facility permit the hazardous constituents that must be degraded, transformed, or immobilized under ~~this chapter~~sections 33-24-05-160 through 33-24-05-175. Hazardous constituents are constituents identified in appendix V of chapter 33-24-02 that are reasonably expected to be in or derived from waste placed in or on the treatment zone.
3. The department will specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone must be:
  - a. No more than one and five-tenths meters [5 feet] from the initial soil surface; and
  - b. More than one meter [3 feet] above the seasonal high water table.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-162. Treatment demonstration.

1. For each waste that will be applied to the treatment zone, the owner or operator shall demonstrate prior to application of the waste that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.
2. In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under subsection 1 ~~of this section~~ the owner or operator shall obtain a treatment or disposal permit under subsection 3 of section 33-24-06-19. The department will specify in this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and cleanup activities) necessary to meet the requirements in subsection 3.
3. Any field test or laboratory analysis conducted in order to make a demonstration under subsection 1 must:
  - a. Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:
    - (1) The characteristics of the waste (including the presence of constituents in appendix V of chapter 33-24-02);
    - (2) The climate of the area;
    - (3) The topography of the surrounding area;
    - (4) The characteristics of the soil in the treatment zone (including depth); and
    - (5) The operating practices to be used at the unit;.
  - b. Be likely to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and
  - c. Be conducted in a manner that protects human health and the environment considering:
    - (1) The characteristics of the waste to be tested;
    - (2) The operating and monitoring measures to be taken during the course of the test;
    - (3) The duration of the tests;
    - (4) The volume of waste used in the test; and
    - (5) In the case of field tests, the potential for the migration of hazardous constituents to ground water or surface water.

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-165. Unsaturated zone monitoring.

An owner or operator subject to ~~the land treatment requirements~~ [sections 33-24-05-160 through 33-24-05-175](#) shall establish an unsaturated zone monitoring program to discharge the following responsibilities:

1. The owner or operator shall monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.
  - a. [The department will specify the hazardous constituents to be monitored in the facility permit.](#) The hazardous constituents to be monitored are those specified under subsection 2 of section 33-24-05-161.
  - b. The department may require monitoring for principal hazardous constituents in lieu of the constituents specified under subsection 2 of section 33-24-05-161. Principal hazardous constituents are hazardous constituents contained in the waste to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The department will establish principal hazardous constituents if ~~it~~ [the department](#) finds, based on waste analyses, treatment demonstrations, or other data that effective degradation, transformation, or immobilization of the principal hazardous constituents will assure treatment of at least equivalent levels for the other hazardous constituents in the wastes.
2. The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores, and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:
  - a. Represent the quality of background soil-pore liquid quality and the chemical makeup of soil that has not been affected by leakage from the treatment zone; and
  - b. Indicate the quality of soil-pore liquid in the chemical makeup of the soil below the treatment zone.
3. The owner or operator shall establish a background value for each hazardous constituent to be monitored under subsection 1. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.
  - a. Background soil values may be based on a one-time sampling at a background plot having characteristics similar to that of the treatment zone.
  - b. Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.
  - c. The owner or operator shall express all background values in a form necessary for the determination of statistically significant increases under subsection 6.
  - d. In taking samples used in the determination of all background values, the owner or operator shall use an unsaturated zone monitoring system that complies with subdivision a of subsection 2.
4. The owner or operator shall conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The department will specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application and the soil permeability. The owner or operator shall express the results of the soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under subsection 6.

5. The owner or operator shall use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality ~~in~~and the chemical makeup in the soil below the treatment zone. At a minimum, the owner or operator shall implement procedures and techniques for:
  - a. Sample collection;
  - b. Sample preservation and shipment;
  - c. Analytical procedures; and
  - d. Chain of custody control.
6. The owner or operator shall determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under subsection 1 below the treatment zone each time the owner or operator conducts soil monitoring and soil-pore liquid monitoring under subsection 4.
  - a. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent as determined under subsection 4 to the background value for that constituent according to the statistical procedures specified in the facility permit under this subsection.
  - b. The owner or operator shall determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The department will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of the soil and soil-pore liquid samples.
  - c. The owner or operator shall determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The department will specify a statistical procedure in the facility permit that ~~it~~the department finds:
    - (1) Is appropriate for the distribution of data used to establish background values; and
    - (2) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.
7. If the owner or operator determines pursuant to subsection 6 that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator shall:
  - a. Notify the department of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases.
  - b. Within ninety days submit to the department an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.
8. If the owner or operator determines pursuant to subsection 6 that there is a statistically significant increase of hazardous constituents below the treatment zone, the owner or operator may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make this demonstration in addition to, or in lieu of, submitting a permit modification application under subdivision b of subsection 7, the owner or operator is still

required to submit a permit modification within the time specified in subdivision b of subsection 7 should the demonstration be unsuccessful. In making this demonstration the owner or operator shall:

- a. Notify the department in writing within seven days of determining a statistically significant increase below the treatment zone that the owner or operator intends to make a determination under this subsection;
- b. Within ninety days submit a report to the department demonstrating that a source other than the regulated units caused the increase or that the increase resulted in error in sampling, analysis, or evaluation;
- c. Within ninety days submit to the department an application for permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and
- d. Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-167. Closure and postclosure care.**

1. During the closure period the owner or operator shall:
  - a. Continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under subsection 1 of section 33-24-05-163, except to the extent such measures are inconsistent with subdivision h of this subsection;
  - b. Continue all operations in the treatment zone to minimize runoff of hazardous constituents as required under subsection 2 of section 33-24-05-163;
  - c. Maintain the run-on control system required under subsection 3 of section 33-24-05-163;
  - d. Maintain the runoff management system required under subsection 4 of section 33-24-05-163;
  - e. Control wind dispersal of hazardous waste if required under subsection 6 of section 33-24-05-163;
  - f. Continue to comply with any prohibitions or conditions concerning growth of food chain crops under section 33-24-05-164;
  - g. Continue unsaturated zone monitoring in compliance with section 33-24-05-165, except that soil-pore liquid monitoring may be terminated one year after the last application of waste to the treatment zone if, during that year, the soil-pore liquid monitoring shows that no hazardous constituents are leaching from the treatment zone in the soil-pore water; and
  - h. Establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

2. For the purpose of complying with section 33-24-05-64, when closure is completed the owner or operator may submit to the department certification by an independent qualified soil scientist, in lieu of ~~an independent registered~~ a qualified professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.
3. During the postclosure care period the owner or operator shall:
  - a. Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other postclosure care activities;
  - b. Maintain a vegetative cover over closed portions of the facility;
  - c. Maintain the run-on control system required under subsection 3 of section 33-24-05-163;
  - d. Maintain the runoff management system required under subsection 4 of section 33-24-05-163;
  - e. Control wind dispersal of hazardous waste if required under subsection 6 of section 33-24-05-163;
  - f. Continue to comply with any prohibitions or conditions concerning growth of food chain crops under section 33-24-05-164; and
  - g. Continue unsaturated zone monitoring in compliance with section 33-24-05-165 except that soil-pore liquid monitoring may be terminated one year after the last application of waste to the treatment zone if, during that year, the soil-pore liquid monitoring shows that no hazardous constituents are leaching from the treatment zone in the soil-pore water.
4. The owner or operator is not subject to regulation under subsection 3 or subdivision h of subsection 1 if the department finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in subdivision c ~~of this subsection~~. The owner or operator may submit such a demonstration to the department at any time during the closure or postclosure care periods. For purposes of this subsection:
  - a. The owner or operator shall establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under subsection 2 of section 33-24-05-161:
    - (1) Background soil values may be based on a one-time sampling of the background plot having characteristics similar to those of the treatment zone; and
    - (2) The owner or operator shall express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under subdivision c;
  - b. In taking samples used in the determination of background and treatment zone values, the owner or operator shall take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical makeup of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively; and
  - c. In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent in the treatment zone to the background value of that constituent using a statistical procedure that provides

reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall use a statistical procedure that:

- (1) Is appropriate for the distribution of the data used to establish background values; and
  - (2) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify a real presence in the treatment zone.
5. During closure or postclosure care, or both, the owner or operator is not subject to regulation under sections 33-24-05-47 through 33-24-05-58 if the department finds that the owner or operator satisfies subsection 4 ~~of this section~~ and if unsaturated zone monitoring under section 33-24-05-165 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-168. Special requirements for ignitable or reactive waste.**

The owner or operator may not apply ignitable or reactive waste to the treatment zone unless the waste and the treatment zone meet all applicable requirements of sections 33-24-05-250 through 33-24-05-299; [and](#):

1. The waste is immediately incorporated into the soil so that:
  - a. The resulting waste mixture or dissolution of material no longer meets the definition of ignitable or reactive waste under section 33-24-02-11 or 33-24-02-13; and
  - b. Subsection 2 of section 33-24-05-08 is complied with; or
2. The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

**History:** Effective January 1, 1984; amended effective December 1, 1991; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-170. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.**

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this ~~section~~[subsection](#), and in accord with all other applicable requirements of ~~this chapter~~[sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819](#). The factors to be considered are:
  - a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
  - b. The attenuative properties of underlying and surrounding soils or other materials;
  - c. The mobilizing properties of other materials codisposed with these wastes; and

- d. The effectiveness of additional treatment, design, or monitoring techniques.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

**History:** Effective October 1, 1986; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-176. Applicability of landfill requirements.**

Sections 33-24-05-176 through ~~33-24-05-200~~[33-24-05-190](#) apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as section 33-24-05-01 provides otherwise.

**History:** Effective January 1, 1984; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-177. Design and operating requirements.**

1. Any landfill that is not covered by subsection 3 must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have:
  - a. A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:
    - (1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;
    - (2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
    - (3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and
  - b. A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed one foot [.3048 meter]. The leachate collection and removal system must be:
    - (1) Constructed of materials that are:
      - (a) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

- (b) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and
  - (2) Designed and operated to function without clogging through the scheduled closure of the landfill.
- 2. The owner or operator will be exempted from the requirements of subsection 1 if the department finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see section 33-24-05-50) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the department will consider:
  - a. The nature and quantity of the waste;
  - b. The proposed alternate design and operation;
  - c. The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and ground water ~~and~~or surface water; and
  - d. All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.
- 3. The owner or operator of each new landfill unit on which construction commences after January 19, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992, must install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in section 33-24-01-04 under "existing facility".
  - a. Liner.
    - (1) The liner system must include:
      - (a) A top liner designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into such liner during the active life and postclosure care period; and
      - (b) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (for example, a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and postclosure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least three feet [91.44 centimeters] of compacted soil material with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second.
    - (2) The liners must comply with paragraphs 1, 2, and 3 of subdivision a of subsection 1.
  - b. The leachate collection and removal system immediately above the top liner must be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and postclosure care period. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty centimeters [1 foot]. The leachate collection and removal system must comply with paragraphs 3 and 4 of subdivision c.

- c. The leachate collection and removal system between the liners, and immediately above the bottom composite liners in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system must be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and postclosure care period. The requirements for a leak detection system in this subdivision are satisfied by installation of a system that is, at a minimum:
    - (1) Constructed with a bottom slope of one percent or more;
    - (2) Constructed of granular drainage materials with a hydraulic conductivity of  $1 \times 10^{-2}$  centimeters per second or more and a thickness of twelve inches [30.5 centimeters] or more; or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  square meters per second or more;
    - (3) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;
    - (4) Designed and operated to minimize clogging during the active life and postclosure care period; and
    - (5) Constructed with sumps and liquid removal methods (for example, pumps) of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit must have its own sump or sumps. The design of each sump and removal system must provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.
  - d. The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.
  - e. The owner or operator of a leak detection system that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.
4. The department may approve alternative design or operating practices to those specified in subsection 3 if the owner or operator demonstrates to the department that such design and operating practices, together with location characteristics:
- a. Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection 3; and
  - b. Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.
5. The double-liner requirements set forth in subsection 3 may be waived by the department for any monofill, if:
- a. The monofill contains only hazardous waste from foundry furnace emission controls or metal casting molding sand and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in section 33-24-02-14 with hazardous waste numbers D004 through D017; and

- b. Monofill liner.
    - (1) Evidence of leaking.
      - (a) The monofill has at least one liner for which there is no evidence that such liner is leaking;
      - (b) The monofill is located more than one-quarter mile from an "underground source of drinking water" (as that term is defined in 40 CFR [part 144.3 section 270.2](#)); and
      - (c) The monofill is in compliance with generally acceptable ground water monitoring requirements for facilities with [hazardous waste](#) permits; or
    - (2) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.
6. The owner or operator of any replacement landfill unit is exempt from subsection 3 if:
    - a. The existing unit was constructed in compliance with the design standards of ~~section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act~~[this article](#); and
    - b. There is no reason to believe that the liner is not functioning as designed.
  7. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a twenty-five-year storm.
  8. The owner or operator shall design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.
  9. Collection and holding facilities (for example, tanks or basins) associated with run-on and runoff control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of this system.
  10. If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the landfill to control wind dispersal.
  11. The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-180. Closure and postclosure care.**

1. At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:
  - a. Provide long-term minimization of migration of liquids through the closed landfill;
  - b. Function with minimum maintenance;

- c. Promote drainage and minimize erosion or abrasion of the cover;
  - d. Accommodate settling and subsidence so that the cover's integrity is maintained; and
  - e. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.
2. After final closure, the owner or operator shall comply with all postclosure requirements contained in sections ~~33-24-05-65~~33-24-05-66 through ~~33-24-05-68~~33-24-05-69, including maintenance and monitoring throughout the postclosure care period (specified in the permit under section ~~33-24-05-65~~33-24-05-66). The owner or operator shall:
- a. Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;
  - b. Continue to operate the leachate collection and removal system until leachate is no longer detected;
  - c. Maintain and monitor the leak detection system in accordance with paragraph 4 of subdivision c of subsection 3 of section 33-24-05-177, subdivision d of subsection 3 of section 33-24-05-177, and subsection 3 of section 33-24-05-178, and comply with all other applicable leak detection system requirements of sections 33-24-05-176 through 33-24-05-190;
  - d. Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of sections 33-24-05-47 through 33-24-05-58;
  - e. Prevent run-on and runoff from eroding or otherwise damaging the final cover; and
  - f. Protect and maintain surveyed bench marks used in complying with section 33-24-05-179.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; January 1, 1994; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-183. Special requirements for bulk and containerized wasteliquids.**

~~1. Bulk or noncontainerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if:~~

~~a. The landfill has a liner and leachate collection and removal system that meets the requirements of subsection 1 of section 33-24-05-177; or~~

~~b. Before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (for example, by mixing with a sorbent solid), so that free liquids are no longer present.~~

~~2. Effective May 8, 1985, the~~The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

~~3.~~2. To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: method ~~9095~~9095B (paint filter liquids test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05.

4.3. Containers holding free liquids must not be placed in a landfill unless:

- a. All ~~freestanding~~free-standing liquid:
  - (1) Has been removed by decanting, or other methods;
  - (2) Has been mixed with sorbent or solidified so that freestanding liquid is no longer observed; or
  - (3) Has been otherwise eliminated;
- b. The container is very small, such as an ampule;
- c. The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or
- d. The container is a lab pack as defined in section 33-24-05-185 and is disposed of in accordance with section 33-24-05-185.

5.4. Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in subdivision a; materials that pass one of the tests in subdivision b; or materials that are determined by the department to be nonbiodegradable through the chapter 33-24-01 petition process.

- a. Nonbiodegradable sorbents.
  - (1) Inorganic minerals, other inorganic materials, and elemental carbon (for example, aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon);
  - (2) High molecular weight synthetic polymers (for example, polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or
  - (3) Mixtures of these nonbiodegradable materials.
- b. Test for nonbiodegradable sorbents.
  - (1) The sorbent material is determined to be nonbiodegradable under ASTM method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi;
  - (2) The sorbent material is determined to be nonbiodegradable under ASTM method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or
  - (3) The sorbent material is determined to be nonbiodegradable under Organization for Economic Cooperation and Development test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

~~6.5.~~ ~~Effective November 8, 1985, the~~ **The** placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the department, or the department determines, that:

- a. The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and
- b. Placement in such owner or operator's landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in 40 CFR ~~part 144.3~~ **section 270.2**).

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; January 1, 1994; July 1, 1997; December 1, 2003; **January 1, 2016**.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-185. Disposal of small containers of hazardous waste in overpacked drums (lab packs).**

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

1. Hazardous waste must be packaged in nonleaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the department of transportation hazardous materials regulations [49 CFR, parts 173, 178, and 179], if those regulations specify particular inside container for the waste.
2. The inside containers must be overpacked in an open head department of transportation specification metal shipping container [49 CFR, parts 178 and 179] of no more than four hundred sixteen-liter [110-gallon] capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with subsection **54** of section 33-24-05-183, to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.
3. The sorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with subsection 2 of section 33-24-05-08.
4. Incompatible wastes, as defined in section 33-24-01-04, may not be placed in this same outside container.
5. Reactive wastes, other than cyanide-bearing or sulfide-bearing waste, as defined in subdivision e of subsection 1 of section 33-24-02-13, must be treated or rendered nonreactive prior to packaging in accordance with subsections 1 through 4. Cyanide-bearing and sulfide-bearing reactive waste may be packed in accordance with subsections 1 through 4 without first being treated or rendered nonreactive.
6. Such disposal is in compliance with the requirements of sections 33-24-05-250 through 33-24-05-299. Persons who incinerate lab packs according to the requirements in subdivision a of subsection 3 of section 33-24-05-282 may use fiber drums in place of metal outer containers. Such fiber drums must meet the department of transportation specifications in 49 CFR 173.12 and be overpacked according to the requirements in subsection 2.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-186. Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.**

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 may not be placed in a landfill unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this [section subsection](#) and in accord with all other applicable requirements of ~~this chapter~~ [sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819](#). The factors to be considered are:
  - a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;
  - b. The attenuative properties of underlying and surrounding soils or other materials;
  - c. The mobilizing properties of other materials codisposed with these wastes; and
  - d. The effectiveness of additional treatment, design, or monitoring requirements.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

**History:** Effective October 1, 1986; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-187. Action leakage rate.**

1. The department shall approve an action leakage rate for surface impoundment units subject to subsection 3 or 4 of section 33-24-05-177. The action leakage rate is the maximum design flow rate that the leak detection system (~~LDS~~) can remove without the fluid head on the bottom liner exceeding one foot [.3048 meters]. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (for example, slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the leak detection system, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the leak detection system, and proposed response actions (for example, the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).
2. To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under subsection 3 of section 33-24-05-178, to an average daily flow rate (gallons per acre per day) for each sump. Unless the department approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the postclosure care period when monthly monitoring is required under subsection 3 of section 33-24-05-178.

**History:** Effective January 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-188. Response actions.**

1. The owner or operator of landfill units subject to subsection 3 or 4 of section 33-24-05-177 must have an approved response action plan before receipt of waste. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in subsection 2.
2. If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator must:
  - a. Notify the department in writing of the exceedance within seven days of the determination;
  - b. Submit a preliminary written assessment to the department within fourteen days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;
  - c. Determine to the extent practicable the location, size, and cause of any leak;
  - d. Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;
  - e. Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and
  - f. Within thirty days after the notification that the action leakage rate has been exceeded, submit to the department the results of the analyses specified in subdivisions c, d, and e ~~of subsection 2~~, the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the department a report summarizing the results of any remedial actions taken and actions planned.
3. To make the leak or remediation determinations, or both, in subdivisions c, d, and e of subsection 2, the owner or operator must:
  - a. Assess and conduct the following:
    - (1) Assess the source of liquids and amounts of liquids by source;
    - (2) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquids; and
    - (3) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
  - b. Document why such assessments are not needed.

**History:** Effective January 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-201. Applicability to recyclable materials used in a manner constituting disposal.**

1. Sections 33-24-05-201 through ~~33-24-05-204~~33-24-05-209 apply to recyclable materials that are applied to or placed on the land:
  - a. Without mixing with any other substances; or
  - b. After mixing or combination with any other substances, ~~these~~. These materials will be referred to throughout sections 33-24-05-201 through ~~33-24-05-204~~33-24-05-209 as "materials used in a manner that constitutes disposal".
2. Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in sections 33-24-05-280 through 33-24-05-289 (or applicable prohibition levels in section 33-24-05-272 or Resource Conservation and Recovery Act section 3004(d), where no treatment standards have been established) for each recyclable material (for example, hazardous waste) that they contain, and the recycler complies with subdivision f of subsection 2 of section 33-24-05-256.
3. Antiskid or deicing uses of slags, which are generated from high temperature metals recovery (~~HTMR~~) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in subsection 2 and remain subject to regulation.
4. Fertilizers that contain recyclable materials are not subject to regulation provided that:
  - a. They are zinc fertilizers excluded from the definition of solid waste according to subdivision u of subsection 1 of section 33-24-02-04; or
  - b. They meet the applicable treatment standards in sections 33-24-05-280 through 33-24-05-289 for each hazardous waste that they contain.

**History:** Effective October 1, 1986; amended effective December 1, 1988; December 1, 1991; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-203. Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.**

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the material, are regulated under all applicable provisions of sections 33-24-05-01 through 33-24-05-143, sections 33-24-05-950 through 33-24-05-1149, and chapters ~~33-24-05 through~~33-24-06 and 33-24-07 and the notification requirements.

**History:** Effective October 1, 1986; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-204. Standards applicable to users of materials that are used in a manner that constitutes disposal.**

1. Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of sections 33-24-05-01 through 33-24-05-143, sections 33-24-05-160 through 33-24-05-190, sections 33-24-05-250 through

33-24-05-299, and chapters ~~33-24-05 through~~33-24-06 and 33-24-07 and the notification requirements. (These requirements do not apply to products which contain these recyclable materials under the provisions of subsection 2 of section 33-24-05-201.)

2. The use of waste oil or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

**History:** Effective October 1, 1986; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-230. Applicability and requirements for recyclable materials utilized for precious metal recovery.**

1. Sections 33-24-05-230 through 33-24-05-234 apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, ~~paladium~~palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.
2. Persons who generate, transport, or store recyclable materials that are regulated under sections 33-24-05-230 through 33-24-05-234 are subject to the following requirements:
  - a. Notification requirements; ~~and~~
  - b. Chapter 33-24-03 (for generators), sections 33-24-04-04 and 33-24-04-05 (for transporters), and sections 33-24-05-38 and 33-24-05-39 (for persons who store); ~~and~~
  - c. For precious metals exported to or imported from designated organization for economic cooperation and development member countries for recovery, sections 33-24-03-50 through 33-24-03-59 and subsection 1 of section 33-24-05-02. For precious metals exported to or imported from non-organization for economic cooperation and development countries for recovery, sections 33-24-03-17 through 33-24-03-25 and section 33-24-03-30.
3. Persons who store recycled materials that are regulated under ~~this chapter~~sections 33-24-05-230 through 33-24-05-234 must keep the following records to document that they are not accumulating these materials speculatively (as defined in subsection 3 of section 33-24-02-01):
  - a. Records showing the volume of these materials stored at the beginning of the calendar year;
  - b. The amount of these materials generated or received during the calendar year; and
  - c. The amount of materials remaining at the end of the calendar year.
4. Recyclable materials that are regulated under ~~this chapter~~sections 33-24-05-230 through 33-24-05-234 that are accumulated speculatively (as defined in subsection 3 of section 33-24-02-01) are subject to all applicable provisions of chapters 33-24-03 through 33-24-07.

**History:** Effective October 1, 1986; amended effective December 1, 1988; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-235. Applicability and requirements of spent lead acid batteries being reclaimed.**

1. For a facility that generates, collects, transports, stores, or regenerates lead-acid batteries for reclamation purposes, the facility may be exempt from certain hazardous waste management

requirements. Use the following table to determine which requirements apply. Alternatively, a generator may choose to manage spent lead-acid batteries under the universal waste rules in sections 33-24-05-700 through 33-24-05-799.

If the batteries:	And if you:	Then you:	And you:
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).		Are exempt from chapters 33-24-03 (except for section 33-24-03-02), 33-24-04, 33-24-06, and 33-24-07 and sections 33-24-05-01 through 33-24-05-599 and 33-24-05-800 through <del>33-24-05-826</del> <u>33-24-05-929</u> , and the notification requirements of section <del>3010 of the Resource Conservation and Recovery Act</del> <u>33-24-03-03</u> .	Are subject to chapter 33-24-02 and section 33-24-03-02.
(2) Will be reclaimed other than through regeneration.	Generate, collect, or transport, or any combination of the above, these batteries.	Are exempt from chapters 33-24-03 (except for section 33-24-03-02), 33-24-04, 33-24-06, and 33-24-07 and sections 33-24-05-01 through 33-24-05-249, 33-24-05-300 through 33-24-05-599, and 33-24-05-800 through <del>33-24-05-826</del> <u>33-24-05-929</u> , and the notification requirements of section <del>3010 of the Resource Conservation and Recovery Act</del> <u>33-24-03-03</u> .	Are subject to chapter 33-24-02 and section 33-24-03-02, and the applicable provisions of sections 33-24-05-250 through 33-24-05-299.
(3) Will be reclaimed other than through regeneration.	Store these batteries but are not the reclaimer.	Are exempt from chapters 33-24-03 (except for section 33-24-03-02), 33-24-04, 33-24-06, and 33-24-07 and sections 33-24-05-01 through 33-24-05-249, 33-24-05-300 through 33-24-05-599, and	Are subject to chapter 33-24-02 and section 33-24-03-02, and the applicable provisions of sections 33-24-05-250 through 33-24-05-299.

(4) Will be reclaimed other than through regeneration.	Store these batteries before you reclaim them.	33-24-05-800 through <del>33-24-05-826</del> 33-24-05-929, and the notification requirements of section <del>3010 of the Resource Conservation and Recovery Act</del> 33-24-03-03.	Are subject to chapter 33-24-02 and section 33-24-03-02, and the applicable provisions of sections 33-24-05-250 through 33-24-05-299.
(5) Will be reclaimed other than through regeneration.	Do not store these batteries before you reclaim them.	Must comply with subsection 2 of section 33-24-02 and section 33-24-05-235 <u>and as appropriate other regulatory provisions in subsection 2 of section 33-24-06-235.</u> Are exempt from chapters 33-24-03 (except for section 33-24-03-02), 33-24-04, 33-24-06, and 33-24-07 and sections 33-24-05-01 through 33-24-05-249, 33-24-05-300 through 33-24-05-599, and 33-24-05-800 through <del>33-24-05-826</del> 33-24-05-929, and the notification requirements of section <del>3010 of the Resource Conservation and Recovery Act</del> 33-24-03-03.	Are subject to chapter 33-24-02 and section 33-24-03-02, and the applicable provisions of sections 33-24-05-250 through 33-24-05-299.
<u>(6) Will be reclaimed through regeneration or any other means.</u>	<u>Export these batteries for reclamation in a foreign country.</u>	<u>Are exempt from chapters 33-24-03 (except for section 33-24-03-02), 33-24-04, 33-24-06, and 33-24-07 and sections 33-24-05-01 through 33-24-05-559 and 33-24-05-800 through 33-24-05-929, and the notification requirements of section 33-24-03-03, and except for the applicable requirements in either: (1) Sections</u>	<u>Are subject to chapter 33-24-02 and section 33-24-03-02, and either must comply with sections 33-24-03-50 through 33-24-03-59 (if shipping to one of the organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33-24-03-25, or must: (a) Comply with the requirements</u>

<u>(7) Will be reclaimed through regeneration or any other means.</u>	<u>Transport these batteries in the United States to export them for reclamation in a foreign country.</u>	<u>Are exempt from chapters 33-24-04, 33-24-06, and 33-24-07 and sections 33-24-05-01 through 33-24-05-559 and 33-24-05-800 through 33-24-05-929, and the notification requirements of section 33-24-03-03.</u>	<u>33-24-03-50 through 33-24-03-59; or (2) Section 33-24-03-20</u> <u>applicable to a primary exporter in section 33-24-03-20, subdivisions a through "Notification of Intent to Export", subdivisions a through d and f of section 33-24-03-23 and section 33-24-03-24; (b) Export these batteries only upon consent of the receiving country and in conformance with the environmental protection agency acknowledgment of consent as defined in sections 33-24-03-17 through 33-24-03-25; and (c) Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export. Must comply with applicable requirements in sections 33-24-03-50 through 33-24-03-59 (if shipping to one of the organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33-24-03-25, or must comply with the following: (a) May not accept a shipment if the shipment does not conform to the environmental protection agency acknowledgment of consent; (b) Must ensure that a copy of the environmental protection agency acknowledgment of</u>
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consent accompanies the shipment; and (c) Must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

2. For a facility that stores spent lead-acid batteries before reclamation but not through regeneration, the facility is subject to the following requirements:
  - a. Notification under section ~~3010 of the Resource Conservation and Recovery Act~~33-24-03-03.
  - b. ~~Sections~~All applicable provisions in sections 33-24-05-01 through 33-24-05-143, and sections 33-24-05-950 through 33-24-05-1149, except sections 33-24-05-04, 33-24-05-38, and 33-24-05-39.
  - c. All applicable regulations in chapters 33-24-06 and 33-24-07.

**History:** Effective October 1, 1986; amended effective December 1, 1988; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-250. Purpose, scope, and applicability to land disposal restrictions.**

1. Sections 33-24-05-250 through 33-24-05-299 identify hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.
2. Except as specifically provided otherwise in sections 33-24-05-250 through 33-24-05-299 or chapter 33-24-02, the requirements of sections 33-24-05-250 through 33-24-05-299 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.
3. Restricted wastes may continue to be land disposed as follows:
  - a. Where persons have been granted an extension from the effective date of a prohibition under sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279 or pursuant to section 33-24-05-254, with respect to those wastes covered by the extension;
  - b. Where persons have been granted an exemption from a prohibition pursuant to a petition under section 33-24-05-255, with respect to those wastes and units covered by the petition;
  - c. Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under sections 33-24-05-250 through 33-24-05-299, or 40 CFR part 148, are not prohibited if the wastes:
    - (1) Are disposed into a nonhazardous or hazardous injection well as defined in 40 CFR 144.6(a); and
    - (2) Do not exhibit any prohibited characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14 at the point of injection; or

- d. Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under sections 33-24-05-250 through 33-24-05-299, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in section 33-24-05-280, or are D003 reactive cyanide:
  - (1) The wastes are managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act;
  - (2) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or
  - (3) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in subsection 1 of section 33-24-05-277; and
  - (4) The wastes no longer exhibit a prohibited characteristic at the point of land disposal (for example, placement in a surface impoundment).
4. The requirements of ~~this section~~ [sections 33-24-05-250 through 33-24-05-299](#) do not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
5. The following hazardous wastes are not subject to any provision of sections 33-24-05-250 through 33-24-05-299:
  - a. Waste generated by small quantity generators of less than one hundred kilograms of nonacute hazardous waste or less than one kilogram of acute hazardous waste per month, as defined in section 33-24-02-05.
  - b. Waste pesticides that a farmer disposes of pursuant to section 33-24-03-40.
  - c. Wastes identified or listed as hazardous after November 8, 1984, for which the department has not promulgated land disposal prohibitions or treatment standards.
  - d. De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one percent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.
6. Universal waste handlers and universal waste transporters, as defined in section 33-24-01-04, are exempt from sections 33-24-05-256 and 33-24-05-290 for the wastes listed below. These handlers are subject to regulation under sections ~~33-24-05-701~~ [33-24-05-700](#) through 33-24-05-799.
  - a. Batteries as described in section 33-24-05-702;
  - b. Pesticides as described in section 33-24-05-703;

- c. Mercury containing ~~devices~~equipment as described in section 33-24-05-704; and
- d. Lamps as described in section 33-24-05-705.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-252. Dilution prohibited as a substitute for treatment.**

1. Except as provided in subsection 2, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with sections 33-24-05-280 through 33-24-05-289, to circumvent the effective date of a prohibition in sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279, to otherwise avoid a prohibition in sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279, or to circumvent a land disposal prohibition imposed by Resource Conservation and Recovery Act section 3004.
2. Dilution of wastes that are hazardous only because they exhibit a characteristic in treatment systems which include land-based units which treat wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act, or which treat wastes in a Clean Water Act-equivalent treatment system, or which treat wastes for the purposes of pretreatment requirements under section 307 of the Clean Water Act is not impermissible dilution for purposes of this section unless a method other than DEACT has been specified in section 33-24-05-280 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.
3. Combustion of the hazardous waste codes listed in appendix XXIX is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria, unless otherwise specifically prohibited from combustion:
  - a. The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard specified in section 33-24-05-288;
  - b. The waste consists of organic, debris-like materials (for example, wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;
  - c. The waste, at point of generation, has reasonable heating value such as greater than or equal to five thousand British thermal units per pound;
  - d. The waste is cogenerated with wastes for which combustion is a required method of treatment;
  - e. The waste is subject to requirements necessitating reduction of organics, including biological agents; or
  - f. The waste contains greater than one percent total organic carbon (TOC).
4. It is a form of impermissible dilution, and therefore prohibited, to add iron filings or other metallic forms of iron to lead-containing hazardous wastes in order to achieve any land disposal restriction treatment standard for lead. Lead-containing wastes include D008 wastes (wastes exhibiting a characteristic due to the presence of lead), all characteristic wastes containing lead as an underlying hazardous constituent, listed wastes containing lead as a

regulated constituent, and hazardous media containing any of the aforementioned lead-containing wastes.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-253. Treatment surface impoundment exemption.**

1. Wastes which are otherwise prohibited from land disposal under ~~this part~~ [sections 33-24-05-250 through 33-24-05-299](#) may be treated in a surface impoundment or series of impoundments provided that:
  - a. Treatment of such wastes occurs in the impoundments.
  - b. The following conditions are met:
    - (1) Sampling and testing. For wastes with treatment standards in sections 33-24-05-280 through 33-24-05-289 and prohibition levels in sections ~~33-24-05-270~~ [33-24-05-266](#) through 33-24-05-279, or both, or Resource Conservation and Recovery Act section 3004(d), the residues from treatment are analyzed, as specified in section 33-24-05-256 or 33-24-05-272, to determine if the wastes meet the applicable treatment standards or where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under section 33-24-05-04, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.
    - (2) Removal. The following treatment residues (including any liquid waste) must be removed at least annually; residues which do not meet the treatment standards promulgated under sections 33-24-05-280 through 33-24-05-289; residues which do not meet the prohibition levels established under sections ~~33-24-05-270~~ [33-24-05-266](#) through 33-24-05-279 or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited from land disposal under sections ~~33-24-05-270~~ [33-24-05-266](#) through 33-24-05-279 (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes which are not delisted under section 33-24-01-08. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flowthrough constitutes removal of the supernatant for the purpose of this requirement.
    - (3) Subsequent management. Treatment residues may not be placed in any other surface impoundment for subsequent management.
    - (4) Recordkeeping. Sampling and testing and recordkeeping provisions of section 33-24-05-04 apply.
  - c. The impoundment meets the design requirements of subsection 3 of section 33-24-05-119, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of sections 33-24-05-47 through 33-24-05-58 unless:
    - (1) Exempted pursuant to subsection 4 or 5 of section 33-24-05-119;

- (2) Upon application by the owner or operator, the department, after notice and an opportunity to comment, has granted a waiver of the requirements on the basis that the surface impoundment:
  - (a) Has at least one liner, for which there is no evidence that such liner is leaking;
  - (b) Is located more than one-quarter mile [402.3 meters] from an underground source of drinking water; and
  - (c) Is in compliance with generally applicable ground water monitoring requirements for facilities with permits; or
- (3) Upon application by the owner or operator, the department, after notice and an opportunity to comment, has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

- d. The owner or operator submits to the department a written certification that the requirements of subdivision c of subsection 1 have been met. The following certification is required:

I certify under penalty of law that the requirements of subdivision c of subsection 1 of section 33-24-05-253 have been met for all surface impoundments being used to treat restricted wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

- 2. Evaporation of hazardous constituents as the principal means of treatment is not considered to be treatment for purposes of an exemption under this section.

~~3. Combustion of the hazardous waste codes listed in appendix XXIX is prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria, unless otherwise specifically prohibited from combustion:~~

- ~~a. The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent specific treatment standard specified in section 33-24-05-288;~~
- ~~b. The waste consists of organic, debris-like materials (for example, wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;~~
- ~~c. The waste, at point of generation, has reasonable heating value such as greater than or equal to five thousand British thermal units per pound;~~
- ~~d. The waste is cogenerated with wastes for which combustion is a required method of treatment;~~
- ~~e. The waste is subject to requirements necessitating reduction of organics, including biological agents; or~~
- ~~f. The waste contains greater than one percent total organic carbon (TOC).~~

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-254. Procedures for case-by-case extensions to an effective date.**

1. Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the administrator for an extension to the effective date of any applicable restriction established under sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279. The applicant shall demonstrate the following:
  - a. The applicant has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage the applicant's waste in accordance with the effective date of the applicable restrictions established under sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279;
  - b. The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, (for example, recycling), or disposal capacity that meets the treatment standards specified in sections 33-24-05-280 through 33-24-05-289 or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment;
  - c. Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date;
  - d. The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application;
  - e. The applicant provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available;
  - f. The applicant has arranged for adequate capacity to manage the applicant's waste during an extension and has documented in the application the location of all sites at which the waste will be managed; and
  - g. Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of subdivision b of subsection 8.
2. An authorized representative signing an application described under subsection 1 shall make the following certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.
3. After receiving an application for an extension, the administrator may request any additional information which the administrator deems as necessary to evaluate the application.
4. An extension will apply only to the waste generated at the individual facility covered by the application and will not apply to restricted waste from any other facility.
5. On the basis of the information referred to in subsection 1, after notice and opportunity for comment, and after consultation with appropriate state agencies in all affected states, the administrator may grant an extension of up to one year from the effective date. The administrator may renew this extension for up to one additional year upon the request of the applicant if the demonstration required in subsection 1 can still be made. In no event will an extension extend beyond twenty-four months from the applicable effective date specified in

sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279. The length of any extension authorized will be determined by the administrator based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in subdivision e of subsection 1. The administrator will give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the federal register.

6. Any person granted an extension under this section shall immediately notify the administrator as soon as that person has knowledge of any change in the conditions certified to in the application.
7. Any person granted an extension under this section shall submit written progress reports at intervals designated by the administrator. Such reports must describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery, or disposal capacity; must identify any event which may cause or has caused a delay in the development of the capacity; and must summarize the steps taken to mitigate the delay. The administrator can revoke an extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the environmental protection agency denies or revokes any required permit, if conditions certified in the application change, or for any violation of this ~~chapter~~article.
8. When the administrator establishes an extension to an effective date under this section, during the period for which such extension is in effect:
  - a. The storage restrictions under subsection 1 of section 33-24-05-290 do not apply; and
  - b. Such hazardous waste may be disposed in a landfill or surface impoundment only if such unit is in compliance with the technical requirements of the following provisions regardless of whether such unit is existing, new, or a replacement or lateral expansion.
    - (1) The landfill, if in interim status, is in compliance with the applicable requirements of subsection 5 of section 33-24-06-16;
    - (2) The landfill, if permitted, is in compliance with the requirements of sections 33-24-05-47 through 33-24-05-58 and subsections 3, 4, and 5 of section 33-24-05-177;
    - (3) The surface impoundment, if in interim status, is in compliance with the applicable requirements of ~~sections 33-24-05-47 through 33-24-05-58, subsections 1, 3, and 4 of section 33-24-05-119~~subsection 5 of section 33-24-06-16, and Resource Conservation and Recovery Act section 3005(j)(1);
    - (4) The surface impoundment, if permitted, is in compliance with the requirements of sections 33-24-05-47 through 33-24-05-58 and subsections 3, 4, and 5 of section 33-24-05-119;
    - (5) The surface impoundment, if newly subject to Resource Conservation and Recovery Act section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of subsection 5 of section 33-24-06-16 (subpart F of 40 CFR part 265) within twelve months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of subsection 5 of section 33-24-06-16 (40 CFR section 265.221 (a), (c), and (d)) within forty-eight months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect, the surface impoundment, if newly subject to Resource Conservation and Recovery Act section

3005(j)(1) due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirements of subsection 5 of section 33-24-06-16 (subpart F of 40 CFR part 265) within twelve months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of subsection 5 of section 33-24-06-16 (40 CFR section 265.221 (a), (c), and (d)) within forty-eight months after the promulgation of additional listings or characteristics of hazardous waste; or

- (6) The landfill, if disposing of containerized liquid hazardous wastes containing polychlorinated biphenyls of concentrations greater than or equal to fifty parts per million but less than five hundred parts per million, is also in compliance with the requirements of 40 CFR 761.75 and this article.
9. Pending a decision on an application, the applicant is required to comply with all restrictions on land disposal under sections 33-24-05-250 through ~~33-24-05-290~~33-24-05-299 once the effective date for the waste has been reached.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-255. Petitions to allow land disposal of a waste prohibited under sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279.**

1. Any person seeking an exemption from a prohibition under sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration must include the following components:
  - a. An identification of the specific waste and the specific unit for which the demonstration will be made;
  - b. A waste analysis to describe fully the chemical and physical characteristics of the subject waste;
  - c. A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality;
  - d. A monitoring plan that detects migration at the earliest practicable time; and
  - e. Sufficient information to assure the administrator that the owner or operator of a land disposal unit receiving restricted wastes will comply with other applicable federal, state, and local laws.
2. The demonstration referred to in subsection 1 must meet the following criteria:
  - a. All waste and environmental sampling, test, and analysis data must be accurate and reproducible to the extent that state of the art techniques allow;
  - b. All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters must have been approved by the administrator;

- c. Simulation models must be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements;
  - d. A quality assurance and quality control plan that addresses all aspects of the demonstration must be approved by the administrator; and
  - e. An analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena.
3. Each petition referred to in subsection 1 must include the following:
- a. A monitoring plan that describes the monitoring program installed at or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit or the environment around the unit, or both. The following specific information must be included in the plan:
    - (1) The media monitored in the cases where monitoring of the environment around the unit is required;
    - (2) The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;
    - (3) The location of the monitoring station;
    - (4) The monitoring interval (frequency of monitoring at each station);
    - (5) The specific hazardous constituents to be monitored;
    - (6) The implementation schedule for the monitoring program;
    - (7) The equipment used at the monitoring station;
    - (8) The sampling and analytical techniques employed; and
    - (9) The data recording and reporting procedures.
  - b. Where applicable, the monitoring program described in subdivision a must be in place for a period of time specified by the administrator, as part of ~~his~~the administrator's approval of the petition, prior to receipt of prohibited waste at the unit.
  - c. The monitoring data collected according to the monitoring plan specified under subdivision a must be sent to the administrator according to a format and schedule specified and approved in the monitoring plan.
  - d. A copy of the monitoring data collected under the monitoring plan specified under subdivision a must be kept onsite at the facility in the operating record.
  - e. The monitoring program specified under subdivision a meets the following criteria:
    - (1) All sampling, testing, and analytical data must be approved by the administrator and must provide data that is accurate and reproducible.
    - (2) All estimation and monitoring techniques must be approved by the administrator.
    - (3) A quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the administrator.

4. Each petition must be submitted to the administrator.
5. After a petition has been approved, the owner or operator must report any changes in conditions at the unit or the environment around the unit, or both, that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:
  - a. If the owner or operator plans to make changes to the unit design, construction, or operation, such a change must be proposed in writing and the owner or operator must submit a demonstration to the administrator at least thirty days prior to making the change. The administrator will determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the administrator prior to being made.
  - b. If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the administrator within ten days of discovering the change. The administrator will determine whether the reported change from the terms of the petition requires further action which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.
6. If the owner or operator determines that there is migration of hazardous constituents from the unit, the owner or operator must:
  - a. Immediately suspend receipt of prohibited waste at the unit; and
  - b. Notify the administrator in writing, within ten days of the determination that a release has occurred.
  - c. Following receipt of the notification the administrator will determine, within sixty days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The administrator shall also determine whether further examination of any migration is warranted under applicable provisions of chapter 33-24-05.
7. Each petition must include the following statement signed by the petitioner or an authorized representative: (I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.)
8. After receiving a petition, the administrator may request any additional information that reasonably may be required to evaluate the demonstration.
9. If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.
10. The administrator will give public notice in the federal register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the federal register.
11. The term of a petition granted under this section may be no longer than the term of the hazardous waste permit if the disposal unit is operating under a hazardous waste permit, or

up to a maximum of five years from the date of approval provided under subsection 7 if the unit is operating under interim status. In either case, the term of the granted petition expires upon the termination or denial of a hazardous waste permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

12. Prior to the administrator's decision, the applicant is required to comply with all restrictions on land disposal under sections 33-24-05-250 through 33-24-05-299 once the effective date for the waste has been reached.
13. The petition granted by the administrator does not relieve the petitioner of the petitioner's responsibility in the management of hazardous waste under chapters 33-24-01 through 33-24-07.
14. Liquid hazardous wastes containing polychlorinated biphenyls of concentrations greater than or equal to five hundred parts per million are not eligible for an exemption under this section.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-256. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.**

1. Requirements for generators:
  - a. A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in section 33-24-05-280, or section 33-24-05-285, or section 33-24-05-289. This determination can be made concurrently with the hazardous waste determination required in section 33-24-03-02, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as referenced in section 33-24-01-05, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a hazardous waste permitted treatment facility, where the waste treatment facility must comply with the requirements of section 33-24-05-04 and subsection 2.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in section 33-24-05-280 and are described in detail in section 33-24-05-282, table 1. These wastes, and soils contaminated with such wastes, do not need to be tested; (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines it ~~is~~ they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, it ~~they~~ must comply with the special requirements of section 33-24-05-258 in addition to any applicable requirements in this section.
  - b. If the waste or contaminated soil does not meet the treatment ~~standard: With standards,~~ or if the generator chooses not to make the determination of whether the generator's waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage

facility receiving the waste and place a copy in the file. The notice must include the information in column "subdivision b" of the generator paperwork requirements table in subdivision d. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the hazardous waste numbers and manifest number of the first shipment and must state "This hazardous waste may or may not be subject to the land disposal restrictions treatment standards. The treatment facility must make the determination".) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

- (1) For contaminated soil, the following certification statement should be included, signed by an authorized representative:

I certify under penalty of law that I personally have examined this contaminated soil and it [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and requires treatment to meet the soil treatment standards as provided by subsection 3 of section 33-24-05-289.

- (2) [Reserved]

- c. If the waste or contaminated soil meets the treatment standard at the original point of generation:

- (1) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste and place a copy in the file. The notice must include the information indicated in column "subdivision c" of the generator paperwork requirements table in subdivision d of subsection 1 and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in sections 33-24-05-280 through 33-24-05-289. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

- (2) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in column "subdivision c" of the generator paperwork requirements table in subdivision d of subsection 1.
- (3) If the waste changes, the generator must send a new notice and certification to the receiving facility and place a copy in its files. Generators of hazardous debris excluded from the definition of hazardous waste under subsection 5 of section 33-24-02-03 are not subject to these requirements.

- d. For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under section 33-24-05-254, disposal in a no-migration unit under section 33-24-05-255, or a national capacity variance or case-by-case capacity variance under sections ~~33-24-05-270~~33-24-05-266 through

33-24-05-279. If a generator's waste is so exempt, then with the initial shipment of waste, the generator must send a one-time written notice to each land disposal facility receiving the waste. The notice must include the information indicated in column "subdivision d" of the generator paperwork requirements table. If the waste changes, the generator must send a new notice to the receiving facility and place a copy in its files.

Required Information*	Generator Paperwork Requirements Table			
	Subdivision b	Subdivision c	Subdivision d	Subdivision i
1.Environmental protection agency hazardous waste numbers and manifest number of first shipment.	√	√	√	√
2.Statement: This waste is not prohibited from land disposal.			√	
3.The waste is subject to the land disposal restrictions. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the land disposal restriction notice.	√	√		
4.The notice must include the applicable wastewater/nonwastewater category (see subsections 7 and 11 of section 33-24-05-251) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide).	√	√		
5.Waste analysis data (when available).	√	√	√	
6.Date the waste is subject to the prohibition.			√	
7.For hazardous debris, when treating with the alternative treatment technologies provided by section 33-24-05-285, the contaminants subject to treatment, as described in subsection 2 of section 33-24-05-285; and an indication that these contaminants are being treated to comply with section 33-24-05-285.	√		√	
8.For contaminated soil subject to land disposal restrictions as provided in subsection 1 of section 33-24-05-289, the constituents subject to treatment as described in subsection 4 of section 33-24-05-289, and the following statements: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by subsection 3 of section 33-24-05-289 or the universal treatment standards.	√	√		
9.A certification is needed (see applicable section for exact wording).			√	√

\*Note: Information requirements referenced in the above table can be found in the indicated subdivision of subsection 1.

- e. If a generator is managing and treating prohibited waste, or contaminated soil in tanks, containers, or containment buildings regulated under section 33-24-03-12 to meet applicable land disposal restriction treatment standards found at section 33-24-05-280,

the generator must develop and follow a written waste analysis plan which describes the procedures ~~it~~the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of table 1, section 33-24-05-285, however, are not subject to these waste analysis requirements.) The plan must be kept onsite in the generator's records, and the following requirements must be met:

- (1) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste or wastes being treated and contain all information necessary to treat the waste or wastes in accordance with the requirements of sections 33-24-05-250 through 33-24-05-299, including the selected testing frequency.
- (2) Such plan must be kept in the facility's onsite files and made available to inspectors.

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- (3) Wastes shipped offsite pursuant to this ~~paragraph~~subdivision must comply with the notification requirements of subdivision ~~c-of subsection 4~~.
- f. If a generator determines that the waste, or contaminated soil, is restricted based solely on the generator's knowledge of the waste, all supporting data used to make this determination must be retained onsite in the generator's files. If a generator determines that the waste or contaminated soil is restricted based on testing this waste or an extract developed using the test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05, and all waste analysis data must be retained onsite in the generator's files.
  - g. If a generator determines that ~~it~~the generator is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or is exempted from hazardous waste regulation under sections 33-24-02-02 through 33-24-02-06 subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act, as specified at subdivision b of subsection 1 of section 33-24-02-04 or that are Clean Water Act-equivalent, or are managed in an underground injection well regulated by the Safe Drinking Water Act), the generator must place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from hazardous waste regulation, and the disposition of the waste, in the facility's onsite files.
  - h. Generators must retain onsite a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to onsite or offsite treatment, storage, or disposal. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department. The requirements of this ~~subdivisionsubsection~~ apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under sections 33-24-02-02 through 33-24-02-06, or exempted from hazardous waste regulation, subsequent to the point of generation.
  - i. If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at subsection 3 of section 33-24-05-282:
    - (1) With the initial shipment of waste to a treatment facility, the generator must submit a notice that provides the information in column "subdivision i" in the generator

paperwork requirements table of subdivision d, and the following certification. The certification, which must be signed by an authorized representative and must be placed in the generator's files, must say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix VIII to chapter 33-24-05 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at subsection 3 of section 33-24-05-282. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

- (2) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification must be sent and a copy placed in the generator's file.
  - (3) If the lab pack contains characteristic hazardous wastes (D001-D043), underlying hazardous constituents (as defined in subsection 10 of section 33-24-05-251) need not be determined.
  - (4) The generator must also comply with the requirements in subdivisions f and g.
- j. Small quantity generators with tolling agreements pursuant to subsection 5 of section 33-24-03-04 must comply with the applicable notification and certification requirements of subsection 1 for the initial shipment of the waste subject to the agreement. Such generators must retain onsite a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.
2. Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by section 33-24-05-04 for permitted facilities or the applicable requirements of subsection 5 of section 33-24-06-16 for interim status facilities. Such testing must be performed as provided in subdivisions a, b, and c.
- a. For wastes or contaminated soil with treatment standards expressed in the waste extract (toxicity characteristic leaching procedure), the owner or operator of the treatment facility must test an extract of the treatment residues, using test method 1311 (the toxicity characteristic leaching procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05) to assure that the treatment residues extract meet the applicable treatment standards.
  - b. For wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that they meet the applicable treatment standards.
  - c. A one-time notice must be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice must be placed in the treatment facility's file.
    - (1) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice must be sent and a copy placed in the treatment facility's file.

- (2) The one-time notice must include these requirements:

Treatment Facility Paperwork Requirements Table Required Information	Subsection 2
1. Hazardous waste number or numbers and manifest number of first shipment.	√
2. The waste is subject to the land disposal restrictions. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the land disposal restriction notice.	√
3. The notice must include the applicable wastewater/nonwastewater category (see subsections 7 and 11 of section 33-24-05-251), and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides).	√
4. Waste analysis data (when available).	√
5. For contaminated soil subject to land disposal restrictions as provided in subsection 1 of section 33-24-05-289, the constituents subject to treatment as described in subsection 4 of section 33-24-05-289, and the following statement: "This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by subsection 3 of section 33-24-05-289."	√
6. A certification is needed (see applicable section for exact wording).	√

- d. The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in section 33-24-05-280 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in section 33-24-05-289 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- (1) A copy of the certification must be placed in the treatment facility's onsite files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.
- (2) Debris excluded from the definition of hazardous waste under subsection 5 of section 33-24-02-03 (for example, debris treated by an extraction or destruction technology provided by table 1, section 33-24-05-285, and debris that the department has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of subsection 4 rather than the certification requirements of this ~~subdivision~~subsection.
- (3) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in subsection 4 of section 33-24-05-280, the certification, signed by an authorized representative, must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in section 33-24-05-282, table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- (4) For characteristic wastes that are subject to the treatment standards in section 33-24-05-280 (other than those expressed as a method of treatment), or section 33-24-05-289, and that contain underlying hazardous constituents as defined in subsection 10 of section 33-24-05-251; if these wastes are treated onsite to remove the hazardous characteristic; and are then sent offsite for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of section 33-24-05-280 or 33-24-05-289 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- (5) For characteristic wastes that contain underlying hazardous constituents as defined subsection 10 of section 33-24-05-251 that are treated onsite to remove the hazardous characteristic to treat underlying hazardous constituents to levels in section 33-24-05-288 universal treatment standards, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of section 33-24-05-280 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in subsection 10 of section 33-24-05-251 have been treated onsite to meet the section 33-24-05-288 universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- e. If the waste or treatment residue will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste

or treatment residue offsite must comply with the notice and certification requirements applicable to generators under this section.

- f. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of subsection 2 of section 33-24-05-201 regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (the recycler) ~~is not required to notify the receiving facility, pursuant to subdivision c. With each shipment of such wastes the owner or operator of the recycling facility must submit~~ a must, for the initial shipment of waste, prepare a one-time certification described in subdivision d, and a one-time notice which includes the information listed in subdivision c (except the manifest number) ~~to the department~~. The certification and notification must be placed in the facility's onsite files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the onsite files. In addition, the recycling facility also must also keep records of the name and location of each entity receiving the hazardous waste-derived product.
3. Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to subsection 2 of section 33-24-05-201, the owner or operator of any land disposal facility disposing any waste subject to restrictions under sections 33-24-05-250 through 33-24-05-299 must:
    - a. Have copies of the notice and certifications specified in subsection 1 or 2.
    - b. Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the toxicity characteristic leaching procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section ~~33-14-01-05~~33-24-01-05), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in sections 33-24-05-280 through 33-24-05-289. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by section 33-24-05-04, or the applicable requirements of subsection 5 of section 33-24-06-16 for interim status facilities.
  4. Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under subsection 5 of section 33-24-02-03 (for example, debris treated by an extraction or destruction technology provided by table 1 in section 33-24-05-285, and debris that the department ~~authorized to implement the requirements of sections 33-24-05-250 through 33-24-05-299~~ has determined does not contain hazardous waste) are subject to the following notification and certification requirements:
    - a. A one-time notification, including the following information, must be submitted to the department:
      - (1) The name and address of the nonhazardous waste facility receiving the treated debris;
      - (2) A description of the hazardous debris as initially generated, including the applicable hazardous waste numbers; and
      - (3) For debris excluded under subdivision a of subsection 5 of section 33-24-02-03, the technology from table 1, section 33-24-05-285, used to treat the debris.
    - b. The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under subdivision a of subsection 5 of section 33-24-02-03, if a different type of debris is treated or if a different technology is used to treat the debris.

- c. For debris excluded under subdivision a of subsection 5 of section 33-24-02-03, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of table 1 in section 33-24-05-285, as follows:
- (1) Records must be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;
  - (2) Records must be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and
  - (3) For each shipment of treated debris, a certification of compliance with the treatment standards must be signed by an authorized representative and placed in the facility's files. The certification must state the following:

I certify under penalty of law that the debris has been treated in accordance with the requirements of section 33-24-05-285. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment.

5. Generators and treaters who first receive from the department a determination that a given contaminated soil subject to the land disposal restrictions as provided in subsection 1 of section 33-24-05-289 no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to the land disposal restrictions as provided in subsection 1 of section 33-24-05-289 no longer exhibits a characteristic of hazardous waste must:
- a. Prepare a one-time only documentation of these determinations, including all supporting information; and
  - b. Maintain that information in the facility files and other records for a minimum of three years.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-258. Special rules regarding wastes that exhibit a characteristic.**

1. The initial generator of a solid waste must determine each hazardous waste number (waste code) applicable to the waste in order to determine the applicable treatment standards under sections 33-24-05-280 through 33-24-05-289. This determination may be made concurrently with the hazardous waste determination required in section 33-24-03-02. For purposes of sections 33-24-05-250 through 33-24-05-299, the waste will carry the waste code for any applicable listed waste ~~as specified in~~ (sections 33-24-02-15 through ~~33-24-02-22~~[33-24-02-19](#)). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes ~~specified in~~ (sections 33-24-02-10 through 33-24-02-14), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in subsection 2. If the generator determines that ~~its~~the generator's waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, or POLYM of section 33-24-05-282, table 1), the generator must determine the underlying hazardous constituents (as defined at subsection 10 of section 33-24-05-251) in the characteristic waste.
2. Where a prohibited waste is both listed under sections 33-24-02-15 through 33-24-02-19 and exhibits a characteristic under sections 33-24-02-10 through 33-24-02-14, the treatment standard for the waste code listed in sections 33-24-02-15 through 33-24-02-19 will operate in

lieu of the standard for the waste code under sections 33-24-02-10 through 33-24-02-14 provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste must meet the treatment standards for all applicable listed and characteristic waste codes.

3. In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under sections 33-24-02-10 through 33-24-02-14 may be land disposed unless the waste complies with the treatment standards under sections 33-24-05-280 through 33-24-05-289.
4. Wastes that exhibit a characteristic are also subject to section 33-24-05-256 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the ~~generators~~generator's or ~~treater~~treater's onsite files ~~and sent to the department~~. The notification and certification ~~that is placed in the generators or treaters files~~ must be updated if the process or operation generating the waste changes or if the permitted nonhazardous facility receiving the waste changes, or both change. ~~However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December thirty-first.~~
  - a. The notification must include the following information:
    - (1) The name and address of the permitted nonhazardous facility receiving the waste shipment; and
    - (2) A description of the waste as initially generated, including the applicable codes, treatability groups, and underlying hazardous constituents (as defined in subsection 10 of section 33-24-05-251), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.
  - b. The certification must be signed by an authorized representative and must state the language specified in subdivision d of subsection 2 of section 33-24-05-256.
    - (1) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in paragraph 4 of subdivision d of subsection 2 of section 33-24-05-256 applies.
    - (2) [Reserved]

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-266. ~~[Reserved]~~ Waste specific prohibitions - Dyes or pigments, or both, production wastes.**

1. Effective August 23, 2005, the waste specified in chapter 33-24-02 as hazardous waste number K181, and soil and debris contaminated with this waste, radioactive wastes mixed with this waste, and soil and debris contaminated with radioactive wastes mixed with this waste are prohibited from land disposal.
2. The requirements of subsection 1 do not apply if:

- a. The wastes meet the applicable treatment standards specified in sections 33-24-05-280 through 33-24-05-289;
  - b. Persons have been granted an exemption from a prohibition pursuant to a petition under section 33-24-05-255, with respect to those wastes and units covered by the petition;
  - c. The wastes meet the applicable treatment standards established pursuant to a petition granted under section 33-24-05-284;
  - d. Hazardous debris has met the treatment standards in section 33-24-05-280, or the alternative treatment standards in 33-24-05-285; or
  - e. Persons have been granted an extension to the effective date of a prohibition pursuant to section 33-24-05-254, with respect to these wastes covered by the extension.
3. To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 33-24-05-280, the initial generator must test a sample of the waste extract, or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract, or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable sections 33-24-05-280 through 33-24-05-289 levels, the waste is prohibited from land disposal, and all requirements of sections 33-24-05-250 through 33-24-05-299 are applicable, except as otherwise specified.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-271. Waste specific prohibitions - Dioxin-containing wastes.**

1. Effective November 8, 1988, the dioxin-containing wastes specified in section 33-24-02-16 as hazardous waste numbers F020, F021, F022, F023, F026, F027, and F028 are prohibited from land disposal unless the F020-F023 and F026-F028 dioxin-containing waste is contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action taken under ~~sub~~title C of the Resource Conservation and Recovery Act article 33-24.
2. Effective November 8, 1990, the F020-F023 and F026-F028 dioxin-containing wastes listed in ~~sub~~division a of subsection 1 are prohibited from land disposal.
3. Between November 8, 1988, and November 8, 1990, wastes included in ~~sub~~division a of subsection 1 may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in subdivision b of subsection 8 of section 33-24-05-254 and all other applicable requirements of chapter 33-24-05.
4. The requirements of subsections 1 and 2 do not apply if:
  - a. The wastes meet the standards of sections 33-24-05-280 through 33-24-05-289;
  - b. Persons have been granted an exemption from a prohibition pursuant to a petition under section 33-24-05-255, with respect to those wastes and units covered by the petition; or
  - c. Persons have been granted an extension to the effective date of a prohibition pursuant to section 33-24-05-254, with respect to those wastes covered by the extension.

**History:** Effective December 1, 1988; amended effective December 1, 1991; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-278. Waste specific prohibitions - Newly identified organic toxicity characteristic wastes and newly listed coke byproduct and chlorotoluene production wastes.**

1. Effective December 19, 1994, the wastes specified in section ~~33-24-05-272~~[33-24-02-17](#) as hazardous waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 are prohibited from land disposal. In addition, debris contaminated with hazardous waste numbers F037, F038, K107 through K112, K117, K118, K123 through K126, K131, K132, K136, U328, U353, U359, and soil and debris contaminated with D012 through D043, K141 through K145, and K147 through K151 are prohibited from land disposal. The following wastes that are specified in section 33-24-02-14, table 1 as hazardous waste numbers: D012, D013, D014, D015, D016, D017, D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, and D043 that are not radioactive, or that are managed in systems other than those whose discharge is regulated under the Clean Water Act, or that are zero discharges that do not engage in Clean Water Act-equivalent treatment before ultimate land disposal, or that are injected in class I deep wells regulated under the Safe Drinking Water Act, are prohibited from land disposal. Clean Water Act-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation or sedimentation, or both, for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or better than these technologies.
2. On September 19, 1996, radioactive wastes that are mixed with D018 through D043 that are managed in systems other than those whose discharge is regulated under the Clean Water Act, or that inject in class I deep wells regulated under the Safe Drinking Water Act, or that are zero dischargers that engage in Clean Water Act-equivalent treatment before ultimate land disposal, are prohibited from land disposal. Clean Water Act-equivalent treatment means biological treatment for organics, alkaline chlorination or ferrous sulfate precipitation for cyanide, precipitation or sedimentation, or both, for metals, reduction of hexavalent chromium, or other treatment technology that can be demonstrated to perform equally or greater than these technologies. Radioactive wastes mixed with K141 through K145, and K147 through K151 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.
3. Between December 19, 1994, and September 19, 1996, the wastes included in subsection 2 may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in subdivision b of subsection 8 of section 33-24-05-254.
4. The requirements of subsections 1, 2, and 3 do not apply if:
  - a. The wastes meet the applicable treatment standards specified in sections 33-24-05-280 through 33-24-05-289;
  - b. Persons have been granted an exemption from a prohibition pursuant to a petition under section 33-24-05-255, with respect to those wastes and units covered by the petition;
  - c. The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under section 33-24-05-284; or
  - d. Persons have been granted an extension to the effective date of a prohibition pursuant to section 33-24-05-254, with respect to these wastes covered by the extension.

5. To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in section 33-24-05-280, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable levels found in sections 33-24-05-280 through 33-24-05-289, the waste is prohibited from land disposal, and all requirements of sections 33-24-05-250 through 33-24-05-299 are applicable, except as otherwise specified.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-280. Applicability of treatment standards.**

1. A prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of treatment standard requirements:
  - a. All hazardous constituents in the waste or in the treatment residue must be at or below the values found in the table for that waste ("Total Waste Standards");
  - b. The hazardous constituents in the extract of the waste or in the extract of the treatment residue must be at or below the values found in the table ("Waste Extract Standards"); or
  - c. The waste must be treated using the technology specified in the table ("Technology Standard"), which are described in detail in section 33-24-05-282, table 1-Technology Codes and Description of Technology-Based Standards.
2. For wastewaters, compliance with concentration level standards is based on maximums for any one day, except for D004 through D011 wastes for which the previously promulgated treatment standards based on grab samples remain in effect. For all nonwastewaters, compliance with concentration level standards is based on grab sampling. For wastes covered by the waste extract standards, the test method 1311, the toxicity characteristic leaching procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05, must be used to measure compliance. An exception is made for D004 and D008, for which either of two test methods may be used: method 1311, or method ~~1310~~[1310B](#), the extraction procedure toxicity test. For wastes covered by a technology standard, the wastes may be land disposed after being treated using that specified technology or an equivalent treatment technology approved by the ~~department~~[administrator](#) under the procedures set forth in subsection 2 of section 33-24-05-282.
3. When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.
4. Notwithstanding the prohibitions specified in subsection 1, treatment and disposal facilities may demonstrate (and certify pursuant to subdivision e of subsection 2 of section 33-24-05-256) compliance with the treatment standards for organic constituents specified by a footnote in the table "Treatment Standards for Hazardous Wastes" in this section, provided the following conditions are satisfied:
  - a. The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of sections

33-24-05-144 through 33-24-05-159, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

- b. The treatment or disposal facility has used the methods referenced in subdivision a to treat the organic constituents; and
  - c. The treatment or disposal facility may demonstrate compliance with organic constituents if good-faith analytical efforts achieve detection limits for the regulated organic constituents that do not exceed the treatment standards specified in this section by an order of magnitude.
5. For characteristic wastes (D001 through D043) that are subject to treatment standards in the following table "Treatment Standards for Hazardous Wastes", and are not managed in a wastewater treatment system that is regulated under the Clean Water Act, that is CWA-equivalent, or that is injected into a class I nonhazardous deep injection well, all underlying hazardous constituents (as defined in subsection 10 of section 33-24-05-251) must meet universal treatment standards, found in section 33-24-05-288, table "Universal Treatment Standards", prior to land disposal as defined in subsection 6 of section 33-24-05-251.
  6. The treatment standards for F001 through F005 nonwastewater constituents carbon disulfide, cyclohexanone, or methanol apply to wastes which contain only one, two, or three of these constituents. Compliance is measured for these constituents in the waste extract from test method 1311, the toxicity characteristic leaching procedure found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05. If the waste contains any of these three constituents along with any of the other twenty-five constituents found in F001 through F005, then compliance with treatment standards for carbon disulfide, cyclohexanone, or methanol are not required.
  7. Between August 26, 1996, and March 4, 1999, the treatment standards for the wastes specified in section 33-24-02-17 as hazardous waste numbers K156 through K159 and K161; and in section 33-24-02-18 as hazardous waste numbers P127, P128, P185, P188 through P192, P194, P196 through P199, P201 through P205, U271, U277 through U280, U364 through U367, U372, U373, U375 through U379, U381 through U387, U389 through U396, U400 through U404, U407, and U409 through U411; and soil contaminated with these wastes; may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Waste", or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST in table 1 in section 33-24-05-282, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined by the technology code CMBST in table 1 of section 33-24-05-282, for wastewaters.
  8. Prohibited D004 through D011 mixed radioactive wastes and mixed radioactive listed wastes containing metal constituents, that were previously treated by stabilization to the treatment standards in effect at that time and then put into storage, do not have to be retreated to meet treatment standards in this section prior to land disposal.
  9. [Reserved]
  10. Effective September 4, 1998, the treatment standards for the wastes specified in section 33-24-02-18 as hazardous waste numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST in table 1 of

section 33-24-05-282, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined by the technology code CMBST in table 1 in section 33-24-05-282, for wastewaters.

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
D001 <sup>9</sup>	Ignitable characteristic wastes, except for NA the subdivision a of subsection 1 of section 33-24-02-11 high total organic carbon subcategory. High total organic carbon ignitable characteristic liquids subcategory based on subdivision a of subsection 1 of section 33-24-02-11 - Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	DEACT and meet section 33-24-05-288 standards <sup>8</sup> ; or RORGS; or CMBST	DEACT and meet section 33-24-05-288 standards <sup>8</sup> ; or RORGS; or CMBST
		NA	NA	NA	RORGS; CMBST; or POLYM
D002 <sup>9</sup>	Corrosive characteristic wastes.	NA	NA	DEACT and meet section 33-24-05-288 standards <sup>8</sup>	DEACT and meet section 33-24-05-288 standards <sup>8</sup>
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440-38-2	NA	HLVIT
		Barium	7440-39-3	NA	HLVIT
		Cadmium	7440-43-9	NA	HLVIT
		Chromium (Total)	7440-47-3	NA	HLVIT
		Lead	7439-92-1	NA	HLVIT
		Mercury	7439-97-6	NA	HLVIT
		Selenium	7782-49-2	NA	HLVIT
		Silver	7440-22-4	NA	HLVIT
D003 <sup>9</sup>	Reactive sulfides subcategory based on subdivision e of subsection 1 of section 33-24-02-13.	NA	NA	DEACT	DEACT
	Explosives subcategory based on subdivisions f, g, and h of subsection 1 of section 33-24-02-13.	NA	NA	DEACT and meet section 33-24-05-288 standards <sup>8</sup>	DEACT and meet section 33-24-05-288 standards <sup>8</sup>
	Unexploded ordnance and other explosive devices which have been the subject of an emergency response.	NA	NA	DEACT	DEACT
	Other reactives subcategory based on subdivision a of subsection 1 of section 33-24-02-13.	NA	NA	DEACT and meet section 33-24-05-288 standards <sup>8</sup>	DEACT and meet section 33-24-05-288 standards <sup>8</sup>
	Water reactive subcategory based on subdivisions b, c, and d of subsection 1 of section 33-24-02-13. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT and meet section 33-24-05-288 standards <sup>8</sup>

TREATMENT STANDARDS FOR HAZARDOUS WASTES					
Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
	Reactive cyanides subcategory based on subdivision e of subsection 1 of section 33-24-02-13.	Cyanides (Total) <sup>7</sup>	57-12-5	Reserved	590
D004 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Cyanides (Amenable) <sup>7</sup> Arsenic	57-12-5 7440-38-2	0.86 1.4 and meet section 33-24-05-288 standards <sup>8</sup>	30 5.0 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
D005 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Barium	7440-39-3	1.2 and meet section 33-24-05-288 standards <sup>8</sup>	2.1 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
D006 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Cadmium	7440-43-9	0.69 and meet section 33-24-05-288 standards <sup>8</sup>	0.11 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
	Cadmium containing batteries subcategory (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	RTHRM
	Radioactively contaminated cadmium containing batteries. (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	Macroencapsulation in accordance with section 33-24-05-285
D007 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Chromium (Total)	7440-47-3	2.77 and meet section 33-24-05-288 standards <sup>8</sup>	0.60 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
D008 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Lead	7439-92-1	0.69 and meet section 33-24-05-288 standards <sup>8</sup>	0.75 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
	Lead acid batteries subcategory (Note: This standard only applies to lead acid batteries that are identified as Resource Conservation and Recovery Act hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of sections 33-24-05-250 through 33-24-05-299 or exempted under other regulations. This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code MACRO
		Common Name	CAS <sup>2</sup> No.		
D009 <sup>9</sup>	Radioactive lead solids subcategory (Note: These lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues (high mercury-organic subcategory).	Mercury	7439-97-6	NA	IMERC; OR RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC (high mercury-inorganic subcategory).	Mercury	7439-97-6	NA	RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury (low mercury subcategory).	Mercury	7439-97-6	NA	0.20 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
	All other nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the toxicity characteristic leaching procedure (TCLP) in SW846; and contain less than 260 mg/kg total mercury and that are not residues from RMERC (low mercury subcategory).	Mercury	7439-97-6	NA	0.25 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
All D009 wastewaters.	Mercury	7439-97-6	0.15	NA	

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code AMLGM
		Common Name	CAS <sup>2</sup> No.		
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	
	Hydraulic oil contaminated with mercury radioactive materials subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC
	Radioactively contaminated mercury containing batteries. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	Macroencapsulation in accordance with section 33-24-05-285
D010 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Selenium	7782-49-2	0.82 and meet section 33-24-05-288 standards <sup>8</sup>	5.7 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
D011 <sup>9</sup>	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the toxicity characteristic leaching procedure (TCLP) in SW846.	Silver	7440-22-4	0.43 and meet section 33-24-05-288 standards <sup>8</sup>	0.14 mg/l TCLP and meet section 33-24-05-288 standards <sup>8</sup>
	Radioactively contaminated silver containing batteries. (Note: This subcategory consists of nonwastewaters only.)	Silver	7440-22-4	NA	Macroencapsulation in accordance with section 33-24-05-285
D012 <sup>9</sup>	Wastes that are toxicity characteristic for endrin based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Endrin	72-20-8	BIODG; or CMBST	0.13 and meet section 33-24-05-288 standards <sup>8</sup>
		Endrin aldehyde	7421-93-4	BIODG; or CMBST	0.13 and meet section 33-24-05-288 standards <sup>8</sup>
D013 <sup>9</sup>	Wastes that are toxicity characteristic for lindane based on the toxicity characteristic leaching procedure in SW846 Method 1311.	alpha-BHC	319-84-6	CARBN; or CMBST	0.066 and meet section 33-24-05-288 standards <sup>8</sup>
		beta-BHC	319-85-7	CARBN; or CMBST	0.066 and meet section 33-24-05-288 standards <sup>8</sup>
		delta-BHC	319-86-8	CARBN; or CMBST	0.066 and meet section 33-24-05-288 standards <sup>8</sup>
		gamma-BHC (Lindane)	58-89-9	CARBN; or CMBST	0.066 and meet section 33-24-05-288 standards <sup>8</sup>
D014 <sup>9</sup>	Wastes that are toxicity characteristic for methoxychlor based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or CMBST	0.18 and meet section 33-24-05-288 standards <sup>8</sup>
D015 <sup>9</sup>	Wastes that are toxicity characteristic for toxaphene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or CMBST	2.6 and meet section 33-24-05-288 standards <sup>8</sup>

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code 10 and meet section 33-24-05-288 standards <sup>8</sup>
D016 <sup>9</sup>	Wastes that are toxicity characteristic for 2,4-D(2,4-Dichlorophenoxyacetic acid) based on the toxicity characteristic leaching procedure in SW 846 Method 1311.	2,4-D(2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD; BIODG; or CMBST	10 and meet section 33-24-05-288 standards <sup>8</sup>
D017 <sup>9</sup>	Wastes that are toxicity characteristic for 2,4,5-TP(Silvex) based on the toxicity characteristic leaching procedure in SW846 Method 1311.	2,4,5-TP(Silvex)	93-72-1	CHOXD or CMBST	7.9 and meet section 33-24-05-288 standards <sup>8</sup>
D018 <sup>9</sup>	Wastes that are toxicity characteristic for benzene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Benzene	71-43-2	0.14 and meet section 33-24-05-288 standards <sup>8</sup>	10 and meet section 33-24-05-288 standards <sup>8</sup>
D019 <sup>9</sup>	Wastes that are toxicity characteristic for carbon tetrachloride based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Carbon tetrachloride	56-23-5	0.057 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D020 <sup>9</sup>	Wastes that are toxicity characteristic for chlordane based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033 and meet section 33-24-05-288 standards <sup>8</sup>	0.26 and meet section 33-24-05-288 standards <sup>8</sup>
D021 <sup>9</sup>	Wastes that are toxicity characteristic for chlorobenzene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Chlorobenzene	108-90-7	0.057 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D022 <sup>9</sup>	Wastes that are toxicity characteristic for chloroform based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Chloroform	67-66-3	0.046 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D023 <sup>9</sup>	Wastes that are toxicity characteristic for o-cresol based on the toxicity characteristic leaching procedure in SW846 Method 1311.	o-Cresol	95-48-7	0.11 and meet section 33-24-05-288 standards <sup>8</sup>	5.6 and meet section 33-24-05-288 standards <sup>8</sup>
D024 <sup>9</sup>	Wastes that are toxicity characteristic for m-cresol based on the toxicity characteristic leaching procedure in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77 and meet section 33-24-05-288 standards <sup>8</sup>	5.6 and meet section 33-24-05-288 standards <sup>8</sup>
D025 <sup>9</sup>	Wastes that are toxicity characteristic for p-cresol based on the toxicity characteristic leaching procedure in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77 and meet section 33-24-05-288 standards <sup>8</sup>	5.6 and meet section 33-24-05-288 standards <sup>8</sup>
D026 <sup>9</sup>	Wastes that are toxicity characteristic for cresols (total) based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet section 33-24-05-288 standards <sup>8</sup>	11.2 and meet section 33-24-05-288 standards <sup>8</sup>
D027 <sup>9</sup>	Wastes that are toxicity characteristic for p-dichloro-benzene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
D028 <sup>9</sup>	Wastes that are toxicity characteristic for 1,2-dichloroethane based on the toxicity characteristic leaching procedure in SW846 Method 1311.	1,2-Dichloroethane	107-06-2	0.21 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D029 <sup>9</sup>	Wastes that are toxicity characteristic for 1,1-dichloroethylene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	1,1-Dichloroethylene	75-35-4	0.025 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D030 <sup>9</sup>	Wastes that are toxicity characteristic for 2,4-dinitrotoluene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	2,4-Dinitrotoluene	121-14-2	0.32 and meet section 33-24-05-288 standards <sup>8</sup>	140 and meet section 33-24-05-288 standards <sup>8</sup>
D031 <sup>9</sup>	Wastes that are toxicity characteristic for heptachlor based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Heptachlor	76-44-8	0.0012 and meet section 33-24-05-288 standards <sup>8</sup>	0.066 and meet section 33-24-05-288 standards <sup>8</sup>
		Heptachlor epoxide	1024-57-3	0.016 and meet section 33-24-05-288 standards <sup>8</sup>	0.066 and meet section 33-24-05-288 standards <sup>8</sup>
D032 <sup>9</sup>	Wastes that are toxicity characteristic for hexachloro- benzene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Hexachlorobenzene	118-74-1	0.055 and meet section 33-24-05-288 standards <sup>8</sup>	10 and meet section 33-24-05-288 standards <sup>8</sup>
D033 <sup>9</sup>	Wastes that are toxicity characteristic for hexachlorobutadiene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Hexachlorobutadiene	87-68-3	0.055 and meet section 33-24-05-288 standards <sup>8</sup>	5.6 and meet section 33-24-05-288 standards <sup>8</sup>
D034 <sup>9</sup>	Wastes that are toxicity characteristic for hexachloroethane based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Hexachloroethane	67-72-1	0.055 and meet section 33-24-05-288 standards <sup>8</sup>	30 and meet section 33-24-05-288 standards <sup>8</sup>
D035 <sup>9</sup>	Wastes that are toxicity characteristic for methyl ethyl ketone based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Methyl ethyl ketone	78-93-3	0.28 and meet section 33-24-05-288 standards <sup>8</sup>	36 and meet section 33-24-05-288 standards <sup>8</sup>
D036 <sup>9</sup>	Wastes that are toxicity characteristic for nitrobenzene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Nitrobenzene	98-95-3	0.068 and meet section 33-24-05-288 standards <sup>8</sup>	14 and meet section 33-24-05-288 standards <sup>8</sup>
D037 <sup>9</sup>	Wastes that are toxicity characteristic for pentachlorophenol based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Pentachlorophenol	87-86-5	0.089 and meet section 33-24-05-288 standards <sup>8</sup>	7.4 and meet section 33-24-05-288 standards <sup>8</sup>
D038 <sup>9</sup>	Wastes that are toxicity characteristic for pyridine based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Pyridine	110-86-1	0.014 and meet section 33-24-05-288 standards <sup>8</sup>	16 and meet section 33-24-05-288 standards <sup>8</sup>

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
D039 <sup>9</sup>	Wastes that are toxicity characteristic for tetrachloroethylene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Tetrachloroethylene	127-18-4	0.056 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D040 <sup>9</sup>	Wastes that are toxicity characteristic for trichloroethylene based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Trichloroethylene	79-01-6	0.054 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
D041 <sup>9</sup>	Wastes that are toxicity characteristic for 2,4,5-trichlorophenol based on the toxicity characteristic leaching procedure in SW846 Method 1311.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet section 33-24-05-288 standards <sup>8</sup>	7.4 and meet section 33-24-05-288 standards <sup>8</sup>
D042 <sup>9</sup>	Wastes that are toxicity characteristic for 2,4,6-trichlorophenol based on the toxicity characteristic leaching procedure in SW846 Method 1311.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet section 33-24-05-288 standards <sup>8</sup>	7.4 and meet section 33-24-05-288 standards <sup>8</sup>
D043 <sup>9</sup>	Wastes that are toxicity characteristic for vinyl chloride based on the toxicity characteristic leaching procedure in SW846 Method 1311.	Vinyl chloride	75-01-4	0.27 and meet section 33-24-05-288 standards <sup>8</sup>	6.0 and meet section 33-24-05-288 standards <sup>8</sup>
F001, F002, F003, F004 and/or F005 & F005	F001, F002, F003, F004 and/or F005 & F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in section 33-24-02-16.	Acetone	67-64-1	0.28	160
		Benzene	71-42-2	0.14	10
		n-Butyl alcohol	71-36-3	5.6	2.6
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		o-Cresol	95-48-7	0.11	5.6

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3		
		Cyclohexanone	108-94-1	0.36	NA
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Ethyl acetate	141-78-6	0.34	33
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		Isobutyl alcohol	78-83-1	5.6	170
		Methanol	67-56-1	5.6	NA
		Methylene chloride	75-9-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Nitrobenzene	98-95-3	0.068	14
		Pyridine	110-86-1	0.014	16
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol (formerly subsection 3 of section 33-24-05-281).	Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
		Methanol	67-56-1	5.6	0.75 mg/l TCLP
	F005 solvent waste containing 2-nitropropane as the only listed F001-F005 solvent.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
	F005 solvent waste containing 2-ethoxyethanol as the only listed F001-F005 solvent.	2-Ethoxyethanol	110-80-5	BIODG; or CMBST	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code		
		Common Name	CAS <sup>2</sup> No.				
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	.069	0.11 mg/l TCLP		
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP		
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30		
		Lead	7439-92-1	0.69	0.75 mg/l TCLP		
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP		
		Silver	7440-22-4	NA	0.14 mg/l TCLP		
		F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
				Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
				Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
Cyanides (Amenable) <sup>7</sup>	57-12-5			0.86	30		
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Lead	7439-92-1	0.69	0.75 mg/l TCLP		
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP		
		Silver	7440-22-4	NA	0.14 mg/l TCLP		
		Cadmium	7440-31-9	NA	0.11 mg/l TCLP		
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP		
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30		
		Lead	7439-92-1	0.69	0.75 mg/l TCLP		
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP		
		Silver	7440-22-4	NA	0.14 mg/l TCLP		
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP		
		Chromium (Total)	7440-47-3	2.77	0.60mg/l TCLP		
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30		
		Lead	7439-92-1	0.69	0.75 mg/l TCLP		
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP		
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Silver	7440-22-4	NA	0.14 mg/l TCLP		
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	NA		

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES					
Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (for example, F021); (3) tetra-, penta-, or hexachloro-benzenes under alkaline conditions (for example, F022; and from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (for example, F026).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code CMBST <sup>11</sup>
		Common Name	CAS <sup>2</sup> No.		
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in section 33-24-02-16 or 33-24-02-17.)	All F024 Wastes	NA	CMBST <sup>11</sup>	CMBST <sup>11</sup>
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
		3-Chloropropylene	107-05-1	0.036	30
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Hexachloroethane	67-72-1	0.055	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light ends subcategory.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0

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Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code		
F027	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent filters/aids and desiccants subcategory.	Carbon tetrachloride	56-23-5	0.057	6.0		
		Chloroform	67-66-3	0.046	6.0		
		Hexachlorobenzene	118-74-1	0.055	10		
		Hexachlorobutadiene	87-68-3	0.055	5.6		
		Hexachloroethane	67-72-1	0.055	30		
		Methylene chloride	75-9-2	0.089	30		
		1,1,2-Trichloroethane	79-00-5	0.054	6.0		
		Trichloroethylene	79-01-6	0.054	6.0		
		Vinyl chloride	75-01-4	0.27	6.0		
		F028	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols (this listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component).	HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
				HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA			0.000035	0.001		
PeCDFs (All Pentachlorodibenzofurans)	NA			0.000035	0.001		
Pentachlorophenol	87-86-5			0.089	7.4		
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA			0.000063	0.001		
TCDFs (All Tetrachlorodibenzofurans)	NA			0.000063	0.001		
2,4,5-Trichlorophenol	95-95-4			0.18	7.4		
2,4,6-Trichlorophenol	88-06-2			0.035	7.4		
2,3,4,6-Tetrachlorophenol	58-90-2			0.030	7.4		
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA			0.000063	0.001		
HxCDFs (All Hexachlorodibenzofurans)	NA			0.000063	0.001		
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA			0.000035	0.001		
PeCDFs (All Pentachlorodibenzofurans)	NA			0.000035	0.001		
Pentachlorophenol	87-86-5			0.089	7.4		
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001				
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001				

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Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with section 33-24-02-19 or potentially cross-contaminated wastes that are otherwise regulated as hazardous wastes (for example, F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.30	7.4
		Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		2-4-Dimethyl phenol	105-67-9	0.036	14
		Fluorene	86-73-7	0.059	3.4
		Hexachlorodibenzo-p-dioxins	NA	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		Hexachlorodibenzofurans	NA	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4		
Naphthalene	91-20-3	0.059	5.6		
Pentachlorodibenzo-p-dioxins	NA	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>		
Pentachlorodibenzofurans	NA	0.000035 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>		
Pentachlorophenol	87-86-5	0.089	7.4		
Phenanthrene	85-01-8	0.059	5.6		
Phenol	108-95-2	0.039	6.2		
Pyrene	129-00-0	0.067	8.2		
Tetrachlorodibenzo-p-dioxins	NA	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>		
Tetrachlorodibenzofurans	NA	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>		
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4		

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Chromium (total)	7440-47-3	2.77	0.60 mg/l TCLP
		Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluorene	86-73-7	0.059	3.4
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	Arsenic	7440-38-2
Chromium (total)	7440-47-3			2.77	0.60 mg/l TCLP
Arsenic	7440-38-2			1.4	5.0 mg/l TCLP
Chromium (total)	7440-47-3			2.77	0.60 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
F037	Petroleum refinery primary oil/water/solids separation sludge-any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in subdivision b of subsection 2 of section 33-24-02-16 (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from noncontact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in subdivision b of subsection 2 of section 33-24-02-16 (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11.0 mg/l TCLP

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under sections 33-24-05-280 through 33-24-05-289 (leachate resulting from the disposal of one or more of the following hazardous wastes and no other hazardous wastes retains its hazardous waste number(s): F020, F021, F022, F026, F027, and/or F028).	Acenaphthylene	208-96-8	0.059	3.4
		Acenaphthene	83-32-9	0.059	3.4
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	5.6	NA
		Acetophenone	96-86-2	0.010	9.7
		2-Acetylaminofluorene	53-96-3	0.059	140
		Acrolein	107-02-8	0.29	NA
		Acrylonitrile	107-13-1	0.24	84
		Aldrin	309-00-2	0.021	0.066
		4-Aminobiphenyl	92-67-1	0.13	NA
		<a href="#">o-Anisidine (2-methoxyaniline)</a>	<a href="#">90-04-0</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		Aniline	62-53-3	0.81	14
		Anthracene	120-12-7	0.059	3.4
		Aramite	140-57-8	0.36	NA
		alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.0.066
		gamma-BHC	58-89-9	0.0017	0.066
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Bromodichloromethane	75-27-4	0.35	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
		4-Bromophenyl phenyl ether	101-55-3	0.055	15
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butyl benzyl phthalate	85-68-7	0.017	28
		2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
		Carbondisulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		p-Chloroaniline	106-47-8	0.46	16
		Chlorobenzene	108-90-7	0.057	6.0
		Chlorobenzilate	510-15-6	0.10	NA
		2-Chloro-1,3-butadiene	126-99-8	0.057	NA

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
		Chlorodibromomethane	124-48-1	0.057	15
		Chloroethane	75-00-3	0.27	6.0
		bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chloroform	67-66-3	0.046	6.0
		bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
		p-Chloro-m-cresol	59-50-7	0.018	14
		Chloromethane (Methyl chlorida)	74-87-3	0.19	30
		2-Chloronaphthalene	91-58-7	0.055	5.6
		2-Chlorophenol	95-57-8	0.044	5.7
		3-Chloropropylene	107-05-1	0.036	30
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		<u>p-Cresidine</u>	<u>120-71-8</u>	<u>0.010</u>	<u>0.66</u>
		Cyclohexanone	108-94-1	0.36	NA
		1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
		Dibromomethane	74-95-3	0.11	15
		2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Dibenz(a,e)pyrene	192-65-4	0.061	NA
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoromethane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		<u>2,4-Dimethylaniline (2,4-xylylidine)</u>	<u>95-68-1</u>	<u>0.010</u>	<u>0.66</u>
		2,4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
		Di-n-butyl phthalate	87-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	12.0	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	131-07-8	0.029	0.13
		Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33
		Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Ethyl methacrylate	97-63-2	0.14	160
		Ethylene oxide	75-21-8	0.12	NA
		Famphur	52-85-7	0.017	15
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	0.059	3.4
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		1,2,3,4,6,7,8- Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035	0.0025
		1,2,3,4,7,8,9- Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	0.0025
		1,2,3,4,6,7,8- Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	0.0025
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		HxCDDs (All Hexa- chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	0.035	30
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Iodomethane	74-88-4	0.19	65

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
		Isobutyl alcohol	78-83-1	5.6	170
		Isodrin	465-73-6	0.021	0.066
		Isosaffrole	120-58-1	0.081	2.6
		Kepone	143-50-8	0.0011	0.13
		Methacrylonitrile	126-98-7	0.24	84
		Methanol	67-56-1	5.6	NA
		Methapyrilene	91-80-5	0.081	1.5
		Methoxychlor	72-43-5	0.25	0.18
		3-Methylcholanthrene	56-49-5	0.0055	15
		4,4-Methylene bis(2- chloroaniline)	101-14-4	0.50	30
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methyl methacrylate	80-62-6	0.14	160
		Methyl methansulfonate	66-27-3	0.018	NA
		Methyl parathion	298-00-0	0.014	4.6
		Naphthalene	91-20-3	0.059	5.6
		2-Naphthylamine	91-59-8	0.52	NA
		p-Nitroaniline	100-01-6	0.028	28
		Nitrobenzene	98-95-3	0.068	14
		5-Nitro-o-toluidine	99-55-8	0.32	28
		p-Nitrophenol	100-02-7	0.12	29
		N-Nitrosodiethylamine	55-18-5	0.40	28
		N-Nitrosodimethylamine	62-75-9	0.40	NA
		N-Nitroso-di-n-butylamine	924-16-3	0.40	17
		N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
		N-Nitrosomorpholine	59-89-2	0.40	2.3
		N-Nitrosopiperidine	100-75-4	0.013	35
		N-Nitrosopyrrolidine	930-55-2	0.013	35
		1,2,3,4,6,7,8,9- Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063	0.005
		1,2,3,4,6,7,8,9- Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063	0.0025
		Parathion	56-38-2	0.014	4.6
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		PeCDDs (All Penta- chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodi- benzofurans)	NA	0.000035	0.001
		Pentachloronitrobenzene	82-68-8	0.055	4.8
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		<u>1,3-Phenylenediamine</u>	<u>108-45-2</u>	<u>0.010</u>	<u>0.66</u>
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		TCDDs (All Tetra-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetra- chlorodibenzofurans)	NA	0.000063	0.001
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Toluene	108-88-3	0.080	10
		Toxaphene	8001-35-2	0.0095	2.6
		Bromoform (Tribromomethane)	75-25-2	0.63	15
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		1,2,3-Trichloropropane	96-18-4	0.85	30
		1,1,2-Trichloro-1,2,2- trifluoroethane	76-13-1	0.057	30
		tris(2,3-Dibromopropyl) phosphate	126-72-7	0.11	NA
		Vinyl chloride	75-01-4	0.27	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	21 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable)	57-12-5	0.86	NA
		Fluoride	16964-48-8	35	NA
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
		Sulfide	8496-25-8	14	NA
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
K007	Wastewater treatment sludge from the production of iron blue pigments.	Lead	7439-92-1	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K008	Oven residue from the production of chrome oxide green pigments.	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Benzene	71-43-2	0.14	10
		Cyanide (Total)	47-12-5	1.2	590
		Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
		Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
K015	Still bottoms from the distillation of benzyl chloride.	Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
		Anthracene	120-12-7	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoroanthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	1,2-Dichloropropane	78-87-5	0.85	18
		1,2,3-Trichloropropane	96-18-4	0.85	30
		Chloroethane	75-00-3	0.27	6.0
K018	Heavy ends from the fractionation column in ethyl chloride production.	Chloromethane	74-87-3	0.19	NA
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.		

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		p-Dichlorobenzene	106-46-7	0.090	NA
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Fluorene	86-73-7	0.059	NA
		Hexachloroethane	67-72-1	0.055	30
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		Carbon tetrachloride	56-23-5	0.057	6.0
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Toluene	108-88-3	0.080	10
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Acetophenone	96-86-2	0.010	9.7
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	LLEXT fb SSTRP fb CARBN; or CMBST	CMBST
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CMBST	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	NA	NA	CARBAN; or CMBST	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code		
		Common Name	CAS <sup>2</sup> No.				
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	trans-1,2-Dichloroethylene	156-60-5	0.054	30		
		Hexachlorobutadiene	87-68-3	0.055	5.6		
		Hexachloroethane	67-72-1	0.055	30		
		Pentachloroethane	76-01-7	NA	6.0		
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0		
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0		
		Tetrachloroethylene	127-18-4	0.056	6.0		
		1,1,1-Trichloroethane	71-55-6	0.054	6.0		
		1,1,2-Trichloroethane	79-00-5	0.054	6.0		
		Cadmium	7440-43-9	0.69	NA		
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP		
		Lead	7439-92-1	0.69	0.75 mg/l TCLP		
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP		
		Chloroform	67-66-3	0.046	6.0		
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	1,2-Dichloroethane	107-06-2	0.21	6.0		
		1,1-Dichloroethylene	75-35-4	0.025	6.0		
		1,1,1-Trichloroethane	71-55-6	0.054	6.0		
		Vinyl chloride	75-01-4	0.27	6.0		
		o-Dichlorobenzene	95-50-1	0.088	NA		
		p-Dichlorobenzene	106-46-7	0.090	NA		
		Hexachlorobutadiene	87-68-3	0.055	5.6		
		Hexachloroethane	67-72-1	0.055	30		
		Hexachloropropylene	1888-71-7	NA	30		
		Pentachlorobenzene	608-93-5	NA	10		
K031	Byproduct salts generated in the production of MSMA and cacodylic acid.	Pentachloroethane	76-01-7	NA	6.0		
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14		
		Tetrachloroethylene	127-18-4	0.056	6.0		
		1,2,4-Trichlorobenzene	120-82-1	0.055	19		
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP		
		K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
				Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
				Heptachlor	76-44-8	0.0012	0.066
				Heptachlor epoxide	1024-57-3	0.016	0.066
		K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
Hexachlorocyclopentadiene	77-47-4			0.057	2.4		
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4		
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83-32-9	NA	3.4		
		Anthracene	120-12-7	NA	3.4		
		Benz(a)anthracene	56-55-3	0.059	3.4		
		Benzo(a)pyrene	50-32-8	0.061	3.4		

TREATMENT STANDARDS FOR HAZARDOUS WASTES					
Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Dibenz(a,h)anthracene	53-70-3	NA	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	NA	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	NA	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithioc acid in the production of phorate.	NA	NA	CARBN; or CMBST	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	187-65-0	0.044	14
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
		Tetrachloroethylene	127-18-4	0.056	6.0
		HxCDDs (All)	NA	0.000063	0.001
		Hexachlorodibenzo-p-dioxins)			
		HxCDFs (All hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Penta-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Penta- chlorodibenzofurans)	NA	0.000035	0.001

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	TCDDs (All tetra-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetra- chlorodibenzofurans)	NA	0.000063	0.001
			NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
K047	Pink/red water from TNT operations.	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
K049	Slop oil emulsion solids from the petroleum refining industry.	Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11.0 mg/l TCLP
		Anthracene	120-12-7	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2)-Ethylhexyl phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
Chrysene	2218-01-9	0.059	3.4		
2,4-Dimethylphenol	105-67-9	0.036	NA		
Ethylbenzene	100-41-4	0.057	10		
Naphthalene	91-20-3	0.059	5.6		
Phenanthrene	85-01-8	0.059	5.6		
Phenol	108-95-2	0.039	6.2		
Pyrene	129-00-0	0.067	8.2		
Toluene	108-88-3	0.080	10		
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30		
Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP		

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code		
		Common Name	CAS <sup>2</sup> No.				
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Lead	7439-92-1	0.69	NA		
		Nickel	7440-02-0	NA	11.0 mg/l TCLP		
		Benzo(a)pyrene	50-32-8	0.061	3.4		
		Phenol	108-95-2	0.039	6.2		
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP		
		Lead	7439-92-1	0.69	NA		
K051	API separator sludge from the petroleum refining industry.	Nickel	7440-02-0	NA	11.0 mg/l TCLP		
		Acenaphthene	83-32-9	0.059	NA		
		Anthracene	120-12-7	0.059	3.4		
		Benz(a)anthracene	56-55-3	0.059	3.4		
		Benzene	71-43-2	0.14	10		
		Benzo(a)pyrene	50-32-8	0.061	3.4		
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28		
		Chrysene	2218-01-9	0.059	3.4		
		Di-n-butyl phthalate	105-67-9	0.057	28		
		Ethylbenzene	100-41-4	0.057	10		
		Fluorene	86-73-7	0.059	NA		
		Naphthalene	91-20-3	0.059	5.6		
		Phenanthrene	85-01-8	0.059	5.6		
		Phenol	108-95-2	0.039	6.2		
		Pyrene	129-00-0	0.067	8.2		
		Toluene	108-88-3	0.08	10		
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30		
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590		
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP		
		Lead	7439-92-1	0.69	NA		
		Nickel	7440-02-0	NA	11.0 mg/l TCLP		
		K052	Tank bottoms (leaded) from the petroleum refining industry.	Benzene	71-43-2	0.14	10
				Benzo(a)pyrene	50-32-8	0.061	3.4
				o-Cresol	95-48-7	0.11	5.6
				m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
				p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
				2,4-Dimethylphenol	105-67-9	0.036	NA
Ethylbenzene	100-41-4			0.057	10		
Naphthalene	91-20-3			0.059	5.6		
Phenanthrene	85-01-8			0.059	5.6		
Phenol	108-95-2			0.039	6.2		
Toluene	108-88-3			0.08	10		
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7			0.32	30		
Chromium (Total)	7440-47-3			2.77	0.60 mg/l TCLP		
Cyanides (Total) <sup>7</sup>	57-12-5			1.2	590		

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K060	Ammonia still lime sludge from coking operations.	Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	11.0 mg/l TCLP
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Antimony	7440-36-0	NA	1.15 mg/l TCLP
		Arsenic	7440-38-2	NA	5.0 mg/l TCLP
		Barium	7440-39-3	NA	21 mg/l TCLP
		Beryllium	7440-41-7	NA	1.22 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (standard industrial codes 331 and 332).	Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Selenium	7782-49-2	NA	5.7 mg/l TCLP
		Silver	7440-22-4	NA	0.14 mg/l TCLP
		Thallium	7440-28-0	NA	0.20 mg/l TCLP
		Zinc	7440-66-6	NA	4.3 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Nickel	7440-02-0	3.98	NA
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K069	Emission control dust/sludge from secondary lead smelting - calcium sulfate (low lead) subcategory.	Lead	7439-92-1	0.69	0.75 mg/l TCLP
	Emission control dust/sludge from secondary lead smelting - noncalcium sulfate (high lead) subcategory.	NA	NA	NA	RLEAD
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) Nonwastewaters that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) Nonwastewaters that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K071 wastewaters.	Mercury	7439-97-6	0.15	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code	
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Carbon tetrachloride	56-23-5	0.057	6.0	
		Chloroform	67-66-3	0.046	6.0	
		Hexachloroethane	67-72-1	0.055	30	
		Tetrachloroethylene	127-18-4	0.056	6.0	
		1,1,1-Trichloroethane	71-55-6	0.054	6.0	
K083	Distillation bottoms from aniline production.	Aniline	62-53-3	0.81	14	
		Benzene	71-43-2	0.14	10	
		Cyclohexanone	108-94-1	0.36	NA	
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13	
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13	
		Nitrobenzene	98-95-3	0.068	14	
		Phenol	108-95-2	0.039	6.2	
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP	
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP	
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Benzene	71-43-2	0.14	10	
		Chlorobenzene	108-90-7	0.057	6.0	
		m-Dichlorobenzene	541-73-1	0.036	6.0	
		o-Dichlorobenzene	95-50-1	0.088	6.0	
		p-Dichlorobenzene	106-46-7	0.090	6.0	
		Hexachlorobenzene	118-74-1	0.055	10	
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10	
		Pentachlorobenzene	608-93-5	0.055	10	
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14	
		1,2,4-Trichlorobenzene	120-82-1	0.055	19	
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	0.28	160	
		Acetophenone	96-86-2	0.010	9.7	
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28	
		n-Butyl alcohol	71-36-3	5.6	2.6	
		Butylbenzyl phthalate	85-68-7	0.017	28	
		Cyclohexanone	108-94-1	0.36	NA	
		o-Dichlorobenzene	95-50-1	0.088	6.0	
		Diethyl phthalate	84-66-2	0.20	28	

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K087	Decanter tank tar sludge from coking operations.	Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Ethyl acetate	141-78-6	0.34	33
		Ethylbenzene	100-41-4	0.057	10
		Methanol	67-56-1	5.6	NA
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methylene chloride	75-09-2	0.089	30
		Naphthalene	91-20-3	0.059	5.6
		Nitrobenzene	98-95-3	0.068	14
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Acenaphthylene	208-96-8	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
Benzo(k)fluoranthene	207-08-09	0.11	6.8		
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8		
Chrysene	218-01-9	0.059	3.4		
Dibenz(a,h)anthracene	53-70-3	0.055	8.2		
Fluoranthene	206-44-0	0.068	3.4		
Indeno(1,2,3-c,d)(1,2,3-cd)-pyrene	193-39-5	0.0055	3.4		
Phenanthrene	85-01-8	0.059	5.6		
Pyrene	129-00-0	0.067	8.2		
Antimony	7440-36-0	1.9	1.15 mg/l TCLP		
Arsenic	7440-38-2	1.4	26.1		
Barium	7440-39-3	1.2	21 mg/l TCLP		
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP		

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	11 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
		Cyanide (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanide (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Fluoride	16984-48-8	35	NA
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K098	Untreated process wastewater from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D.	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexa-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All hexa-chlorodibenzofurans)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES					
Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	PeCDDs (All penta-chlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (all Pentachlorodi- benzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachloro-dibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachloro- dibenzofurans)	NA	0.000063	0.001
		Cadmium	7440-43-9	0.069	0.11 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		o-Nitroaniline	88-74-4	0.27	14
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
		o-Nitrophenol	88-75-5	0.028	13
K103	Process residues from aniline extraction from the production of aniline.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA
		Mercury	7439-97-6	0.15	NA
		Aniline	62-53-3	0.81	14
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Aniline	62-53-3	0.81	14
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Benzene	71-43-2	0.14	10
		2,4-Dinitrophenol	51-28-5	0.12	160
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Benzene	71-43-2	0.14	10
		Chlorobenzene	108-90-7	0.057	6.0
		2-Chlorophenol	95-57-8	0.044	5.7
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
K106	K106 (Wastewater treatment sludge from the mercury cell process in chlorine production.) Nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		Mercury	7439-97-6	NA	RMERC
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production.) Nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
K107	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene.	2,4-Dinitrotoluene	<del>121-1-1</del> 121-14-2	0.32	140
K112	Reaction byproduct water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	2,6-Dinitrotoluene	606-20-2	0.55	28
		NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; or CMBST	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; or CMBST	CMBST

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	TREATMENT STANDARDS FOR HAZARDOUS WASTES Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code 11 mg/l TCLP
		Common Name	CAS <sup>2</sup> No.		
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or CMBST CARBN; or CMBST	CMBST CMBST
		NA	NA		
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethane.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Chloroform	67-63-3	0.046	6.0
		Ethylene dibromide (1,2- Dibromoethane)	106-93-4	0.028	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
		NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	Na	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code		
		Common Name	CAS <sup>2</sup> No.				
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke byproducts produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	10		
		Benz(a)anthracene	56-55-3	0.059	3.4		
		Benzo(a)pyrene	50-2-8	0.061	3.4		
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8		
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8		
		Chrysene	218-01-9	0.059	3.4		
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2		
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4		
		Benzene	71-43-2	0.14	10		
		K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke byproducts produced from coal.	Benz(a)anthracene	56-55-3	0.059	3.4
Benzo(a)pyrene	50-32-8			0.061	3.4		
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2			0.11	6.8		
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9			0.11	6.8		
Chrysene	218-01-9			0.059	3.4		
Dibenz(a,h)anthracene	53-70-3			0.055	8.2		
Indeno(1,2,3-cd)pyrene	193-39-5			0.0055	3.4		
Benzene	71-43-2			0.14	10		
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke byproducts produced from coal.			Benz(a)anthracene	56-55-3	0.059	3.4
				Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8		
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8		
		Chrysene	218-01-9	0.059	3.4		
		Benzene	71-43-2	0.14	10		
		K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke byproducts produced from coal.	Benz(a)anthracene	56-55-3	0.059	3.4
				Benzo(a)pyrene	50-32-8	0.061	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K145	Residues from naphthalene collection and recovery operations from the recovery of coke byproducts produced from coal.	Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Benzene	71-43-2	0.14	10
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Naphthalene	91-20-3	0.059	5.6
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	10
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Toluene	108-88-3	0.080	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		Acetonitrile	75-05-8	5.6	<del>38.0</del> 1.8
		K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>	Acetophenone	<del>96-86-2</del> 98-86-2
Aniline	62-53-3			0.81	14
Benomyl <sup>10</sup>	17804-35-2			0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
Benzene	71-43-2			0.14	10
Carbaryl <sup>10</sup>	63-25-21			0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
Carbenzadim <sup>10</sup>	10605-21-7			0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Carbofuran <sup>10</sup>	1563-66-2	0.006; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	0.14; <u>or CMBST</u>
		Carbosulfan <sup>10</sup>	55285-14-8	0.028; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl <sup>10</sup>	16752-77-5	0.028; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	0.14; <u>or CMBST</u>
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.5; <u>or CMBST</u>
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl <sup>10</sup>	16752-77-5	0.028; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	0.14; <u>or CMBST</u>
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		<del>o-Phenylenediamine</del>	<del>95-54-5</del>	<del>0.056</del>	<del>5.6</del>
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.5; <u>or CMBST</u>
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. <u>(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)</u>	<del>Benomyl</del>	<del>17804-35-2</del>	<del>0.056</del>	<del>1.4</del>
		Benzene	71-43-2	0.14	10
		Carbenzadim <sup>10</sup>	10605-21-7	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
		Carbofuran <sup>10</sup>	1563-66-2	0.006; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	0.14; <u>or CMBST</u>
		Carbosulfan <sup>10</sup>	55285-14-8	0.028; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K159	Organics from the treatment of thiocarbamate wastes.	Phenol	108-95-2	0.039	6.2
		Benzene	71-43-2	0.14	10
		Butylate <sup>10</sup>	2008-41-5	0.042; <a href="#">or CMBST, CHOXD, BIODG, or CARBN</a>	1.4; <a href="#">or CMBST</a>
		EPTC (Eptam <sup>10</sup> )	759-94-4	0.042; <a href="#">or CMBST, CHOXD, BIODG, or CARBN</a>	1.4; <a href="#">or CMBST</a>
		Molinate <sup>10</sup>	2212-67-1	0.042; <a href="#">or CMBST, CHOXD, BIODG, or CARBN</a>	1.4; <a href="#">or CMBST</a>
		Pebulate <sup>10</sup>	1114-71-2	0.042; <a href="#">or CMBST, CHOXD, BIODG, or CARBN</a>	1.4; <a href="#">or CMBST</a>
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings, from the production of dithiocarbamate acids and their salts <sup>10</sup> .	Vernolate <sup>10</sup>	1929-77-7	0.042; <a href="#">or CMBST, CHOXD, BIODG, or CARBN</a>	1.4; <a href="#">or CMBST</a>
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Dithiocarbamates (total) <sup>10</sup>	NA	0.028; <a href="#">or CMBST, CHOXD, BIODG, or CARBN</a>	28; <a href="#">or CMBST</a>
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K169	Crude oil tank sediment from petroleum refining operations.	Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Selenium	7782-49-2	0.82	5.7 mg/l TCLP
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Ethyl benzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	81-05-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene (methyl benzene)	108-88-3	0.080	10
		Xylene(s)(Total)	1330-20-7	0.32	30
		K170	Clarified slurry oil sediment from petroleum refining operations.	Benz(a)anthracene	56-55-3
Benzene	71-43-2			0.14	10
Benzo(g,h,i)perylene	191-24-2			0.0055	1.8
Chrysene	218-01-9			0.059	3.4
Dibenz(a,h)anthracene	53-70-3			0.055	8.2
Ethyl benzene	100-41-4			0.057	10
Fluorene	86-73-7			0.059	3.4
Indeno(1,2,3-cd)pyrene	193-39-5			0.0055	3.4
Naphthalene	91-20-3			0.059	5.6
Phenanthrene	81-05-8			0.059	5.6
Pyrene	129-00-0			0.067	8.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
K171	Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	Toluene (Methyl benzene)	108-88-3	0.080	10
		Xylene(s)(Total)	1330-20-7	0.32	30
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Chrysene	218-01-9	0.059	3.4
		Ethyl benzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	81-05-8	0.059	5.6
		Pyrene	129-00-0	0.67	8.2
		Toluene (Methyl benzene)	108-88-3	0.080	10
		Xylene(s)(Total)	1330-20-7	0.32	30
		Arsenic	7740-38-2	1.4	5 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Vanadium	7440-62-2	4.3	1.6 mg/l TCLP
K172	Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	Reactive sulfides	NA	DEACT	DEACT
		Benzene	71-43-2	0.14	10
		Ethyl benzene	100-41-4	0.57	10
		Toluene (Methyl benzene)	108-88-3	0.080	10
		Xylene(s)(Total)	1330-20-7	0.32	30
		Antimony	7740-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7740-38-2	1.4	5 mg/l TCLP
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
		Vanadium	7440-62-2	4.3	1.6 mg/l TCLP
		Reactive sulfides	NA	DEACT	DEACT
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer.	1,2,3,4,6,7,8-	35822-46-9	0.000035 or CMBST <sup>11</sup>	0.0025 or CMBST <sup>11</sup>
		Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)			
		1,2,3,4,6,7,8- Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035 or CMBST <sup>11</sup>	0.0025 or CMBST <sup>11</sup>
		1,2,3,4,7,8,9- Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035 or CMBST <sup>11</sup>	0.0025 or CMBST <sup>11</sup>
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	34465-46-8	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		1,2,3,4,6,7,8,9- Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063 or CMBST <sup>11</sup>	0.005 or CMBST <sup>11</sup>
		1,2,3,4,6,7,8,9- Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063 or CMBST <sup>11</sup>	0.005 or CMBST <sup>11</sup>
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088-22-9	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		Pentachlorodibenzo-p-dioxins			
		PeCDFs (All Pentachlorodibenzofurans)	30402-15-4	0.000035 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
K175	Wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process.	TCDDs (All Tetrachlorodibenzo-p-dioxins)	41903-57-5	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		TCDFs (All Tetrachlorodibenzofurans)	55722-27-5	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Mercury <sup>12</sup>	7438-97-6	NA	0.025 mg/l TCLP
K176	All K175 wastewaters. Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (for example, antimony metal or crude antimony oxide).	pH <sup>12</sup>	NA	NA	pH ≤ 6.0
		Mercury	7438-97-6	0.15	NA
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (for example, antimony metal or crude antimony oxide).	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Antimony	7440-36-0	1.9	1.15 mg/l TCLP
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-39-4	0.000035 or CMBST <sup>11</sup>	0.0025 or CMBST <sup>11</sup>
		1,2,3,4,6,7,8- Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035 or CMBST <sup>11</sup>	0.0025 or CMBST <sup>11</sup>
		1,2,3,4,6,7,9- Heptachlorodibenzofuran (1,2,3,4,6,7,9-HpCDF)	55673-89-7	0.000035 or CMBST <sup>11</sup>	0.0025 or CMBST <sup>11</sup>
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	34465-46-8	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD)	3268-87-9	0.000063 or CMBST <sup>11</sup>	0.005 or CMBST <sup>11</sup>
		1,2,3,4,6,7,8,9- Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063 or CMBST <sup>11</sup>	0.005 or CMBST <sup>11</sup>
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	36088-22-9	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		PeCDFs (All Pentachlorodibenzofurans)	30402-15-4	0.000035 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	41903-57-5	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		TCDFs (All Tetrachlorodibenzofurans)	55722-27-5	0.000063 or CMBST <sup>11</sup>	0.001 or CMBST <sup>11</sup>
		Thallium	7440-28-0	1.4	0.20 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	Regulated Hazardous Constituent CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
K181	<u>Nonwastewaters from the production of dyes or pigments, or both, (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in subsection 3 of section 33-24-02-17 that are equal to or greater than the corresponding subsection 3 of section 33-24-02-17 levels, as determined on a calendar year basis.</u>	Aniline	62-53-3	0.81	14
		o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
		4-Chloroaniline	106-47-8	0.46	16
		p-Cresidine	120-71-8	0.010	0.66
		2,4-Dimethylaniline (2,4-xylydine)	95-68-1	0.010	0.66
		1,2-Phenylenediamine	95-54-5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN
		1,3-Phenylenediamine	108-45-2	0.010	0.66
P001	Warfarin, and salts, when present at concentrations greater than 0.3 percent.	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P002	1-Acetyl-2-thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P003	Acrolein	Acrolein	107-02-8	0.29	CMBST
P004	Aldrin	Aldrin	309-00-2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P009	Ammonium picrate	Ammomium picrate	131-74-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P010	Arsenic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium Cyanides (Total) <sup>7</sup>	7440-39-3	NA	21 mg/l TCLP
		Cyanides (Amenable) <sup>7</sup>	57-12-5	1.2	590
		Thiophenol (Benzene thiol)	57-12-5	0.86	30
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P015	Beryllium dust	Beryllium	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542-88-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P017	Bromoacetone	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code CMBST
P018	Brucine	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or CMBST	
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
P021	Calcium cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
P022	Carbon disulfide	Carbon disulfide	75-15-0	3.8	CMBST
		Carbon disulfide; alternate <sup>6</sup> standard for nonwastewaters only	75-15-0	NA	4.8 mg/l TCLP
P023	Chloroacetaldehyde	Chloroacetaldehyde	107-20-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P024	p-Chloroaniline	p-Chloroaniline	106-47-8	0.46	16
P026	1-(o-Cholorphenyl)thiourea	1-(o-Cholorphenyl)thiourea	5344-82-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P027	3-Chloropropionitrile	3-Chloropropionitrile	542-76-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P028	Benzyl chloride	Benzyl chloride	100-44-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P029	Copper cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
P030	Cyanides (soluble salts and complexes)	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
P031	Cyanogen	Cyanogen	460-19-5	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P033	Cyanogen chloride	Cyanogen chloride	506-77-4	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P034	2-Cyclohexly-4,6-dinitrophenol	2-Cyclohexly-4,6-dinitrophenol	131-89-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P036	Dichlorophenylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P037	Dieldrin	Dieldrin	60-57-1	0.017	0.13
P038	Diethylarine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P039	Disulfoton	Disulfoton	298-04-4	0.017	6.2
P040	0,0-Diethyl O-pyrazinyl phosphorothioate	0,0-Diethyl O-pyrazinyl phosphorothioate	297-97-2	CARBN; or CMBST	CMBST
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311-45-5	CARBN; or CMBST	CMBST
P042	Epinephrine	Epinephrine	51-43-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluorophosphate (DFP)	55-91-4	CARBN; or CMBST	CMBST
P044	Dimethoate	Dimethoate	60-51-5	CARBN; or CMBST	CMBST
P045	Thiofanox	Thiofanox	39196-18-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P046	Alpha, alpha-Dimethyl-phenethylamine	alpha, alpha-Dimethyl-phenethylamine	122-09-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol	543-52-1	0.28	160
	4,6-Dinitro-o-cresol salts	NA	NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	51-28-5	0.12	160
P049	Dithiobiuret	Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P050	Endosulfan	Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name		CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
P051	Endrin	Endosulfan sulfate		1031-07-8	0.029	0.13
		Endrin		72-20-8	0.0028	0.13
		Endrin aldehyde		7421-93-4	0.025	0.13
P054	Aziridine	Aziridine		151-56-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P056	Fluorine	Fluoride (measured in wastewaters only)		16964-48-8	35	ADGAS fb NEUTR
P057	Fluoroacetamide	Fluoroacetamide		640-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt		62-74-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P059	Heptachlor	Heptachlor		76-44-8	0.0012	0.066
		Heptachlor epoxide		10234-57-3	0.016	0.066
P060	Isodrin	Isodrin		465-73-6	0.021	0.066
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate		757-58-4	CARBN; or CMBST	CMBST
P063	Hydrogen cyanide	Cyanides (Total) <sup>7</sup>		57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>		57-12-5	0.86	30
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester		624-83-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P065	Mercury fulminate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury		7439-97-6	NA	IMERC
	Mercury fulminate nonwastewaters that are either incinerator residues or are residues from RMERC; and contain greater than or equal to 260 mg/kg total mercury.	Mercury		7339-97-6	NA	RMERC
	Mercury fulminate nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury		7439-97-6	NA	0.20 mg/l TCLP
	Mercury fulminate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury		7439-97-6	NA	0.025 mg/l TCLP
P066	All mercury fulminate wastewaters. Methomyl	Mercury		7439-97-6	0.15	NA
		Methomyl		16752-77-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P067	2-Methyl-aziridine	2-Methyl-aziridine		75-55-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P068	Methyl hydrazine	Methyl hydrazine		60-34-4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED, OR CMBST
P069	2-Methylactonitrile	2-Methylactonitrile		75-86-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P070	Aldicarb	Aldicarb		116-06-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P071	Methyl parathion	Methyl parathion		298-00-0	0.014	4.6
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea		86-88-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P073	Nickel carbonyl	Nickel		7440-02-0	3.98	11.0 mg/l TCLP
P074	Nickel-cyanide	Cyanides (Total) <sup>7</sup>		57-12-5	1.2	590

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

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		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	11.0 mg/l TCLP
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG or CMBST	CHOXD; CHRED; or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN; or CMBST	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6
P092	Phenyl mercuric acetate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC; or RMERC
	Phenyl mercuric acetate nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	Phenyl mercuric acetate nonwastewaters that are residues from RMERC and contain less than 160 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Phenyl mercuric acetate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
P093	All phenyl mercuric acetate wastewaters. Phenylthiourea	Mercury Phenylthiourea	7439-97-6 103-85-5	0.15 (WETOX or CHOXD) fb CARBN; or CMBST	NA CMBST
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P096	Phosphine	Phosphine	7803-51-2	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Postassium cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total) <sup>7</sup>	57-12-5	1.2	590
		Cyanides (Amenable) <sup>7</sup>	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.14 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360

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P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	
P103	Selenourea	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
P104	Silver cyanide	Cyanides (Total) <sup>7</sup> Cyanides (Amenable) <sup>7</sup> Silver	57-12-5 57-12-5 7440-22-4	1.2 0.86 0.43	590 30 0.14 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total) <sup>7</sup> Cyanides (Amenable) <sup>7</sup>	57-12-5 57-12-5	1.2 0.86	590 30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P109	Tetraethyldithiopyrophosphate	Tetraethyl- dithiopyrophosphate	3689-24-5	CARBN; or CMBST	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.75 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or CMBST	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P121	Zinc cyanide	Cyanides (Total) <sup>7</sup> Cyanides (Amenable) <sup>7</sup>	57-12-5 57-12-5	1.2 0.86	590 30
P122	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations greater than 10 percent.	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
P127	Carbofuran <sup>10</sup>	Carbofuran	1563-66-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
P128	Mexacarbate <sup>10</sup>	Mexacarbate	315-18-4	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P185	Tirpate <sup>10</sup>	Tirpate	26419-73-8	0.056; or CMBST, CHOXD, BIODG, or CARBN	0.28; or CMBST
P188	Physostigmine salicylate <sup>10</sup>	Physostigmine salicylate	57-64-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P189	Carbosulfan <sup>10</sup>	Carbosulfan	55285-14-8	0.028; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P190	Metolcarb <sup>10</sup>	Metolcarb	1129-41-5	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P191	Dimetilan <sup>10</sup>	Dimetilan	644-64-4	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
P192	Isolan <sup>10</sup>	Isolan	119-38-0	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
P194	Oxamyl <sup>10</sup>	Oxamyl	23135-22-0	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	0.28; <u>or CMBST</u>
P196	Manganese dimethyldithiocarbamate <sup>10</sup>	Dithiocarbamates (total)	NA	0.028; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	28; <u>or CMBST</u>
P197	Formparanate <sup>10</sup>	Formparanate	17702-57-7	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
P198	Formetanate hydrochloride <sup>10</sup>	Formetanate hydrochloride	23422-53-9	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
P199	Methiocarb <sup>10</sup>	Methiocarb	2032-65-7	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
P201	Promecarb <sup>10</sup>	Promecarb	2631-37-0	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
P202	<del>M-Cumenyl methylcarbamate</del> <sup>10</sup> m-Cumenyl methylcarbamate <sup>10</sup>	m-Cumenyl methylcarbamate	64-00-6	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
P203	Aldicarb sulfone <sup>10</sup>	Aldicarb sulfone	1646-88-4	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	0.28; <u>or CMBST</u>
P204	Physostigmine <sup>10</sup>	Physostigmine	57-47-6	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
P205	Ziram <sup>10</sup>	Dithiocarbamates (total)	NA	0.028; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	28; <u>or CMBST</u>
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	CMBST
		Acetonitrile; alternate <sup>6</sup> standard for nonwastewaters only	75-05-8	NA	38
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U012	Aniline	Aniline	62-53-3	0.81	14
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U017	Benzal chloride	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
U018	Benz(a)anthracene	Benz(a)anthracene	56-55-3	0.059	3.4
U019	Benzene	Benzene	71-43-2	0.14	10
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U021	Benzidine	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U022	Benzo(a)pyrene	Benzo(a)pyrene	50-32-8	0.061	3.4
U023	Benzotrichloride	Benzotrichloride	98-07-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U024	bis(2-Chloroethoxy)methane	bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
U025	bis(2-Chloroethyl)ether	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
U026	Chlornaphazine	Chlornaphazine	494-03-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U027	bis(2-Chloroisopropyl)ether	bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
U028	bis(2-Ethylhexyl)phthalate	bis(2-Ethylhexyl)phthalate	117-81-7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74-89-9	0.11	15
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101-55-3	0.055	15
U031	n-Butyl alcohol	n-Butyl alcohol	71-36-3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353-50-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U035	Chlorambucil	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U036	Chlordane	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108-90-7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510-15-6	0.10	CMBST
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59-50-7	0.018	14
U041	Epichlorohydrin	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106-89-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110-75-8	0.062	CMBST
U043	Vinyl chloride	Vinyl chloride	75-01-4	0.27	6.0
U044	Chloroform	Chloroform	67-66-3	0.046	6.0
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74-87-3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U047	2-Chloronaphthalene	2-Chloronaphthalene	91-58-7	0.055	5.6
U048	2-Chlorophenol	2-Chlorophenol	95-57-8	0.044	5.7
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U050	Chrysene	Chrysene	218-01-9	0.059	3.4
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
U052	Cresols (Cresylic acid)	Lead	7439-92-1	0.69	0.75 mg/l TCLP
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
U053	Crotonaldehyde	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U055	Cumene	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U056	Cyclohexane	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	CMBST
		Cyclohexanone; alternate <sup>5</sup> standard for nonwastewaters only	108-94-1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBAN; or CMBST	CMBST
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U060	DDD	o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
U061	DDT	o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U063	Dibenz(a,h)anthracene	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
U064	Dibenz(a,i)pyrene	Dibenz(a,i)pyrene	189-55-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
U067	Ethylene dibromide (1,2-Dibromoethane)	Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	15
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	28
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	6.0
U071	m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	6.0
U072	p-Dichlorobenzene	p-Dichlorobenzene	106-46-7	0.090	6.0
U073	3,3'-Dichlorobenzidine	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U074	1,4-Dichloro-2-butene	cis-1,4-Dichloro-2-butene	1476-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		trans-1,4-Dichloro-2-butene	764-41-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75-71-8	0.23	7.2
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	6.0
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	6.0
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-60-5	0.054	30
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	30
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120-83-2	0.044	14
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87-65-0	0.044	14
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	18
U084	1,3-Dichloropropylene	cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U086	N,N'-Diethylhydrazine	N,N'-Diethylhydrazine	1615-80-1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U087	O,O-Diethyl S-methyldithiophosphate	O,O-Diethyl S-methyldithiophosphate	3288-58-2	CARBN; CMBST	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56-53-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U092	Dimethylamine	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60-11-7	0.13	CMBST
U094	7,12-Dimethylbenz(a)anthracene	7,12-Dimethylbenz(a)anthracene	57-97-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U095	3,3'-Dimethylbenzidine	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U096	alpha, alpha-Dimethyl benzyl hydroperoxide	alpha, alpha-Dimethyl benzyl hydroperoxide	80-15-9	CHOXD; CHRED; CARBN; BIODG; OR CMBST	CHOXD; CHRED; or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57-14-7	CHOXD; CHRED; CARBN; BIODG; OR CMBST	CHOXD; CHRED; or CMBST
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540-73-8	CHOXD; CHRED; CARBN; BIODG; OR CMBST	CHOXD; CHRED; or CMBST
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105-67-9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131-11-3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77-78-1	CHOXD; CHRED; CARBN; BIODG; OR CMBST	CHOXD; CHRED; or CMBST
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121-14-2	0.32	140
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606-20-2	0.55	28
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117-84-0	0.017	28
U108	1,4-Dioxane	1,4-Dioxane	123-91-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		1,4-Dioxane; alternate <sup>6</sup> standard for nonwastewaters only	123-91-1	12.0	170
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; OR CMBST	CHOXD; CHRED; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code NA
		1,2-Diphenylhydrazine; alternate <sup>6</sup> standard for wastewaters only	122-66-7	0.087	NA
U110	Dipropylamine	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621-64-7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141-78-6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U115	Ethylene oxide	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or CMBST	CHOXD; or CMBST
		Ethylene oxide; alternate <sup>6</sup> standard for wastewaters only	75-21-8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U117	Ethyl ether	Ethyl ether	60-29-7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97-63-2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	<del>16964-48-8</del> 87664-39-3	35	ADGAS fb NEUTR; or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
U137	Indeno(1,2,3-cd)pyrene	Indeno(1,2,3-e,d3-cd)pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U144	Lead acetate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.75 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U151	U151 (mercury) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental mercury contaminated with radioactive materials.	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Methanol, alternate <sup>6</sup> set of standards for both wastewaters and nonwastewaters	67-56-1	5.6	0.75 mg/l TCLP
U155	Methapyrilene	Methapyrilene	91-80-5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U157	3-Methylcholanthrene	3-Methylcholanthrene	56-49-5	0.0055	15
U158	4,4'-Methylene bis(2-chloroaniline)	4,4'-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78-93-3	0.28	36
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108-10-1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80-62-6	0.14	160
U163	N-Methyl N'-nitro N-nitrosoguanidine	N-Methyl N'-nitro N-nitrosoguanidine	70-25-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Regulated Hazardous Constituent		Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
		Common Name	CAS <sup>2</sup> No.		
U164	Methylthiouracil	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U165	Naphthalene	Naphthalene	91-20-3	0.059	5.6
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U167	1-Naphthylamine	1-Naphthylamine	134-32-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U168	2-Naphthylamine	2-Naphthylamine	91-59-8	0.52	CMBST
U169	Nitrobenzene	Nitrobenzene	98-95-3	0.068	14
U170	p-Nitrophenol	p-Nitrophenol	100-02-7	0.12	29
U171	2-Nitropropane	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924-16-3	0.40	17
U173	N-Nitrosodiethanolamine	N-Nitrosodiethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U174	N-Nitrosodiethylamine	N-Nitrosodiethylamine	55-18-5	0.40	28
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U179	N-Nitrosopiperidine	N-Nitrosopiperidine	100-75-4	0.013	35
U180	N-Nitrosopyrrolidine	N-Nitrosopyrrolidine	93-55-2	0.013	35
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99-55-8	0.32	28
U182	Paraldehyde	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608-93-5	0.055	10
U184	Pentachloroethane	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Pentachloroethane; alternate <sup>6</sup> standards for both wastewaters and nonwastewaters	76-01-7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitrobenzene	82-68-8	0.055	4.8
U186	1,3-Pentadiene	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U187	Phenacetin	Phenacetin	62-44-2	0.081	16
U188	Phenol	Phenol	108-95-2	0.039	6.2
U189	Phosphorus sulfide	Phosphorus sulfide	1314-80-3	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U190	Phthalic anhydride (measured as phthalic acid or terephthalic acid).	Phthalic anhydride (measured as phthalic acid or terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride	85-44-9	0.055	28
U191	2-Picoline	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U192	Pronamide	Pronamide	23950-58-5	0.093	1.5
U193	1,3-Propane sultone	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
U194	n-Propylamine	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U196	Pyridine	Pyridine	110-86-1	0.014	16
U197	p-Benzoquinone	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U200	Reserpine	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U201	Resorcinol	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
<del>U202</del>	<del>Saccharin and salts</del>	<del>Saccharin</del>	<del>81-07-2</del>	<del>(WETOX or CHOXD) fb CARBN; or CMBST</del>	<del>CMBST</del>
U203	Safrole	Safrole	94-59-7	0.081	22
U204	Selenium dioxide	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
U205	Selenium sulfide	Selenium	7782-49-2	0.82	5.7 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883-66-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127-18-4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56-23-5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U218	Thioacetamide	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U219	Thiourea	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U220	Toluene	Toluene	108-88-3	0.080	10
U221	Toluenediamine	Toluenediamine	25376-45-8	CARBN; or CMBST	CMBST
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U223	Toluene diisocyanate	Toluene diisocyanate	26471-62-5	CARBN; or CMBST	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75-25-2	0.63	15
U226	1,1,1-Trichloroethane	1,1,1-Trichloroethane	71-55-6	0.054	6.0
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79-01-6	0.054	6.0
U234	1,3,5-Trinitrobenzene	1,3,5-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U235	tris-(2,3-Dibromopropyl)-phosphate	tris-(2,3-Dibromopropyl)- phosphate	126-72-7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U237	Uracil mustard	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
U238	Urethane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51-79-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U239	Xylenes	Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
U240	2,4-D (2,4-Dichlorophenoxyacetic acid) salts and esters	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7 NA	0.72 (WETOX or CHOXD) fb CARBN; or CMBST	10 CMBST
U243	Hexachloropropylene	Hexachloropropylene	1888-71-7	0.035	30
U244	Thiram	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U246	Cyanogen bromide	Cyanogen bromide	506-68-3	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
U247	Methoxychlor	Methoxychlor	72-43-5	0.25	0.18
U248	Warfarin, and salts, when present at concentrations of 0.3% or less.	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U249	Zinc phosphide, Zn <sub>3</sub> P <sub>2</sub> , when present at concentrations of 10% or less.	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U271	Benomyl <sup>10</sup>	Benomyl	17804-35-2	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U278	Bendiocarb <sup>10</sup>	Bendiocarb	22781-23-3	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U279	Carbaryl <sup>10</sup>	Carbaryl	63-25-2	0.006; or CMBST, CHOXD, BIODG, or CARBN	0.14; or CMBST
U280	Barban <sup>10</sup>	Barban	101-27-9	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U328	o-Toluidine	o-Toluidine	95-53-4	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U353	p-Toluidine	p-Toluidine	106-49-0	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U359	2-Ethoxyethanol	2-Ethoxyethanol	110-80-5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U364	Bendiocarb phenol <sup>10</sup>	Bendiocarb phenol	22961-82-6	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U367	Carbofuran phenol <sup>10</sup>	Carbofuran phenol	1563-38-8	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U372	Carbendazim <sup>10</sup>	Carbendazim	10605-21-7	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U373	Propham <sup>10</sup>	Propham	122-42-9	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U387	Prosulfocarb <sup>10</sup>	Prosulfocarb	52888-80-9	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U389	Triallate <sup>10</sup>	Triallate	2303-17-5	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U394	A2213 <sup>10</sup>	A2213	30558-43-1	0.042; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U395	Diethylene glycol, dicarbamate <sup>10</sup>	Diethylene glycol, dicarbamate	5952-26-1	0.056; or CMBST, CHOXD, BIODG, or CARBN	1.4; or CMBST
U404	Triethylamine <sup>10</sup>	Triethylamine	<del>101-44-8</del> 121-44-8	0.081; or CMBST, CHOXD, BIODG, or CARBN	1.5; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES  
Regulated Hazardous Constituent

Waste Code	Waste Description and Treatment/Regulatory Subcategory <sup>1</sup>	Common Name	CAS <sup>2</sup> No.	Wastewaters Concentration <sup>3</sup> mg/l <sup>3</sup> ; or Technology Code <sup>4</sup>	Nonwastewaters Concentration <sup>5</sup> in mg/kg <sup>6</sup> unless noted as "mg/l TCLP"; or Technology Code
U409	Thiophanate-methyl <sup>10</sup>	Thiophanate-methyl	23564-05-8	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
U410	Thiodicarb <sup>10</sup>	Thiodicarb	59669-26-0	0.019; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>
U411	Propoxur <sup>10</sup>	Propoxur	114-26-1	0.056; <u>or CMBST, CHOXD, BIODG, or CARBN</u>	1.4; <u>or CMBST</u>

Notes to Table:

- 1.The waste descriptions provided in this table do not replace waste descriptions in chapter 33-24-02. Descriptions of treatment/regulatory subcategories are provided, as needed, to distinguish between applicability of different standards.
- 2.CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
- 3.Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.
- 4.All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in section 33-24-05-282 Table 1 - Technology Codes and Descriptions of Technology-Based Standards.
- 5.Except for metals (extraction procedure or toxicity characteristic leaching procedure) and cyanides (total and amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of sections 33-24-05-144 through 33-24-05-159 or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in subsection 4 of section 33-24-05-280. All concentration standards for nonwastewaters are based on analysis of grab samples.
- 6.Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the treatment/regulatory subcategory or physical form (for example, wastewater and/or nonwastewater) specified for that alternate standard.
- 7.Both cyanides (total) and cyanides (amenable) for nonwastewaters are to be analyzed using Method ~~90409010C~~ or ~~90429012B~~, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", Environmental Protection Agency publication SW-846, as incorporated by reference in section 33-24-01-05, with a sample size of 10 grams and a distillation time of one hour and fifteen minutes.
- 8.These wastes, when rendered nonhazardous and then subsequently managed in Clean Water Act, or Clean Water Act-equivalent systems, are not subject to treatment standards. (See subdivisions c and d of subsection 3 of section 33-24-05-250.)
- 9.These wastes, when rendered nonhazardous and then subsequently injected in a class I Safe Drinking Water Act well are not subject to treatment standards. (See 40 CFR section 148.1(d).)
- 10.The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST in table 1 in section 33-24-05-282, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined by the technology code CMBST in table 1 of section 33-24-05-282, for wastewaters.
- 11.For these wastes, the definition of CMBST is limited to: (1) combustion units operating under sections 33-24-05-201 through 33-24-05-249, (2) combustion units permitted under sections 33-24-05-144 through 33-24-05-159, or (3) combustion units operating under the applicable standards of subsection 5 of section 33-24-06-16, which have obtained a determination of equivalent treatment under subsection 2 of section 33-24-05-282.
- 12.Disposal of K175 wastes that have complied with all applicable section 33-24-05-280 treatment standards must also be macroencapsulated in accordance with section 33-24-05-285 table 1 unless the waste is placed in: (1) A monofill regulated under article 33-20 containing only K175 wastes that meet all applicable section 33-24-05-280 treatment standards; or (2) A dedicated landfill cell regulated under article 33-20 in which all other wastes being co-disposed are at pH 6.0 or less.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-282. Treatment standards expressed as specified technologies.

1. The following wastes in the table in section 33-24-05-280 "Treatment Standards for Hazardous Wastes", for which standards are expressed as a treatment method rather than a concentration level, must be treated using the technology or technologies specified in the table entitled "Technology Codes and Description of Technology-Based Standards" in this section.

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
ADGAS:	Venting of compressed gases into an absorbing or reacting media (for example, solid or liquid)-venting can be accomplished through physical release utilizing valves/piping; physical penetration of the container; and/or penetration through detonation.
AMLGM:	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semi-solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG:	Biodegradation of organics or non-metallic inorganics (for example, degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, Total Organic Carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).
CARBN:	Carbon adsorption (granulated or powdered) of non-metallic inorganics, organo-metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough (for example, Total Organic Carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.
CHOXD:	Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) Hypochlorite (e.g. bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permangantes; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.
CHRED:	Chemical reduction utilizing the following reducing reagents (or waste reagents) or combinations of reagents: (1) Sulfur dioxide; (2) sodium, potassium, or alkali salts or sulfites, bisulfites, metabisulfites, and polyethylene glycols (for example, NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
	concentration in the residuals (for example, Total Organic Halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.
CMBST:	High temperature organic destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of sections 33-24-05-144 through 33-24-05-159, sections 33-24-05-525 through 33-24-05-549, or subsection 5 of section 33-24-06-16, and in other units operated in accordance with applicable technical operating requirements; and certain noncombustive technologies, such as the catalytic extraction process.
DEACT:	Deactivation to remove the hazardous characteristics of a waste due to its ignitability, corrosivity, and/or reactivity.
FSUBS:	Fuel substitution in units operated in accordance with applicable technical operating requirements.
HLVIT:	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
IMERC:	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of sections 33-24-05-144 through 33-24-05-159. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (for example, High or Low Mercury Subcategories).
INCIN:	Incineration in units operated in accordance with the technical operating requirements of sections 33-24-05-144 through 33-24-05-159.
LLEXT:	Liquid-liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that must undergo further treatment as specified in the standard.
MACRO:	Macroencapsulation with surface coating materials such as polymeric organics (e.g. resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to section 33-24-01-04.
NEUTR:	Neutralization with the following reagents (or waste reagents) or combinations of reagents: (1) Acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.
NLDBR:	No land disposal based on recycling.
POLYM:	Formation of complex high-molecular weight solids through polymerization of monomers in high-total organic carbon D001 nonwastewaters which are chemical components in the manufacture of plastics.
PRECP:	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates,

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
	chlorides, flourides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) Lime (for example, containing oxides and/or hydroxides of calcium and/or magnesium; (2) caustic (for example, sodium and/or potassium hydroxides; (3) soda ash (for example, sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional flocculating, coagulation or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.
RBERY:	Thermal recovery of Beryllium.
RCGAS:	Recovery/reuse of compressed gases including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
RCORR:	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) Distillation (for example, thermal concentration); (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and/or (5) incineration for the recovery of acid - Note: This does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RLEAD:	Thermal recovery of lead in secondary lead smelters.
RMERC:	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit (or facility) must be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (for example, High or Low Mercury Subcategories).
RMETL:	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) Ion exchange; (2) resin or solid (for example, zeolites) adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystallization; (6) ultrafiltration and/or (7) simple precipitation (for example, crystallization) - Note: This does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RORGS:	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid-liquid extraction; (7) precipitation/crystallization (including freeze crystallization); or (8) chemical phase separation techniques (for example, addition of acids, bases, demulsifiers, or similar chemicals) - Note: This does not preclude the use of other physical phase separation techniques such as a decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
RTHRM:	Thermal recovery of metals or inorganics from nonwastewaters in units identified as industrial furnaces according to subdivisions a, f, g, k, and l of subsection 45 of section 33-24-01-04 under the definition of "industrial furnaces".
RZINC:	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.
STABL:	Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (for example, fly ash and cement kiln dust) - this does not preclude the addition of reagents (for example, iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
SSTRP:	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as, temperature and pressure ranges, have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit, such as, the number of separation stages and the internal column design. Thus, design, thus resulting in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard.
WETOX:	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).
WTRRX:	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: When a combination of these technologies (for example, a treatment train) is specified as a single treatment standard, the order of application is specified in section 33-24-05-282, table 2 by indicating the five letter technology code that must be applied first, then the designation "fb" (an abbreviation for "followed by"), then the five letter technology code for the technology that must be applied next, and so on.

Note 2: When more than one technology (or treatment train) are specified as alternative treatment standards, the five letter technology codes (or the treatment trains) are separated by a semicolon(;) with the last technology preceded by the word "or". This indicates that any one of these BDAT technologies or treatment trains can be used for compliance with the standard.

2. Any person may submit an application to the administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in subsections 1, 3, and 4 for wastes or specified in table 1 of section 33-24-05-285 for hazardous debris. The applicant must submit information demonstrating that the applicant's treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the administrator may approve the use of the alternative treatment method if the administrator finds that the alternative treatment method provides a

measure of performance equivalent to that achieved by methods specified in subsections 1, 3, and 4 for wastes or in table 1 of section 33-24-05-285 for hazardous debris. Any approval must be stated in writing and may contain such provisions and conditions as the administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

3. As an alternative to the otherwise applicable sections 33-24-05-280 through 33-24-05-289 treatment standards, lab packs are eligible for land disposal provided the following requirements are met:
  - a. The lab packs comply with the applicable provisions of section 33-24-05-185;
  - b. The lab pack does not contain any of the wastes listed in appendix VIII of chapter 33-24-05;
  - c. The lab packs are incinerated in accordance with the requirements of sections 33-24-05-144 through 33-24-05-159; and
  - d. Any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for such wastes in sections 33-24-05-280 through 33-24-05-289.
4. Radioactive hazardous mixed wastes are subject to the treatment standards in section 33-24-05-280. Where treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards will govern. Where there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste (as designated by environmental protection agency/state waste code) applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in section 33-24-05-285.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-284. Variance from a treatment standard.**

1. Based on a petition filed by a generator or treater of hazardous waste, the administrator may approve a variance from an applicable treatment standard if:
  - a. It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or
  - b. It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:
    - (1) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media); or

- (2) For remediation waste only, treatment to the specified level, or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.
2. Each petition must be submitted in accordance with the procedures in section 33-24-01-06.
3. These petitions must include the following statement signed by the petitioner or an authorized representative: (I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.)
4. After receiving a petition for variance from a treatment standard, the administrator may request any additional information or samples which the administrator may require to evaluate the petition. Additional copies of the complete petition may be requested as needed to send to affected states and to the environmental protection agency regional offices.
5. The administrator will give public notice in the federal register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a variance from a treatment standard will be published in the federal register.
6. A generator, treatment facility, or disposal facility that is managing a waste covered by a variance from the treatment standards shall comply with the waste analysis requirements for restricted wastes found under section 33-24-05-256.
7. During the petition review process, an applicant is required to comply with all restrictions on land disposal under sections 33-24-05-250 through 33-24-05-299 once the effective date for the waste has been reached.
8. Based on a petition filed by a generator or treater of hazardous waste, the ~~department~~administrator, or the administrator's delegated representative, may approve a site-specific variance from an applicable treatment standard if:
  - a. It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method;  
or
  - b. It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:
    - (1) Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media when the treatment standard is not based on combustion of such media); or
    - (2) For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

- c. For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (for example, lower than) the concentrations necessary to minimize short- and long-term threats to human health and the environment. Treatment variances approved under this ~~subdivision~~subsection must:
    - (1) At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario:
      - (a) For carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from  $10^{-4}$  to  $10^{-6}$ ; and
      - (b) For constituents with noncarcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.
    - (2) Not consider post-land-disposal controls.
  - d. For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (for example, lower than) natural background concentrations at the site where the contaminated soil will be land disposed.
  - e. Public notice and reasonable opportunity for public comment must be provided before granting or denying a petition.
9. Each application for a site-specific variance from a treatment standard must include the information in subdivisions a through d of subsection 2 of section 33-24-01-06.
  10. After receiving an application for a site-specific variance from a treatment standard, the assistant administrator, or a delegated representative, may request any additional information or samples which may be required to evaluate the application.
  11. A generator, treatment facility, or disposal facility that is managing a waste governed by a site-specific variance from a treatment standard must comply with the waste analysis requirements for restricted wastes found under section 33-24-05-256.
  12. During the application review process, the applicant for a site-specific variance must comply with all restrictions on land disposal under ~~this chapter~~sections 33-24-05-250 through 33-24-05-299 once the effective date for the waste has been reached.
  13. For all variances, the petitioner must also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, the ~~department~~environmental protection agency may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal pursuant to sections 33-24-05-201 through 33-24-05-209.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-285. Treatment standards for hazardous debris.

1. **Treatment standards.** Hazardous debris must be treated prior to land disposal as follows unless the department determines under subdivision b of subsection 5 of section 33-24-02-03 that the debris is no longer contaminated with hazardous waste or the debris is treated to the waste-specific treatment standard provided in sections 33-24-05-280 through 33-24-05-289 for the waste contaminating the debris.
  - a. General. Hazardous debris must be treated for each "contaminant subject to treatment" defined by subsection 2 using the technology or technologies identified in table 1 of this section.
  - b. Characteristic debris. Hazardous debris that exhibits the characteristic of ignitability, corrosivity, or reactivity identified under sections 33-24-02-11, 33-24-02-12, and 33-24-02-13, respectively, must be deactivated by treatment using one of the technologies identified in table 1 of this section.
  - c. Mixtures of debris types. The treatment standards of table 1 in this section must be achieved for each type of debris contained in a mixture of debris types. If an immobilization technology is used in a treatment train, it must be the last treatment technology used.
  - d. Mixtures of contaminant types. Debris that is contaminated with two or more contaminants subject to treatment identified under subsection 2 must be treated for each contaminant using one or more treatment technologies identified in table 1 of this section. If an immobilization technology is used in a treatment train, it must be the last treatment technology used.
  - e. Waste polychlorinated biphenyls. Hazardous debris that is also a waste polychlorinated biphenyl under 40 CFR part 761 is subject to the requirements of either 40 CFR part 761 or the requirements of this section, whichever are more stringent.
2. **Contaminants subject to treatment.** Hazardous debris must be treated for each "contaminant subject to treatment". The contaminants subject to treatment must be determined as follows:
  - a. Toxicity characteristic debris. The contaminants subject to treatment for debris that exhibits the toxicity characteristic (TC) by section 33-24-02-14 are those extraction procedure constituents (hazardous waste numbers D004 through D017) for which the debris exhibits the toxicity characteristic.
  - b. Debris contaminated with listed waste. The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents or wastes for which treatment standards are established for waste under section 33-24-05-280.
  - c. Cyanide reactive debris. Hazardous debris that is reactive because of cyanide must be treated for cyanide.
3. **Conditioned exclusion of treated debris.** Hazardous debris that has been treated using one of the specified extraction or destruction technologies in table 1 of this section and that does not exhibit a characteristic of hazardous waste identified under sections 33-24-02-10 through 33-24-02-14 after treatment is not a hazardous waste and need not be managed in a ~~subtitle C~~ **hazardous waste** facility. Hazardous debris contaminated with a listed waste that is treated by an immobilization technology specified in table 1 is a hazardous waste and must be managed in a ~~subtitle C~~ **hazardous waste** facility.

**4. Treatment residuals.**

- a. General requirements. Except as provided by subdivisions b and d:
  - (1) Residue from the treatment of hazardous debris must be separated from the treated debris using simple physical or mechanical means; and
  - (2) Residue from the treatment of hazardous debris is subject to the waste-specific treatment standards provided by sections 33-24-05-280 through 33-24-05-289 for the waste contaminating the debris.
- b. Nontoxic debris. Residue from the deactivation of ignitable, corrosive, or reactive characteristic hazardous debris (other than cyanide-reactive) that is not contaminated with a contaminant subject to treatment defined by subsection 2, must be deactivated prior to land disposal and is not subject to the waste-specific treatment standards of sections 33-24-05-280 through 33-24-05-289.
- c. Cyanide-reactive debris. Residue from the treatment of debris that is reactive because of cyanide must meet the treatment standards for D003 in "treatment standards for hazardous wastes" at section 33-24-05-280.
- d. Ignitable nonwastewater residue. Ignitable nonwastewater residue containing equal to or greater than ten percent total organic carbon is subject to the technology specified in the treatment standard for D001: ignitable liquids.
- e. Residue from spalling. Layers of debris removed by spalling are hazardous debris that remain subject to the treatment standards of this section.

**Table 1. Alternative Treatment Standards for Hazardous Debris<sup>1</sup>**

Technology Description	Performance and/or Design and Operating Standard	Contaminant Restrictions <sup>2</sup>
<b>A. Extraction Technologies:</b>		
<b>1. Physical Extraction</b>		
a. Abrasive Blasting: Removal of contaminated debris surface layers using water and/or air pressure to propel a solid media (for example, steel shot, aluminum oxide grit, plastic beads).	Glass, Metal, Plastic, Rubber: Treatment to a clean debris surface. <sup>3</sup>  Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood: Removal of at least 0.6 cm of the surface layer; treatment to a clean debris surface. <sup>3</sup>	All Debris: None.
b. Scarification, Grinding, and Planing: Process utilizing striking piston heads, saws, or rotating grinding wheels such that contaminated debris surface layers are removed.	Same as above.	Same as above.
c. Spalling: Drilling or chipping holes at appropriate locations and depth in the contaminated debris surface and applying a tool which exerts a force on the sides of those holes such that the surface layer is removed. The surface layer removed remains hazardous debris subject to the	Same as above.	Same as above.

**Table 1. Alternative Treatment Standards for Hazardous Debris<sup>1</sup>**

Technology Description	Performance and/or Design and Operating Standard	Contaminant Restrictions <sup>2</sup>
<p>debris treatment standards.                      d. Vibratory Finishing: Process utilizing scrubbing media, flushing fluid, and oscillating energy such that hazardous contaminants or contaminated debris surface layers are removed.<sup>4</sup></p>	Same as above.	Same as above.
<p>e. High Pressure Steam and Water Sprays: Application of water or steam sprays of sufficient temperature, pressure, residence time, agitation, surfactants, and detergents to remove hazardous contaminants from debris surfaces or to remove contaminated debris surface layers.</p>	Same as above.	Same as above.
<p>2. Chemical Extraction</p>	<p>a. Water Washing and Spraying: All Debris: Treatment to a clean debris surface<sup>3</sup>;</p>	<p>Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood: Contaminant must be soluble to at least 5% by weight in water solution or 5% by weight in emulsion; if debris is contaminated with a dioxin-listed waste,<sup>6</sup> and "Equivalent Technology" approval under subsection 2 of section 33-24-05-282 must be obtained.<sup>8</sup></p>
<p>Application of water sprays or water baths of sufficient temperature, pressure, residence time, agitation, surfactants, acids, bases, and detergents to remove hazardous contaminants from debris surfaces and surface pores or to remove contaminated debris surface layers.</p>	<p>Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood: Debris must be no more than 1.2 cm (1/2 inch) in one dimension (for example, thickness limit,<sup>5</sup> except that this thickness limit may be waived under an "Equivalent Technology" approval under subsection 2 of section 33-24-05-282;<sup>8</sup> debris surfaces must be in contact with water solution for at least 15 minutes.</p>	<p>Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood: Same as above, except that contaminant must be soluble to at least 5% by weight in the solvent.</p>
<p>b. Liquid Phase Solvent Extraction: Removal of hazardous contaminants from debris surfaces and surface pores by applying a nonaqueous liquid or liquid solution which causes the hazardous contaminants to enter the liquid phase and be flushed away from the debris along with the liquid or liquid solution while using appropriate agitation, temperature, and residence time.<sup>4</sup></p>	Same as above.	
<p>c. Vapor Phase Solvent Extraction: Application of an organic vapor using sufficient agitation, residence time, and temperature to cause hazardous contaminants on contaminated debris surfaces and surface pores to enter the vapor phase and be flushed away with the organic vapor.<sup>4</sup></p>	<p>Same as above, except that brick, cloth, concrete, paper, pavement, rock and wood surfaces must be in contact with the organic vapor for at least 60 minutes.</p>	Same as above.

**Table 1. Alternative Treatment Standards for Hazardous Debris<sup>1</sup>**

Technology Description	Performance and/or Design and Operating Standard	Contaminant Restrictions <sup>2</sup>
<p>3. Thermal Extraction                      a. High Temperature Metals Recovery: Application of sufficient heat, residence time, mixing, fluxing agents, and/or carbon in a smelting, melting, or refining furnace to separate metals from debris.</p>	<p>For refining furnaces, treated debris must be separated from treatment residuals using simple physical or mechanical means,<sup>9</sup> and, prior to further treatment, such residuals must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.</p>	<p>Debris contaminated with a dioxin-listed waste:<sup>5</sup> Obtain an "Equivalent Technology" approval under subsection 2 of section 33-24-05-282.<sup>8</sup></p>
<p>b. Thermal Desorption: Heating in an enclosed chamber under either oxidizing or nonoxidizing atmospheres at sufficient temperature and residence time to vaporize hazardous contaminants from contaminated surfaces and surface pores and to remove the contaminants from the heating chamber in a gaseous exhaust gas.<sup>7</sup></p>	<p>All Debris: Obtain an "Equivalent Technology" approval under subsection 2 of section 33-24-05-282;<sup>8</sup> treated debris must be separated from treatment residuals using simple physical or mechanical means,<sup>9</sup> and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.</p>	<p>All Debris: Metals other than mercury.</p>
<p>B. Destruction Technologies:</p>	<p>Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood: Debris must be no more than 10 cm (4 inches) in one dimension (for example, thickness limit),<sup>5</sup> except that this thickness limit may be waived under the "Equivalent Technology" approval.</p>	
<p>1. Biological Destruction (Biodegradation): Removal of hazardous contaminants from debris surfaces and surface pores in an aqueous solution and biodegradation of organic or nonmetallic inorganic compounds (for example, inorganics that contain phosphorus, nitrogen, or sulfur) in units operated under either aerobic or anaerobic conditions.</p>	<p>All Debris: Obtain an "Equivalent Technology" approval under subsection 2 of section 33-24-05-282;<sup>8</sup> treated debris must be separated from treatment residuals using simple physical or mechanical means,<sup>9</sup> and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.</p>	<p>All Debris: Metal contaminants.</p>
	<p>Brick, Cloth, Concrete, Paper, Pavement, Rock, wood: Debris must be no more than 1.2 cm (1/2 inch) in one dimension (for example, thickness limit),<sup>5</sup> except that this thickness limit may be</p>	

**Table 1. Alternative Treatment Standards for Hazardous Debris<sup>1</sup>**

Technology Description	Performance and/or Design and Operating Standard waived under the "Equivalent Technology" approval.	Contaminant Restrictions <sup>2</sup>
<p>2. Chemical Destruction</p> <p>a. Chemical Oxidation: Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combination of reagents-(1) hypochlorite (for example, bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permanganates; and/or (9) other oxidizing reagents of equivalent destruction efficiency.<sup>4</sup> Chemical oxidation specifically includes what is referred to as alkaline chlorination.</p>	<p>All Debris: Obtain an "Equivalent Technology" approval under subsection 2 of section 33-24-05-282;<sup>8</sup> treated debris must be separated from treatment residuals using simple physical or mechanical means,<sup>9</sup> and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.</p> <p>Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood: Debris must be no more than 1.2 cm (1/2 inch) in one dimension (for example, thickness limit),<sup>5</sup> except that this thickness limit may be waived under the "Equivalent Technology" approval.</p>	<p>All Debris: Metal contaminants.</p>
<p>b. Chemical Reduction: Chemical reaction utilizing the following reducing reagents (or waste reagents) or combination of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali salts of sulfites, bisulfites, and metabisulfites, and polyethylene glycols (for example, NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency.<sup>4</sup></p>	<p>Save as above.</p>	<p>Same as above.</p>
<p>3. Thermal Destruction: Treatment in an incinerator operating in accordance with sections 33-24-05-144 through 33-24-05-159 or Subpart O of 40 CFR 265; a boiler or industrial furnace operating in accordance with sections 33-24-05-525 through 33-24-05-549, or other thermal treatment unit operated in accordance with sections 33-24-05-299 through 33-24-05-399, or Subpart P, Part 265 of the 40 CFR, but excluding for purposes of these debris treatment standards</p>	<p>Treated debris must be separated from treatment residuals using simple physical or mechanical means,<sup>9</sup> and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.</p>	<p>Brick, Concrete, Glass, Metal, Pavement, Rock, Metal: Metals other than mercury, except that there are no metal restrictions for vitrification. Debris contaminated with a dioxin-listed waste.<sup>6</sup> Obtain an "Equivalent Technology" approval under subsection 2 of section 33-24-05-282,<sup>8</sup> except that this requirement does not apply to vitrification.</p>

**Table 1. Alternative Treatment Standards for Hazardous Debris<sup>1</sup>**

Technology Description	Performance and/or Design and Operating Standard	Contaminant Restrictions <sup>2</sup>
Thermal Desorption units.		
C. Immobilization Technologies:		
1. Macroencapsulation: Application of surface coating materials such as polymeric organics (for example, resins and plastics) or use of a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media.	Encapsulating material must completely encapsulate debris and be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes).	None.
2. Microencapsulation: Stabilization of the debris with the following reagents (or waste reagents) such that the leachability of the hazardous contaminants is reduced:	Leachability of the hazardous contaminants must be reduced.	None.
(1) Portland cement; or (2) lime/pozzolans (for example, fly ash and cement kiln dust). Reagents (for example, iron salts, silicates, and clays) may be added to enhance the set/cure time and/or compressive strength, or to reduce the leachability of the hazardous constituents. <sup>5</sup>		
3. Sealing: Application of an appropriate material which adheres tightly to the debris surface to avoid exposure of the surface to potential leaching media. When necessary to effectively seal the surface, sealing entails pretreatment of the debris surface to remove foreign matter and to clean and roughen the surface.	Sealing must avoid exposure of the debris surface to potential leaching media and sealant must be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes).	None.
Sealing materials include epoxy, silicone, and urethane compounds, but paint may not be used as a sealant.		

FOOTNOTE: <sup>1</sup>Hazardous debris must be treated by either these standards of the waste-specific treatment standards for the waste contaminating the debris. The treatment standards must be met for each type of debris contained in a mixture of debris types, unless the debris is converted into treatment residue as a result of the treatment process. Debris treatment residuals are subject to the waste-specific treatment standards for the waste contaminating the debris.

FOOTNOTE: <sup>2</sup>Contaminant restriction means that the technology is not BDAT for that contaminant. If debris containing a restricted contaminant is treated by the technology, the contaminant must be subsequently treated by a technology for which it is not restricted in order to be land disposed (and excluded from Article 33-24).

FOOTNOTE: <sup>3</sup>"Clean debris surface" means the surface, when viewed without magnification, shall be free of all visible contaminated soil and hazardous waste except that residual staining from soil and waste consisting of light shadows, slight streaks, or minor discolorations, and soil and waste in cracks, crevices, and pits may be present provided that such staining and waste and soil in cracks, crevices,

and pits shall be limited to no more than 5% of each square inch of surface area.

FOOTNOTE: <sup>4</sup>Acids, solvents, and chemical reagents may react with some debris and contaminants to form hazardous compounds. For example, acid washing of cyanide-contaminated debris could result in the formation of hydrogen cyanide. Some acids may also react violently with some debris and contaminants, depending on the concentration of the acid and the type of debris and contaminants. Debris treaters should refer to the safety precautions specified in Material Safety Data Sheets for various acids to avoid applying an incompatible acid to a particular debris/contaminant combination. For example, concentrated sulfuric acid may react violently with certain organic compounds, such as acrylonitrile.

FOOTNOTE: <sup>5</sup>If reducing the particle size of debris to meet the treatment standards results in material that no longer meets the 60 mm minimum particle size limit for debris, such material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste prior to size reduction. At a minimum, simple physical or mechanical means must be used to provide such cleaning and separation of nondebris materials to ensure that the debris surface is free of caked soil, waste, or other nondebris material.

FOOTNOTE: <sup>6</sup>Dioxin-listed wastes are hazardous waste numbers F020, F021, F022, F023, F026, and F027.

FOOTNOTE: <sup>7</sup>Thermal desorption is distinguished from Thermal Destruction in that the primary purpose of Thermal Desorption is to volatilize contaminants and to remove them from the treatment chamber for subsequent destruction or other treatment.

FOOTNOTE: <sup>8</sup>The demonstration "Equivalent Technology" under subsection 2 of section 33-24-05-282 must document that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in this table such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent management controls.

FOOTNOTE: <sup>9</sup>Any soil, waste, and other nondebris material that remains on the debris surface (or remains mixed with the debris) after treatment is considered a treatment residual that must be separated from the debris using, at a minimum, simple physical or mechanical means. Examples of simple physical or mechanical means are vibratory or trommel screening or water washing. The debris surface need not be cleaned to a "clean debris surface" as defined in note 3 when separating treated debris from residue; rather, the surface must be free of caked soil, waste, or other nondebris material. Treatment residuals are subject to the waste-specific treatment standards for the waste contaminating the debris.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-288. Universal treatment standards.**

Table "Universal Treatment Standards" identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents as defined in subsection 10 of section 33-24-05-251, these treatment standards may not be exceeded. Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following table "Universal Treatment Standards".

**Universal Treatment Standards**

Regulated Constituent/ Common Name	CAS <sup>1</sup> Number	Wastewater	Nonwastewater
		Standard Concentration <sup>2</sup> in mg/l <sup>2</sup>	Standard Concentration <sup>3</sup> in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
<b>I. Organic Constituents:</b>			
Acenaphthene	83-32-9	0.059	3.4
Acenaphthylene	208-96-8	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	38
Acetophenone	96-86-2	0.010	9.7
2-Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
<del>Aldicarb sulfone<sup>6</sup></del>	<del>1646-88-4</del>	<del>0.056</del>	<del>0.28</del>
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14
<u>o-Anisidine (2-methoxyaniline)</u>	<u>90-04-0</u>	<u>0.010</u>	<u>0.66</u>
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-85-7	0.00014	0.066
beta-BHC	319-84-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
<del>Barban<sup>6</sup></del>	<del>101-27-9</del>	<del>0.056</del>	<del>1.4</del>
<del>Bendiocarb<sup>6</sup></del>	<del>22781-23-3</del>	<del>0.056</del>	<del>1.4</del>
<del>Benomy<sup>6</sup></del>	<del>17804-35-2</del>	<del>0.056</del>	<del>1.4</del>
Benz(a)anthracene	56-55-3	0.059	3.4
Benzal chloride	98-87-3	0.055	6.0
Benzene	71-43-2	0.14	10
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
Benzo(a)pyrene	50-32-8	0.061	3.4
Bromodichloromethane	75-27-4	0.35	15
Bromomethane/Methyl bromide	74-83-9	0.11	15
4-Bromophenyl phenyl ether	101-55-3	0.055	15
n-Butyl alcohol	71-36-3	5.6	2.6
Butyl benzyl phthalate	85-68-7	0.017	28
<del>Butylate<sup>6</sup></del>	<del>2008-41-5</del>	<del>0.042</del>	<del>1.4</del>
2-sec-Butyl-4,6-dinitrophenol/ Dinoseb	88-85-7	0.066	2.5
<del>Carbaryl<sup>6</sup></del>	<del>63-25-2</del>	<del>0.006</del>	<del>0.14</del>
<del>Carbenzadim<sup>6</sup></del>	<del>10605-21-7</del>	<del>0.056</del>	<del>1.4</del>
<del>Carbofuran<sup>6</sup></del>	<del>1563-66-2</del>	<del>0.006</del>	<del>0.14</del>
<del>Carbofuran-phenol<sup>6</sup></del>	<del>1563-38-8</del>	<del>0.056</del>	<del>1.4</del>
Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56-23-5	0.057	6.0
<del>Carbesulfan<sup>6</sup></del>	<del>55285-14-8</del>	<del>0.028</del>	<del>1.4</del>
Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
p-Chloroaniline	106-47-8	0.46	16
Chlorobenzene	108-90-7	0.057	6.0
Chlorobenzilate	510-15-6	0.10	NA
2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
Chlorodibromomethane	124-48-1	0.057	15
Chloroethane	75-00-3	0.27	6.0
bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
2-Chloroethyl vinyl ether	110-75-8	0.062	NA
Chloroform	67-66-3	0.046	6.0
bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2

Universal Treatment Standards

Regulated Constituent/ Common Name	CAS <sup>1</sup> Number	Wastewater Standard Concentration <sup>2</sup> in mg/l <sup>2</sup>	Nonwastewater Standard Concentration <sup>3</sup> in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
p-Chloro-m-cresol	59-50-7	0.018	14
Chloromethane/methyl chloride	74-87-3	0.19	30
2-Chloronaphthalene	91-58-7	0.055	5.6
2-Chlorophenol	95-57-8	0.044	5.7
3-Chloropropylene	107-05-1	0.036	30
Chrysene	218-01-9	0.059	3.4
<u>p-Cresidine</u>	<u>120-71-8</u>	<u>0.010</u>	<u>0.66</u>
o-Cresol	95-48-7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
<b>m-Cumenyl methylcarbamate<sup>6</sup></b>	<b>64-00-6</b>	<b>0.056</b>	<b>1.4</b>
Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
o,p'-DD	53-19-0	0.023	0.087
p,p'-DDD	72-54-8	0.023	0.087
o,p'-DDE	3424-82-6	0.031	0.087
p,p'-DDE	72-55-9	0.031	0.087
o,p'-DDT	789-02-6	0.0039	0.087
p,p'-DDT	50-29-3	0.0039	0.087
Dibenz(a,h)anthracene	53-70-3	0.055	8.2
Dibenz(a,e)pyrene	192-65-4	0.061	NA
1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
1,2-Dibromoethane/Ethylene dibromide	106-93-4	0.028	15
Dibromomethane	74-95-3	0.11	15
m-Dichlorobenzene	541-73-1	0.036	6.0
o-Dichlorobenzene	95-50-1	0.088	6.0
p-Dichlorobenzene	106-46-7	0.090	6.0
Dichlorodifluoromethane	75-71-8	0.23	7.2
1,1-Dichloroethane	75-34-3	0.059	6.0
1,2-Dichloroethane	107-06-2	0.21	6.0
1,1-Dichloroethylene	75-35-4	0.025	6.0
trans-1,2-Dichloroethylene	156-60-5	0.054	30
2,4-Dichlorophenol	120-83-2	0.044	14
2,6-Dichlorophenol	87-65-0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D	94-75-7	0.72	10
1,2-Dichloropropane	78-87-5	0.85	18
cis-1,3-Dichloropropylene	10061-01-5	0.036	18
trans-1,3-Dichloropropylene	10061-02-6	0.036	18
Dieldrin	60-57-1	0.017	0.13
Diethyl phthalate	84-66-2	0.20	28
p-Dimethylaminoazobenzene	60-11-7	0.13	NA
<u>2,4-Dimethylaniline (2,4-xylydine)</u>	<u>95-68-1</u>	<u>0.010</u>	<u>0.66</u>
2,4-Dimethyl phenol	105-67-9	0.036	14
Dimethyl phthalate	131-11-3	0.047	28
Di-n-butyl phthalate	84-74-2	0.057	28
1,4-Dinitrobenzene	100-25-4	0.32	2.3
4,6-Dinitro-o-cresol	534-52-1	0.28	160
2,4-Dinitrophenol	51-28-5	0.12	160
2,4-Dinitrotoluene	121-14-2	0.32	140
2,6-Dinitrotoluene	606-20-2	0.55	28
Di-n-octyl phthalate	117-84-0	0.017	28
Di-n-propylnitrosamine	621-64-7	0.40	14
1,4-Dioxane	123-91-1	12.0	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
1,2-Diphenylhydrazine	122-66-7	0.087	NA
Disulfoton	298-04-4	0.017	6.2

**Universal Treatment Standards**

<b>Regulated Constituent/ Common Name</b>	<b>CAS<sup>1</sup> Number</b>	<b>Wastewater Standard Concentration<sup>2</sup> in mg/l<sup>2</sup></b>	<b>Nonwastewater Standard Concentration<sup>3</sup> in mg/kg<sup>3</sup> unless noted as "mg/l TCLP"</b>
<del>Dithiocarbamates (total)<sup>6</sup></del>	<del>NA</del>	<del>0.028</del>	<del>28</del>
Endosulfan I	959-98-8	0.023	0.066
Endosulfan II	33213-65-9	0.029	0.13
Endosulfan sulfate	1031-07-8	0.029	0.13
Endrin	72-20-8	0.0028	0.13
Endrin aldehyde	7421-93-4	0.025	0.13
<del>EPTC<sup>6</sup></del>	<del>759-94-4</del>	<del>0.042</del>	<del>1.4</del>
Ethyl acetate	141-78-6	0.34	33
Ethyl benzene	100-41-4	0.057	10
Ethyl cyanide/Propanenitrile	107-12-0	0.24	360
Ethyl ether	60-29-7	0.12	160
<u>bis(2-Ethylhexyl)phthalate</u>	<u>117-81-7</u>	<u>0.28</u>	<u>28</u>
Ethyl methacrylate	97-63-2	0.14	160
Ethylene oxide	75-21-8	0.12	NA
Famphur	52-85-7	0.017	15
Fluoranthene	206-44-0	0.068	3.4
Fluorene	86-73-7	0.059	3.4
<del>Formetanate hydrochloride<sup>6</sup></del>	<del>23422-53-9</del>	<del>0.056</del>	<del>1.4</del>
Heptachlor	76-44-8	0.0012	0.066
Heptachlor epoxide	1024-57-3	0.016	0.066
1,2,3,4,6,7,8-Heptachlorodibenzo- p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	0.0025
1,2,3,4,6,7,8-Heptachlorodibenzo furan (1,2,3,4,6,7,8-HpCDF)	67-562-39-4	0.000035	0.0025
1,2,3,4,7,8,9-Heptachloro dibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	0.0025
Hexachlorobenzene	118-74-1	0.055	10
Hexachlorocyclopentadiene	77-47-4	0.057	2.4
Hexachloroethane	67-72-1	0.055	30
<u>Hexachloropropylene</u>	<u>1888-71-7</u>	<u>0.035</u>	<u>30</u>
HxCDDs (All)	NA	0.000063	0.001
Hexachlorodibenzo-p-dioxins)			
HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
Iodomethane	74-88-4	0.19	65
Isobutyl alcohol	78-83-1	5.6	170
Isodrin	465-73-6	0.021	0.066
Isosafrole	120-58-1	0.081	2.6
Kepone	143-50-0	0.0011	0.13
Methacrylonitrile	126-98-7	0.24	84
Methanol	67-56-1	5.6	0.75 mg/l TCLP
Methapyrilene	91-80-5	0.081	1.5
<del>Methiocarb<sup>6</sup></del>	<del>2032-65-7</del>	<del>0.056</del>	<del>1.4</del>
<del>Methomyl<sup>6</sup></del>	<del>16752-77-5</del>	<del>0.028</del>	<del>0.14</del>
Methoxychlor	72-43-5	0.25	0.18
Methyl ethyl ketone	78-93-3	0.28	36
Methyl isobutyl ketone	108-10-1	0.14	33
Methyl methacrylate	80-62-6	0.14	160
Methyl methansulfonate	66-27-3	0.018	NA
Methyl parathion	298-00-0	0.014	4.6
3-Methylchloranthrene	56-49-5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
Methylene chloride	75-09-2	0.089	30
<del>Metolcarb<sup>6</sup></del>	<del>1129-41-5</del>	<del>0.056</del>	<del>1.4</del>
<del>Mexacarbate<sup>6</sup></del>	<del>315-18-4</del>	<del>0.056</del>	<del>1.4</del>
<del>Molinate<sup>6</sup></del>	<del>2212-67-1</del>	<del>0.042</del>	<del>1.4</del>
Naphthalene	91-20-3	0.059	5.6
2-Naphthylamine	91-59-8	0.52	NA
o-Nitroaniline	88-74-4	0.27	14
p-Nitroaniline	100-01-6	0.028	28

**Universal Treatment Standards**

Regulated Constituent/ Common Name	CAS <sup>1</sup> Number	Wastewater	Nonwastewater
		Standard Concentration <sup>2</sup> in mg/l <sup>2</sup>	Standard Concentration <sup>3</sup> in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
Nitrobenzene	98-95-3	0.068	14
5-Nitro-o-toluidine	99-55-8	0.32	28
o-Nitrophenol	88-75-5	0.028	13
p-Nitrophenol	100-02-7	0.12	29
N-Nitrosodiethylamine	55-18-5	0.40	28
N-Nitrosodimethylamine	62-75-9	0.40	2.3
N-Nitroso-di-n-butylamine	924-16-3	0.40	17
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
N-Nitrosomorpholine	59-89-2	0.40	2.3
N-Nitrosopiperidine	100-75-4	0.013	35
N-Nitrosopyrrolidine	930-55-2	0.013	35
1,2,3,4,6,7,8,9-Octachlorodibenzo- p-dioxin (OCDD)	3268-87-9	0.000063	0.005
1,2,3,4,6,7,8,9-Octachlorodibenzo furan (OCDF)	39001-02-0	0.000063	0.005
<b>Oxamyl<sup>6</sup></b>	<b>23135-22-0</b>	<b>0.056</b>	<b>0.28</b>
Parathion	56-38-2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors) <sup>8</sup>	1336-36-3	0.10	10
<b>Pebulate<sup>6</sup></b>	<b>4114-71-2</b>	<b>0.042</b>	<b>1.4</b>
Pentachlorobenzene	608-93-5	0.055	10
PeCDDs (All	NA	0.000063	0.001
Pentachlorodibenzo-p-dioxins)			
PeCDFs (All	NA	0.000035	0.001
Pentachlorodibenzo-furans)			
Pentachloroethane	76-01-7	0.055	6.0
Pentachloronitrobenzene	82-68-8	0.055	4.8
Pentachlorophenol	87-86-5	0.089	7.4
Phenacetin	62-44-2	0.081	16
Phenanthrene	85-01-8	0.059	5.6
Phenol	108-95-2	0.039	6.2
<b>1,3-Phenylenediamine</b>	<b>108-45-2</b>	<b>0.010</b>	<b>0.66</b>
Phorate	298-02-2	0.021	4.6
Phthalic acid	100-21-0	0.055	28
Phthalic anhydride	85-44-9	0.055	28
<b>Physostigmine<sup>6</sup></b>	<b>57-47-6</b>	<b>0.056</b>	<b>1.4</b>
<b>Physostigmine salicylate<sup>6</sup></b>	<b>57-64-7</b>	<b>0.056</b>	<b>1.4</b>
<b>Promecarb<sup>6</sup></b>	<b>2631-37-0</b>	<b>0.056</b>	<b>1.4</b>
Pronamide	23950-58-5	0.093	1.5
<b>Propam<sup>6</sup></b>	<b>422-42-9</b>	<b>0.056</b>	<b>1.4</b>
<b>Propoxur<sup>6</sup></b>	<b>414-26-1</b>	<b>0.056</b>	<b>1.4</b>
<b>Prosulfocarb<sup>6</sup></b>	<b>52888-80-9</b>	<b>0.042</b>	<b>1.4</b>
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex/2,4,5-TP	93-72-1	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All	NA	0.000063	0.001
Tetrachlorodibenzo-p-dioxins)			
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
<b>Thiodicarb<sup>6</sup></b>	<b>59669-26-0</b>	<b>0.019</b>	<b>1.4</b>
<b>Thiophanate-methyl<sup>6</sup></b>	<b>23564-05-8</b>	<b>0.056</b>	<b>1.4</b>
Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
<b>Triallate<sup>6</sup></b>	<b>2303-17-5</b>	<b>0.042</b>	<b>1.4</b>
Tribromomethane/Bromoform	75-25-2	0.63	15

**Universal Treatment Standards**

Regulated Constituent/ Common Name	CAS <sup>1</sup> Number	Wastewater	Nonwastewater
		Standard Concentration <sup>2</sup> in mg/l <sup>2</sup>	Standard Concentration <sup>3</sup> in mg/kg <sup>3</sup> unless noted as "mg/l TCLP"
1,2,4-Trichlorobenzene	120-82-1	0.055	19
1,1,1-Trichlorethane	71-55-6	0.054	6.0
1,1,2-Trichlorethane	79-00-5	0.054	6.0
Trichloroethylene	79-01-6	0.054	6.0
Trichlorofluoromethane	75-69-4	0.020	30
2,4,5-Trichlorophenol	95-95-4	0.18	7.4
2,4,6-Trichlorophenol	88-06-2	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93-76-5	0.72	7.9
1,2,3-Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
<del>Triethylamine<sup>6</sup></del>	<del>121-44-8</del>	<del>0.081</del>	<del>1.5</del>
tris-(2,3-Dibromopropyl) phosphate	126-72-7	0.11	0.10
<del>Vernolate<sup>6</sup></del>	<del>1929-77-7</del>	<del>0.042</del>	<del>1.4</del>
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30

**II. Inorganic Constituents:**

Antimony	7440-36-0	1.9	1.15 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	21 mg/l TCLP
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total) <sup>4</sup>	57-12-5	1.2	590
Cyanides (Amenable) <sup>4</sup>	57-12-5	0.86	30
Fluoride <sup>5</sup>	16984-48-8	35	NA
Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury--Nonwastewater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury--All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	11 mg/l TCLP
Selenium <sup>7</sup>	7782-49-2	0.82	5.7 mg/l TCLP
Silver	7440-22-4	0.43	0.14 mg/l TCLP
Sulfide <sup>5</sup>	18496-25-8	14	NA
Thallium	7440-28-0	1.4	0.20 mg/l TCLP
Vanadium <sup>5</sup>	7440-62-2	4.3	1.6 mg/l TCLP
Zinc <sup>5</sup>	7440-66-6	2.61	4.3 mg/l TCLP

<sup>1</sup>CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

<sup>2</sup>Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

<sup>3</sup>Except for Metals (Extraction procedure or toxicity characteristic leaching procedure) and cyanides (total and amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of sections 33-24-05-144 through 33-24-05-159, and the applicable requirements under subsection 5 of section 33-24-06-16, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in subsection 4 of section 33-24-05-280. All concentration standards for nonwastewaters are based on analysis of grab samples.

<sup>4</sup>Both cyanides (total) and cyanides (amenable) for nonwastewaters are to be analyzed using Method ~~90109010C~~ or ~~90129012B~~, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section ~~33-24-02-0533-24-01-05~~, with a sample size of 10 grams and a distillation time of one hour and fifteen minutes.

<sup>5</sup>These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at subsection 10 of section 33-24-05-251.

~~<sup>6</sup>Between August 26, 1998, and March 4, 1999, these constituents are not underlying hazardous constituents as defined in subsection 10 of section 33-24-05-251. [Reserved]~~

<sup>7</sup>This constituent is not an underlying hazardous constituent as defined in subsection 10 of section 33-24-05-251 because its UTS level is greater than its toxicity characteristic level, thus a treated selenium waste would always be characteristically hazardous, unless it is treated to below its characteristic level.

<sup>8</sup>This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004 through D011 only.

Note: NA means not applicable.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-04

**33-24-05-289. Alternative land disposal restriction treatment standards for contaminated soil.**

1. Applicability. ~~You~~The generator or treatment, storage, or disposal facility must comply with land disposal restrictions prior to placing soil that exhibits a characteristic of hazardous waste, or exhibited a characteristic of hazardous waste at the time ~~it~~soil that exhibits or exhibited a characteristic of hazardous waste was generated, into a land disposal unit. The following chart describes whether ~~you~~the generator or treatment, storage, or disposal facility must comply with land disposal restrictions prior to placing soil contaminated by listed hazardous waste into a land disposal unit:

If land disposal restrictions	And if land disposal restrictions	And if	Then you
Applied to the listed waste when it contaminated the soil.	Apply to the listed waste now.		Must comply with the land disposal restrictions.
Did not apply to the listed waste when it contaminated the soil.	Apply to the listed waste now.	The soil is determined to contain a listed waste when the soil is first generated.	Must comply with the land disposal restrictions.
Did not apply to the listed waste when it contaminated the soil.	Apply to the listed waste now.	The soil is determined not to contain a listed waste when the soil is first generated.	Need not comply with the land disposal restrictions.
Did not apply to the listed waste when it contaminated the soil.	Do not apply to the listed waste now.		Need not comply with the land disposal restrictions.

\*For dates of land disposal restriction applicability, see appendix XI to chapter 33-24-05. To determine the date any given listed hazardous waste contaminated any given volume of soil, use the last date any given listed hazardous waste was placed into any given land disposal unit or, in the case of an accidental spill, the date of the spill.

2. Prior to land disposal, contaminated soil identified by subsection 1 as needing to comply with land disposal restrictions must be treated according to the applicable treatment standards specified in subsection 3 or according to the universal treatment standards specified in section 33-24-05-288 applicable to the contaminating listed hazardous waste or the applicable characteristic of hazardous waste if the soil is characteristic, or both. The treatment standards specified in subsection 3 and the universal treatment standards may be modified through a treatment variance approved in accordance with section 33-24-05-284.
3. Treatment standards for contaminated soils. Prior to land disposal, contaminated soil identified by subsection 1 as needing to comply with land disposal restrictions must be treated according to all the standards specified in this subsection or according to the universal treatment standards specified in section 33-24-05-288.
  - a. All soils. Prior to land disposal, all constituents subject to treatment must be treated as follows:
    - (1) For nonmetals, except carbon disulfide, cyclohexanone, and methanol, treatment must achieve ninety percent reduction in total constituent concentrations, except as provided by paragraph 3.
    - (2) For metals and carbon disulfide, cyclohexanone, and methanol, treatment must achieve ninety percent reduction in constituent concentrations as measured in leachate from the treated media (tested according to the toxicity characteristic leaching procedure) or ninety percent reduction in total constituent concentrations

(when a metal removal treatment technology is used), except as provided by paragraph 3.

- (3) When treatment of any constituent subject to treatment to a ninety percent reduction standard would result in a concentration less than ten times the universal treatment standard for that constituent, treatment to achieve constituent concentrations less than ten times the universal treatment standard is not required. Universal treatment standards are identified in table "universal treatment standards" in section 33-24-05-288.
- b. Soils that exhibit the characteristic of ignitability, corrosivity, or reactivity. In addition to the treatment required by subdivision a, prior to land disposal, soils that exhibit the characteristic of ignitability, corrosivity, or reactivity must be treated to eliminate these characteristics.
- c. Soils that contain nonanalyzable constituents. In addition to the treatment requirements of subdivisions a and b, prior to land disposal, the following treatment is required for soils that contain nonanalyzable constituents:
  - (1) For soil that contains only analyzable and nonanalyzable organic constituents, treatment of the analyzable constituents to the levels specified in subdivisions a and b; or
  - (2) For soil that contains only nonanalyzable constituents, treatment by the method or methods specified in section 33-24-05-282 for the waste contained in the soil.
4. Constituents subject to treatment. When applying the soil treatment standards in subsection 3, constituents subject to treatment are any constituents listed in section 33-24-05-288, table "universal treatment standards" that are reasonably expected to be present in any given volume of contaminated soil, except fluoride, selenium, sulfides, vanadium, and zinc, and are present at concentrations greater than ten times the universal treatment standard. Polychlorinated biphenyls are not a constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.
5. Management of treatment residuals. Treatment residuals from treating contaminated soil identified by subsection 1 as needing to comply with land disposal restrictions must be managed as follows:
  - a. Soil residuals are subject to the treatment standards of this section;
  - b. Nonsoil residuals are subject to:
    - (1) For soils contaminated by listed hazardous waste, the article 33-24 standards applicable to the listed hazardous waste; and
    - (2) For soils that exhibit a characteristic of hazardous waste, if the nonsoil residual also exhibits a characteristic of hazardous waste, the treatment standards applicable to the characteristic hazardous waste.

**History:** Effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-290. Prohibitions on storage of restricted wastes.

1. Except as provided in this section, the storage of hazardous wastes restricted from land disposal under sections ~~33-24-05-270~~33-24-05-266 through 33-24-05-279 is prohibited, unless the following conditions are met:
  - a. A generator stores such wastes in tanks, containers, or containment buildings onsite solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in section 33-24-03-12, chapter 33-24-05, and the applicable requirements of subsection 5 of section 33-24-06-16;
  - b. An owner or operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:
    - (1) Each container is clearly marked to identify its contents and the date each period of accumulation begins; and
    - (2) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner or operator shall comply with the operating record requirements specified in section 33-24-05-40; and
  - c. A transporter stores manifested shipments of such wastes at a transfer facility for ten days or less.
2. An owner or operator of a treatment, storage, or disposal facility may store such wastes for up to one year unless the department can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal.
3. An owner or operator of a treatment, storage, or disposal facility may store such wastes beyond one year; however, the owner or operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal.
4. If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste, for example, because of an approved case-by-case extension under section 33-24-05-254, or a national capacity variance under section ~~33-24-05-255~~sections 33-24-05-266 through 33-24-05-279, the prohibition in subsection 1 does not apply during the period of such exemption.
5. The prohibition in subsection 1 does not apply to hazardous wastes that meet the treatment standard specified under sections 33-24-05-281, 33-24-05-282, and 33-24-05-283 or the treatment standard specified under the variance in section 33-24-05-284, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in section 33-24-04-272 or Resource Conservation and Recovery Act section 3004.
6. Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to fifty parts per million must be stored at a facility that meets the requirements of 40 CFR 761.65(b) and must be removed from storage and treated or disposed as required under sections 33-24-05-250 through 33-24-05-299 within one year of the date when such wastes

are first placed into storage. The provisions of subsection 3 do not apply to such polychlorinated biphenyls wastes prohibited under section 33-24-05-272.

7. The prohibition and requirements in this section do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to section 33-24-05-554.

**History:** Effective December 1, 1988; amended effective December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-300. Applicability to miscellaneous units.**

Sections 33-24-05-300 through ~~33-24-05-399~~[33-24-05-309](#) apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as section 33-24-05-01 provides otherwise.

**History:** Effective December 1, 1991; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-400. Applicability to air emission standards for process vents.**

1. The regulations of sections 33-24-05-400 through 33-24-05-419 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in section 33-24-05-01).
2. Except for subsections 4 and 5 of section 33-24-05-404, sections 33-24-05-400 through 33-24-05-419 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least ten parts per million weight, if these operations are conducted in one of the following:
  - a. A unit that is subject to the permitting requirements of chapter 33-24-06;
  - b. A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of subsection 1 of section 33-24-03-12 (for example, a hazardous waste recycling unit that is not a ninety-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of chapter 33-24-06; or
  - c. A unit that is exempt from permitting under the provisions of subsection 1 of section 33-24-03-12 (for example, a ninety-day tank or container) and is not a recycling unit under the provisions of section 33-24-02-06.

~~[Note: The requirements of sections 33-24-05-402 through 33-24-05-406 apply to process vents on hazardous waste recycling units previously exempt under subdivision a of subsection 3 of section 33-24-02-06. Other exemptions under section 33-24-02-04 and subsection 7 of section 33-24-05-01 are not affected by these requirements.]~~

3. For the owner and operator of a facility subject to sections 33-24-05-400 through 33-24-05-419 and who received a final state-issued hazardous waste permit under article 33-24 prior to December 6, 1996, the requirements of section 33-24-05-400 through 33-24-05-419 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of section 33-24-07-11 or reviewed in accordance with the requirements of subsection 1 of section 33-24-06-06. Until such date when the owner and operator receive a final state-issued hazardous waste permit incorporating the requirements of sections

33-24-05-400 through 33-24-05-419, the owner and operator are subject to the applicable requirements of subsection 5 of section 33-24-06-16.

[Note: The requirements of sections 33-24-05-402 through 33-24-05-406 apply to process vents on hazardous waste recycling units previously exempt under subdivision a of subsection 3 of section 33-24-02-06. Other exemptions under section 33-24-02-04 and subsection 7 of section 33-24-05-01 are not affected by these requirements.]

4. [Reserved]
5. The requirements of sections 33-24-05-400 through 33-24-04-419 do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to sections 33-24-05-400 through 33-24-05-419 are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, 61, or 63. The documentation of compliance under regulations at 40 CFR part 60, 61, or 63 shall be kept with, or made readily available with, the facility operating record.

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-401. Definitions.**

As used in sections 33-24-05-400 through 33-24-05-419, all terms not defined herein have the meaning given in North Dakota Century Code chapter 23-20.3 and chapters 33-24-01 through 33-24-05 of this article.

1. "Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Pack towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.
2. "Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.
3. "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.
4. "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.
5. "Connector" means flange, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, "connector" means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.
6. "Continuous recorder" means a data-recording device recording an instantaneous data value at least once every fifteen minutes.
7. "Control device" means an enclosed combustion device vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvent or other organic for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

8. "Control device shutdown" means the cessation of operation of a control device for any purpose.
9. "Distillate receiver" means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.
10. "Distillation operation" means an operation, either batch or continuous separating one or more feed streams into two or more exit streams, each exit stream having component concentrations different from those in the feed streams. The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.
11. "Double-block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.
12. "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by sections 33-24-05-400 through 33-24-05-419.
13. "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.
14. "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.
15. "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.
16. "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.
17. "Hazardous waste management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than twenty-four hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.
18. "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.
19. "In gas or vapor service" means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.
20. "In heavy liquid service" means that the piece of equipment is not in gas or vapor service or in light liquid service.
21. "In light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than three-tenths kilopascals at twenty degrees Celsius, the total concentration of the pure organic components having a vapor pressure greater than three-tenths kilopascals at twenty degrees Celsius is equal to or greater than twenty percent by weight, and the fluid is a liquid at operating conditions.
22. "In situ sampling systems" means ~~nonextracted~~nonextractive samplers or inline samplers.

23. "In vacuum service" means that equipment is operating at an internal pressure that is at least five kilopascals below ambient pressure.
24. "Malfunction" means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.
25. "Open-ended valve or line" means any valve, except pressure release valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.
26. "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure release device.
27. "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.
28. "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.
29. "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.
30. "Sampling connection system" means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.
31. "Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.
32. "Separator tank" means a device used for separation of two immiscible liquids.
33. "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.
34. "Start-up" means the setting in operation of a hazardous waste management unit or control device for any purpose.
35. "Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.
36. "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.
37. "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.
38. "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

39. "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

**History:** Effective December 1, 1991; amended effective January 1, 1994; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-403. Standards - Closed-vent systems and control devices.**

1. Requirements for owners or operators of closed-vent systems and control devices.
  - a. Owners or operators of closed-vent systems and control devices used to comply with provisions of sections ~~33-24-05-400~~[33-24-05-01](#) through ~~33-24-05-449~~[33-24-05-190](#), [33-24-05-300](#) through [33-24-05-524](#), [33-24-05-550](#) through [33-24-05-559](#), and [33-24-05-800](#) through [33-24-05-819](#) shall comply with the provisions of this section.
  - b. For:
    - (1) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of sections 33-24-05-400 through 33-24-05-419 on the effective date that the facility becomes subject to the provisions of sections 33-24-05-400 through 33-24-05-419 must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to thirty months after the effective date that the facility becomes subject to sections 33-24-05-400 through 33-24-05-419 for installation and start-up.
    - (2) Any unit that begins operation after December 21, 1990, and is subject to the provisions of sections 33-24-05-400 through 33-24-05-419 when operation begins, must comply with the rules immediately (for example, must have control devices installed and operating on start-up of the affected unit); the thirty-month implementation schedule does not apply.
    - (3) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to sections 33-24-05-400 through 33-24-05-419 shall comply with all requirements of sections 33-24-05-400 through 33-24-05-419 as soon as practicable but no later than thirty months after the amendment's effective date. When control equipment required by sections 33-24-05-400 through 33-24-05-419 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of onsite installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of sections 33-24-05-400 through 33-24-05-419. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

- (4) Owners and operators of facilities and units that become newly subject to the requirements of sections 33-24-05-400 through 33-24-05-419 after December 8, 1997, due to an action other than those described in paragraph 3 must comply with all applicable requirements immediately (for example, must have control devices installed and operating on the date the facility or unit becomes subject to sections 33-24-05-400 through 33-24-05-419; the thirty-month implementation schedule does not apply).
2. A control device involving vapor recovery (for example, a condenser or absorber) must be designed and operated to recover the organic vapors vented to it with an efficiency of ninety-five weight percent or greater unless the total organic emission limits of subdivision a of subsection 1 of section 33-24-05-402 for all affected process vents can be attained at an efficiency less than ninety-five weight percent.
3. An enclosed combustion device (for example, a vapor incinerator, boiler, or process heater) must be designed and operated to reduce the organic emissions vented to it by ninety-five weight percent or greater; to achieve a total organic compound concentration of twenty parts per million volume, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three percent oxygen; or to provide a minimum residence time of fifty hundredths seconds at a minimum temperature of seven hundred sixty degrees Celsius. If a boiler or process heater is used as the control device, then the vent stream must be introduced into the flame zone of the boiler or process heater.
4. Flares.
  - a. A flare must be designed for and operated with no visible emissions as determined by the methods specified in subdivision a of subsection 5, except for periods not to exceed a total of five minutes during any two consecutive hours.
  - b. A flare must be operated with a flame present at all times, as determined by the methods specified in paragraph 3 of subdivision b of subsection 6.
  - c. A flare must be used only if the net heating value of the gas being combusted is eleven and two-tenths mega joules per standard cubic meter at standard conditions (three hundred British thermal units per standard cubic foot at standard conditions) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is seven and forty-five hundredths mega joules per cubic meter at standard conditions (two hundred British thermal units per standard cubic foot at standard conditions) or greater if the flare is nonassisted. The net heating value of the gas being combusted must be determined by the methods specified in subdivision b of subsection 5.
  - d. Steam-assisted or nonassisted flare.
    - (1) A steam-assisted or nonassisted flare must be designed for and operated with an exit velocity, as determined by the methods specified in subdivision c of subsection 5, less than eighteen and three-tenths meters per second [sixty feet per second], except as provided in paragraphs 2 and 3.
    - (2) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subdivision c of subsection 5, equal to or greater than eighteen and three-tenths meters per second [sixty feet per second] but less than one hundred twenty-two meters per second [four hundred feet per second] is allowed if the net heating value of the gas being combusted is greater than thirty-seven and three-tenths mega joules per standard cubic meter at standard

conditions [one thousand British thermal units per standard cubic foot at standard conditions].

- (3) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in subdivision c of subsection 5, less than the velocity  $V_{\max}$  as determined by the method specified in subdivision d of subsection 5 and less than one hundred twenty-two meters per second [four hundred feet per second] is allowed.
- e. An air-assisted flare must be designed and operated with an exit velocity less than the velocity  $V_{\max}$  as determined by the method specified in subdivision e of subsection 5.
- f. A flare used to comply with this section must be steam-assisted, air-assisted, or nonassisted.

5. Methods.

- a. Referenced method 22 in 40 CFR part 60 must be used to determine the compliance of a flare with the visible emissions provisions of sections 33-24-05-400 through ~~33-24-05-429~~33-24-05-419. The observation period is two hours and must be used according to method 22.
- b. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \left[ \sum_{i=1}^n C_i H_i \right]$$

where:

$H_T$  = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

$K$  = Constant,  $1.74 \times 10^{-7}$  (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

$C_i$  = Concentration of sample component  $i$  in ppm on a wet basis, as measured for organics by reference method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (incorporated by reference as specified in section 33-24-01-05); and

$H_i$  = Net heat of combustion of sample component  $i$ , kcal/g mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (incorporated by reference as specified in section 33-24-01-05) if published values are not available or cannot be calculated.

- c. The actual exit velocity of a flare must be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by reference methods 2,

2a, 2c, or 2d in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

- d. The maximum allowed velocity in meters per second  $V_{\max}$  for a flare complying with paragraph 3 of subdivision d of subsection 4 must be determined by the following equation:

$$\log_{10} (V_{\max}) = (H_T + 28.8) / 31.7$$

where:

28.8 = constant,

31.7 = constant, and

$H_T$  = the net heating value as determined in subdivision b.

- e. The maximum allowed velocity in meters per second  $V_{\max}$  for an air-assisted flare must be determined by the following equation:

$$V_{\max} = 8.706 + 0.7084 (H_T)$$

where:

8.706 = constant,

0.7084 = constant, and

$H_T$  = the net heating value as determined in subdivision b.

6. The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:
- a. Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor must be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.
  - b. Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:
    - (1) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of plus or minus one percent of the temperature being monitored in Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. The temperature sensor must be installed at a location in the combustion chamber downstream of the combustion zone.
    - (2) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature at two locations and have an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. One temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor must be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

- (3) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.
  - (4) A boiler or process heater having a design heat input capacity less than forty-four megawatts a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. The temperature sensor must be installed at a location in the furnace downstream of the combustion zone.
  - (5) For a boiler or process heater having a design heat input capacity greater than or equal to forty-four megawatts a monitoring device equipped with a continuous recorder to measure a parameter that indicates good combustion operating practices are being used.
  - (6) For a condenser, either:
    - (a) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds, the exhaust vent stream from the condenser; or
    - (b) A temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of plus or minus one percent of the temperature being monitored in degrees Celsius or plus or minus five-tenths degrees Celsius, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (for example, product side).
  - (7) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber either:
    - (a) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed; or
    - (b) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated in a regular predetermined time cycle.
  - c. Inspect the readings from each monitoring device required by subdivisions a and b at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.
7. An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular predetermined time interval that is no longer than the carbon service life established as a requirement of subparagraph f of paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405.
  8. An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:
    - a. Monitor the concentration level of organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon

with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency must be daily or at an interval no greater than twenty percent of the time required to consume the total carbon working capacity established as a requirement of subparagraph g of paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405, whichever is longer.

- b. Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of subparagraph g of paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405.
9. An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.
  10. An owner or operator of an affected facility seeking to comply with the provisions of sections ~~33-24-05-400~~33-24-05-01 through ~~33-24-05-449~~33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800through 33-24-05-819 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation, including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.
  11. A closed-vent system shall meet either of the following design requirements:
    - a. A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million volume above background as determined by the procedure in subsection 2 of section 33-24-05-404, and by visual inspections; or
    - b. A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.
    - ~~c. Detectable emissions, as indicated by an instrument reading greater than five hundred parts per million and visual inspections, must be controlled as soon as practicable, but not later than fifteen calendar days after the emission is detected.~~
    - ~~d. A first attempt at repair must be made no later than five calendar days after the emission is detected.~~
  12. The owner or operator shall monitor and inspect each closed-vent system required to comply with this section ~~33-24-05-403~~ to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:
    - a. Each closed-vent system that is used to comply with subdivision a of subsection 11 shall be inspected and monitored in accordance with the following requirements:
      - (1) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to this section. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in subsection 2 of section 33-24-05-404 to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million volume above background.

- (2) After initial leak detection monitoring required in paragraph 1, the owner or operator shall inspect and monitor the closed-vent system as follows:
  - (a) Closed-vent system joints, seams, or other connections that are permanently or semipermanently sealed (for example, a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in subsection 2 of section 33-24-05-404 to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (for example, a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (for example, a flange is unbolted).
  - (b) Closed-vent system components or connections other than those specified in subparagraph a shall be monitored annually and at other times as requested by the department, except as provided for in subsection 15, using the procedures specified in subsection 2 of section 33-24-05-404 to demonstrate that the components or connections operate with no detectable emissions.
- (3) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of subdivision c.
- (4) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 33-24-05-405.
- b. Each closed-vent system that is used to comply with subdivision b of subsection 11 shall be inspected and monitored in accordance with the following requirements:
  - (1) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in duct work or piping or loose connections.
  - (2) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year.
  - (3) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of subdivision c.
  - (4) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 33-24-05-405.
- c. The owner or operator shall repair all detected defects as follows:
  - (1) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than five hundred parts per million volume above background, shall be controlled as soon as practicable, but not later than fifteen calendar days after the emission is detected, except as provided for in paragraph 3.
  - (2) A first attempt at repair shall be made no later than five calendar days after the emission is detected.
  - (3) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair

would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

- (4) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in section 33-24-05-405.
13. Closed-vent systems and control devices used to comply with provisions of sections 33-24-05-400 through 33-24-05-419 must be operated at all times when emissions may be vented to them.
14. The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:
  - a. Regenerated or reactivated in a thermal treatment unit that meets one of the following:
    - (1) The owner or operator of the unit has been issued a final permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-300 through ~~33-24-05-303~~33-24-05-309; or
    - (2) The unit is equipped with operating air emission controls in accordance with the applicable requirements of sections 33-24-05-400 through 33-24-05-419 and sections 33-24-05-450 through 33-24-05-474 or the applicable requirements of subsection 5 of section 33-24-06-16; or
    - (3) The unit is equipped with operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.
  - b. Incinerated in a hazardous waste incinerator for which the owner or operator either:
    - (1) Has been issued a final permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-144 through 33-24-05-159; or
    - (2) Has designed and operates the incinerator in accordance with the applicable interim status requirements of subsection 5 of section 33-24-06-16.
  - c. Burned in a boiler or industrial furnace for which the owner or operator either:
    - (1) Has been issued a final permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-525 through 33-24-05-549; or
    - (2) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of sections 33-24-05-525 through 33-24-05-549.
15. Any components of a closed-vent system that are designated, as described in subdivision i of subsection 3 of section 33-24-05-405, as unsafe to monitor are exempt from the requirements of subparagraph b of paragraph 2 of subdivision a of subsection 12 if:
  - a. The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subparagraph b of paragraph 2 of subdivision a of subsection 12; and
  - b. The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedures specified in

subparagraph b of paragraph 2 of subdivision a of subsection 12 as frequently as practicable during safe-to-monitor times.

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-404. Test methods and procedures.**

1. Each owner or operator subject to the provisions of sections 33-24-05-400 through ~~33-24-05-429~~[33-24-05-419](#) shall comply with the test methods and procedures requirements provided in this section.
2. When a closed-vent system is tested for compliance with no detectable emissions, as required in subsection 12 of section 33-24-05-403, the test must comply with the following requirements:
  - a. Monitoring must comply with referenced method 21 in 40 CFR part 60.
  - b. The detection instrument must meet the performance criteria of reference method 21.
  - c. The instrument must be calibrated before use on each day of its use by the procedures specified in reference method 21.
  - d. Calibration gases must be:
    - (1) Zero air (less than ten parts per million hydrocarbon in air).
    - (2) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand parts per million methane or n-hexane.
  - e. The background level must be determined as set forth in reference method 21.
  - f. The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in reference method 21.
  - g. The arithmetic difference between the maximum concentration indicated by the instrument and background level is compared with five hundred parts per million for determining compliance.
3. Performance tests to determine compliance with subsection 1 of section 33-24-05-402 and with the total organic compound concentration limit of subsection 3 of section 33-24-05-403 must comply with the following:
  - a. Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices must be conducted and data reduced in accordance with the following reference methods and calibration procedures:
    - (1) Method 2 in 40 CFR part 60 for velocity and volume flow rate.
    - (2) Method 18 [or Method 25A](#) in 40 CFR part 60, [appendix A](#), for organic content. [If Method 25A is used, the organic hazardous air pollutant used as the calibration gas must be the single organic hazardous air pollutant representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least twenty times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.](#)

(3) Each performance test must consist of three separate runs; each run conducted for at least one hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs apply. The average must be computed on a time-weighted basis.

(4) Total organic mass flow rates must be determined by the following equation:

(a) For sources utilizing method 18.

$$E_h = Q_{2sd} \left[ \sum_{i=1}^n C_i MW_i \right] [0.0416] [10^{-6}]$$

where:

$E_h$  = Total organic mass flow rate, kg/h;

$Q_{2sd}$  = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

$n$  = Number of organic compounds in the vent gas;

$C_i$  = Organic concentration in ppm, dry basis, of compound  $i$  in the vent gas, as determined by Method 18;

$MW_i$  = Molecular weight of organic compound  $i$  in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m<sup>3</sup> [~~@293 k and 760 mm Hg~~]  
(@293K and 760 mm Hg); and

$10^{-6}$  = Conversion from ppm, ~~ppm<sup>-1</sup>~~.

(b) For sources utilizing method 25A.

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

Where:

$E_h$  = Total organic mass flow rate, kg/h;

$Q$  = Volumetric flow rate of gases entering or exiting control device,  
as determined by Method 2, dscm/h;

$C$  = Organic concentration in ppm, dry basis, as determined by  
Method 25A;

$MW$  = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m<sup>3</sup> (@ 293 K  
and 760 mm Hg);

$10^{-6}$  = Conversion from ppm.

- (5) The annual total organic emission rate must be determined by the following equation:

$$E_A = \frac{E_h}{H} (H)$$

where:

$E_A$  = Total organic mass emission rate, kg/y;

$E_h$  = Total organic mass flow rate for the process vent, kg/h;

$H$  = Total annual hours of operations for the affected unit, h.

- (6) Total organic emissions from all affected process vents at the facility must be determined by summing the hourly total organic mass emission rates ( $E_h$  as determined in paragraph 4 ~~of subdivision a of subsection 3~~) and by summing the annual total organic mass emission rates ( $E_A$ , as determined in paragraph 5 ~~of subdivision a of subsection 3~~) for all affected process vents at the facility.
- b. The owner or operator shall record such process information as may be necessary to determine the conditions of the performance test. Operations during periods of startup, shutdown, and malfunction do not constitute representative conditions for the purpose of a performance test.
- c. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:
- (1) Sampling ports adequate for the test methods specified in subdivision a ~~of subsection 3~~.
  - (2) Safe sampling platforms.
  - (3) Safe access to sampling platforms.
  - (4) Utilities for sampling and testing equipment.
- d. For the purpose of making compliance determinations, the time-weighted average of the results of the three runs applies. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of force shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner's or operator's control, compliance may, upon the department's approval, be determined using the average of the results of the two other runs.
4. To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of sections 33-24-05-400 through 33-24-05-419, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than ten parts per million weight using one of the following two methods:
- a. Direct measurement of the organic concentration of the waste using the following procedures:
- (1) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

- (2) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.
  - (3) Each sample must be analyzed and the total organic concentration of the sample must be computed using method ~~9060 or 8260~~9060A (incorporated by reference under section 33-24-01-05) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," environmental protection agency publication SW-846 ~~(incorporated by reference under section 33-24-01-05)~~or analyzed for its individual organic constituents.
  - (4) The arithmetic mean of the results of the analysis of the four samples applies for each waste stream managed in the unit in determining the time-weighted annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.
- b. Using knowledge of the waste to determine that its total organic concentration is less than ten parts per million weight. Documentation of the waste determination is required. Examples of documentation that must be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than ten parts per million weight, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.
5. The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than ten parts per million weight must be made as follows:
    - a. By the effective date that the facility becomes subject to the provisions of sections 33-24-05-400 through 33-24-05-419 or by the date when the waste is first managed in a waste management unit, whichever is later; and
    - b. For continuously generated waste, annually; or
    - c. Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.
  6. When an owner or operator and the department do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least ten parts per million weight based on knowledge of the waste, ~~the procedures in method 8260 of environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05,~~the dispute may be used to resolve the dispute resolved by using direct measurement as specified at subdivision a of subsection 4.

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-405. Recordkeeping requirements.**

1. Applicability.
  - a. Each owner or operator subject to the provisions of sections 33-24-05-400 through 33-24-05-419 shall comply with the recordkeeping requirements of this section.
  - b. An owner or operator of more than one hazardous waste management unit subject to the provisions of sections 33-24-05-400 through 33-24-05-419 may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.
2. Owners and operators must record the following information in the facility operating record:
  - a. For facilities that comply with the provisions of subdivision b of subsection 1 of section 33-24-05-403, an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of sections 33-24-05-400 through 33-24-05-419.
  - b. Up-to-date documentation of compliance with the process vent standards in section 33-24-05-402, including:
    - (1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent, and for the overall facility, namely, the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, for example, identifying the hazardous waste management units on a facility plot plan.
    - (2) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculation or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values, for example, temperatures, flow rates, or vent stream organic compounds and concentrations, that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action, for example, managing a waste of different composition or increasing operating hours of affected waste management units, that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.
  - c. Where an owner or an operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:
    - (1) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This must include the estimated or design flow rate and organic content of each vent stream and define the acceptable

operating ranges of key process and control device parameters during the test program.

- (2) A detailed engineering description of the closed-vent system and control device, including:
    - (a) Manufacturer's name and model number of control device.
    - (b) Type of control device.
    - (c) Dimensions of the control device.
    - (d) Capacity.
    - (e) Construction materials.
  - (3) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
- d. Documentation of compliance with section 33-24-05-403 must include the following information:
- (1) A list of all information references and sources used in preparing the documentation.
  - (2) Records, including the dates, of each compliance test required by subsection 11 of section 33-24-05-403.
  - (3) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "Apti course 415: control of gaseous emissions" (incorporated by reference as specified in section 33-24-01-05) or other engineering texts acceptable to the department that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with subparagraphs a through g may be used to comply with this requirement. The design analysis must address the vent stream characteristics and control device operation parameters as specified below:
    - (a) For a thermal vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.
    - (b) For a catalytic vapor incinerator, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.
    - (c) For a boiler or process heater, the design analysis must consider the vent stream composition, constituent concentrations, and flow rate. The design analysis must also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of methods and location where the vent stream is introduced into the combustion zone.

- (d) For a flare, the design analysis must consider the vent stream composition, constituent concentration, and flow rate. The design analysis must also consider the requirements specified in subsection 4 of section 33-24-05-403.
  - (e) For a condenser, the design analysis must consider the vent stream composition, constituent concentration, flow rate, relative humidity, and temperature. The design analysis must also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.
  - (f) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis must also establish the design exhaust vent stream organic compound concentration level, the number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling or drying cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.
  - (g) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis must consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis must also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.
- (4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.
  - (5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five percent or greater unless the total organic concentration limit of subsection 1 of section 33-24-05-402 is achieved at an efficiency less than ninety-five weight percent or the total organic emission limits of subsection 1 of section 33-24-05-402 for affected process vents at the facility can be obtained by a control device involving vapor recovery and at an efficiency less than ninety-five weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.
  - (6) If performance tests are used to demonstrate compliance, all test results.
- 3. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of sections 33-24-05-400 through 33-24-05-419 must be recorded and up to date in the facility operating record. The information must include:
    - a. Description and date of each modification that is made to the closed-vent system or control device design.

- b. Identification of operating parameters, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with subdivisions a and b of subsection 6 of section 33-24-05-403.
- c. Monitoring, operating, and inspection information required by subsections 6 through 11 of section 33-24-05-403.
- d. Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:
  - (1) For a thermal vapor incinerator designed to operate with a minimum residence time of fifty hundredths seconds at a minimum temperature of seven hundred sixty degrees Celsius, period when the combustion temperature is below seven hundred sixty degrees Celsius.
  - (2) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of ninety-five weight percent or greater, period when the combustion zone temperature is more than twenty-eight degrees Celsius below the designed average combustion zone temperature established as a requirement of subparagraph a of paragraph 3 of subdivision d of subsection 2.
  - (3) For a catalytic vapor incinerator, period when:
    - (a) Temperature of the vent stream at the catalytic bed inlet is more than twenty-eight degrees Celsius below the average temperature of the inlet vent stream established as a requirement of subparagraph b of paragraph 3 of subdivision d of subsection 2; or
    - (b) Temperature difference across the catalyst bed is less than eighty percent of the design average temperature difference established as a requirement of subparagraph b of paragraph 3 of subdivision d of subsection 2.
  - (4) For a boiler or process heater, period when:
    - (a) Flame zone temperature is more than twenty-eight degrees Celsius below the design average flame zone temperature established as a requirement of subparagraph c of paragraph 3 of subdivision 4d of subsection 2; or
    - (b) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of subparagraph c of paragraph 3 of subdivision d of subsection 2.
  - (5) For a flare, period when the pilot flame is not ignited.
  - (6) For a condenser that complies with subparagraph a of paragraph 6 of subdivision b of subsection 6 of section 33-24-05-403, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than twenty percent greater than the design outlet organic compound concentration level established as a requirement of subparagraph e of paragraph 3 of subdivision d of subsection 2.
  - (7) For a condenser that complies with subparagraph b of paragraph 6 of subdivision b of subsection 6 of section 33-24-05-403, period when:
    - (a) Temperature of the exhaust vent stream from the condenser is more than six degrees Celsius above the design average exhaust vent stream temperature

established as a requirement of subparagraph e of paragraph 3 of subdivision d of subsection 2; or

- (b) Temperature of the coolant fluid exiting the condenser is more than six degrees Celsius above the design average coolant fluid temperature at the condenser outlet established as a requirement of subparagraph e of paragraph 3 of subdivision d of subsection 2.
- (8) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates carbon bed directly onsite in the control device and complies with subparagraph a of paragraph 7 of subdivision b of subsection 6 of section 33-24-05-403, period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than twenty percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of subparagraph f of paragraph 3 of subdivision d of subsection 2.
- (9) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with subparagraph b of paragraph 7 of subdivision b of subsection 6 of section 33-24-05-403, period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of subparagraph f of paragraph 3 of subdivision d of subsection 2.
- e. Explanation for each period recorded under subdivision d of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.
- f. For a carbon adsorption system operated subject to requirements specified in subsection 7 of section 33-24-05-403 or subdivision b of subsection 8 of section 33-24-05-403, date when existing carbon in the control device is replaced with fresh carbon.
- g. For a carbon adsorption system operated subject to requirements specified in subdivision a of subsection 8 of section 33-24-05-403, a log that records:
  - (1) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.
  - (2) Date when existing carbon in the control device is replaced with fresh carbon.
- h. Date of each control device startup and shutdown.
- i. An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to subsection 15 of section 33-24-05-403 shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of subsection 15 of section 33-24-05-403, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.
- j. When each leak is detected as specified in subsection 12 of section 33-24-05-403, the following information shall be recorded:
  - (1) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number;

- (2) The date the leak was detected and the date of first attempt to repair the leak;
  - (3) The date of successful repair of the leak;
  - (4) Maximum instrument reading measured by method 21 of 40 CFR part 60, appendix A, after it is successfully repaired or determined to be nonrepairable; and
  - (5) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen calendar days after discovery of the leak:
    - (a) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.
    - (b) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.
4. Records of the monitoring, operating, and inspection information required by subdivisions c through j of subsection 3 must be maintained by the owner or operator for at least three years following the date of each occurrence, measurement, maintenance, corrective action, or record.
  5. For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the department will specify the appropriate recordkeeping requirements.
  6. ~~Fe~~Up to date information and data used to determine whether or not a process vent is subject to the requirements in section 33-24-05-402, including supporting documentation as required by subdivision b of subsection 4 of section 33-24-05-404 when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, must be recorded in a log that is kept in the facility operating record.

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-406. Reporting requirements.**

1. A semiannual report must be submitted by owners and operators subject to the requirements of sections 33-24-05-400 through 33-24-05-419 to the department by dates specified by the department. The report must include the following information:
  - a. The identification number, name, and address of the facility.
  - b. For each month during the semiannual reporting period, dates when the control device exceeded or operated outside of the design specifications as defined in subdivision d of subsection 3 of section 33-24-05-405 and as indicated by the control device monitoring required by subsection 6 of section 33-24-05-403 and such exceedances ~~where~~were not corrected within twenty-four hours, or that a flare operated with visible emissions as designed in subsection 4 of section 33-24-05-03 and as determined by method 22 monitoring, the duration and cause of each exceedance or visible emission, and any corrective measures taken.

2. If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in subdivision d of subsection 3 of section 33-24-05-405 for more than twenty-four hours or a flare does not operate with visible emissions as defined in subsection 4 of section 33-24-05-403, a report to the department is not required.

**History:** Effective December 1, 1991; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-420. Applicability to air emission standards for equipment leaks.**

1. The regulations in sections 33-24-05-420 through 33-24-05-449 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in section ~~33-24-02-04~~[33-24-05-01](#)).
2. Except as provided in subsection 11 of section 33-24-05-434, sections 33-24-05-420 through 33-24-05-449 apply to equipment that contains or contacts hazardous waste with organic concentrations of at least ten percent by weight that are managed in one of the following:
  - a. A unit that is subject to the permitting requirements of chapter 33-24-06;
  - b. A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of subsection 1 of section 33-24-03-12 (for example, a hazardous waste recycling unit that is not a ninety-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of chapter 33-24-06; or
  - c. A unit that is exempt from permitting under the provisions of subsection 1 of section 33-24-03-12 (for example, a ninety-day tank or container) and is not a recycling unit under the provisions of section 33-24-02-06.
3. For the owner or operator of a facility subject to sections 33-24-05-420 through 33-24-05-449 and who received a final state-issued hazardous waste permit under article 33-24 prior to December 6, 1996, the requirements of sections 33-24-05-420 through 33-24-05-449 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of section 33-24-07-11 or reviewed in accordance with the requirements of section 33-24-06-06. Until such date when the owner or operator receives a final state-issued hazardous waste permit incorporating the requirements of sections 33-24-05-420 through 33-24-05-449, the owner or operator is subject to the applicable requirements of subsection 5 of section 33-24-06-16.
4. Each piece of equipment to which sections 33-24-05-420 through 33-24-05-449 apply must be marked in such a manner that it can be distinguished readily from other pieces of equipment.
5. Equipment that is in vacuum service is excluded from the requirements of sections 33-24-05-422 to 33-24-05-430 if it is identified as required in subdivision e of subsection 7 of section 33-24-05-434. ~~[Note: The requirements of sections 33-24-05-422 through 33-24-05-435 apply to equipment associated with hazardous waste recycling units previously exempt under subdivision a of subsection 3. Other exemptions under sections 33-24-02-04, 33-24-03-12, and subsection 7 of section 33-24-05-01 are not affected by these requirements.]~~
6. Equipment that contains or contacts hazardous waste with an organic concentration of at least ten percent by weight for less than three hundred hours per calendar year is excluded from the requirements of sections 33-24-05-422 through 33-24-05-430 if it is identified as required in subdivision f of subsection 7 of section 33-24-05-434.

7. Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart IIII, are not subject to the requirements of sections 33-24-05-420 through 33-24-05-449.

[Note: The requirements of sections 33-24-05-422 through 33-24-05-435 apply to equipment associated with hazardous waste recycling units previously exempt under subdivision a of subsection 3 of section 33-24-02-06. Other exemptions under section 33-24-02-04 and subsection 7 of section 33-24-05-01 are not affected by these requirements.]

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-421. Definitions as used in sections 33-24-05-420 through 33-24-05-449.**

All terms have the meaning given them in section 33-24-05-401, [chapter 23-20.3](#), and chapters 33-24-01 through 33-24-05.

**History:** Effective December 1, 1991; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-422. Standards - Pumps in light liquid service.**

1. Timeframe.
  - a. Each pump in light liquid service must be monitored monthly to detect leaks by the method specified in subsection 2 of section 33-24-05-433, except as provided in subsections 4, 5, and 6.
  - b. Each pump in light liquid service must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.
2. Indicators.
  - a. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.
  - b. If there are indications of liquids dripping from the pump seal, a leak is detected.
3. Response.
  - a. When a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-05-429.
  - b. A first attempt at repair (for example, tightening the packing gland) must be made no later than five calendar days after each leak is detected.
4. Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of subsection 1, provided the following requirements are met:
  - a. Each dual mechanical seal system must be:
    - (1) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

- (2) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with requirements of section 33-24-05-430; or
  - (3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.
- b. The barrier fluid system must not be a hazardous waste with organic concentrations ten percent or greater by weight.
  - c. Each barrier fluid system must be equipped with a sensor that will detect failure of the sealed system, the barrier fluid system, or both.
  - d. Each pump must be checked by visual inspection each calendar week for indications of liquids dripping from the pump seals.
  - e. Checks.
    - (1) Each sensor as described in subdivision c ~~of subsection 4~~ must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.
    - (2) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.
  - f. Leaks.
    - (1) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion determined in paragraph 2 of subdivision e ~~of subsection 4~~, a leak is detected.
    - (2) When a leak is detected it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-05-429.
    - (3) A first attempt at repair (for example, relapping the seal) must be made no later than five calendar days after each leak is detected.
5. Any pump that is designated, as described in subdivision b of subsection 7 of section 33-24-05-434, for no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, is exempt from the requirements of subsections 1, 3, and 4 if the pump meets the following requirements:
- a. Must have no externally actuated shaft penetrating the pump housing.
  - b. Must operate with no detectable emissions as indicated by an instrument reading of less than five hundred parts per million above background as measured by the methods specified in subsection 3 of section 33-24-05-433.
  - c. Must be tested for compliance with subdivision b ~~of subsection 5~~ initially upon designation, annually, and at other times as requested by the department.
6. If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of section 33-24-05-430, it is exempt from the requirements of subsections 1 through 5.

**History:** Effective December 1, 1991; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-423. Standards - Compressors.**

1. Each compressor must be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections 8 and 9.
2. Each compressor seal system as required in subsection 1 must be:
  - a. Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;
  - b. Equipped with the barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of section 33-24-05-430; or
  - c. Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.
3. The barrier fluid must not be a hazardous waste with organic concentrations ten percent or greater by weight.
4. Each barrier fluid system as described in subsections 1 through 3 must be equipped with a sensor that would detect failure of the sealed system, barrier fluid system, or both.
5. Checks.
  - a. Each sensor as required in subsection 4 must be checked daily or must be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plantsite, in which case the sensor must be checked daily.
  - b. The owner or operator shall determine, based on design consideration and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.
6. If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion determined under subdivision b of subsection 5, a leak is detected.
7. Leaks.
  - a. When a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33-24-05-429.
  - b. ~~First~~A first attempt at repair, for example, tightening the packing gland, must be made no later than five calendar days after each leak is detected.
8. A compressor is exempt from the requirements of subsections 1 and 2 if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of section 33-24-05-430 except as provided in subsection 9.
9. Any compressor that is designed, as described in subdivision b of subsection 7 of section 33-24-05-434, for no detectable emissions as indicated by an instrument reading of less than five hundred parts per million above background is exempt from the requirements of subsections 1 through 8 if the compressor:

- a. Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33-24-05-433.
- b. Is tested for compliance with subdivision a of subsection 9 initially upon designation, annually, and other times as requested by the department.

**History:** Effective December 1, 1991; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-424. Standards - Pressure relief devices in gas or vapor service.**

1. Except during pressure releases, each pressure relief device in gas or vapor service must be operated with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33-24-05-433.
2. Pressure release.
  - a. After each pressure release, the pressure relief device must be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as soon as practicable, but no later than five calendar days after each pressure release, except as provided in section 33-24-05-429.
  - b. No later than five calendar days after the pressure release, the pressure relief device must be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33-24-05-433.
3. Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in section 33-24-05-430 is exempt from the requirements of subsections 1 and 2.

**History:** Effective December 1, 1991; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.03-04

### **33-24-05-427. Standards - Valves in gas or vapor service or in light liquid service.**

1. Each valve in gas or vapor or light liquid service must be monitored monthly to detect leaks by the methods specified in subsection 2 of section 33-24-05-433 and must comply with subsections 2 through 5, except as provided in subsections 6, 7, and 8 and sections 33-24-05-431 and 33-24-05-432.
2. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.
3. Timeframe.
  - a. Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.
  - b. If a leak is detected, the valve must be monitored monthly until a leak is not detected for two successive months.
4. Release.

- a. When a leak is detected, it must be repaired as soon as practicable, but no later than fifteen calendar days after the leak is detected, except as provided in section 33-24-05-429.
  - b. A first attempt at repair must be made no later than five calendar days after each leak is detected.
5. First attempts at repair include, but are not limited to, the following best practices where applicable:
- a. Tightening of bonnet bolts.
  - b. Replacement of bonnet bolts.
  - c. Tightening of packing gland nuts.
  - d. Injection of lubricant into lubricated packing.
6. Any valve that is designated, as described in subdivision b of subsection 7 of section 33-24-05-434, for no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, is exempt from the requirements of subsection 1 if the valve:
- a. Has no external actuating mechanism in contact with the hazardous waste stream.
  - b. Is operated with emissions less than five hundred parts per million above background as determined by the methods specified in subsection 3 of section 33-24-05-433.
  - c. Is tested for compliance with subdivision b ~~of subsection 6~~ initially upon designation, annually, and at other times as requested by the department.
7. Any valve that is designated, as described in subdivision a of subsection 8 of section 33-24-04-434 as an unsafe-to-monitor valve is exempt from the requirements of subsection 1 if:
- a. The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with subsection 1.
  - b. The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.
8. Any valve that is designated as described in subdivision b of subsection 8 of section 33-24-05-434, as a difficult-to-monitor valve is exempt from the requirements of subsection 1 if:
- a. The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than two meters above a support surface.
  - b. The hazardous waste management unit within which the valve is located was in operation before June 21, 1990. ~~The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.~~
  - c. The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

**History:** Effective December 1, 1991; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-431. Alternative standards for valves in gas or vapor service or light liquid service - Percentage of valves allowed to leak.**

1. An owner or operator subject to the requirements of section 33-24-05-427 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than two percent of the valves to leak.
2. The following requirements must be met if an owner or operator decides to comply with the alternative standard of allowing two percent of valves to leak:

~~a. An owner or operator must notify the department that the owner or operator has elected to comply with the requirements of this section.~~

~~b.a.~~ A performance test as specified in subsection 3 must be conducted initially upon designation, annually, and at other times requested by the department.

~~e.b.~~ If a valve leak is detected, it must be repaired in accordance with subsections 4 and 5 of section 33-24-05-427.

3. Performance tests must be conducted in the following manner:

- a. All valves subject to requirements in section 33-24-05-427 within the hazardous waste management unit shall be monitored within one week by the methods specified in subsection 2 of section 33-24-05-433.

- b. If an instrument reading of ten thousand parts per million or greater is measured, a leak is detected.

- c. The leak percentage must be determined by dividing the number of valves subject to the requirements in section 33-24-05-427 for which leaks are detected by the total number of valves subject to the requirements in section 33-24-05-427 within the hazardous waste management unit.

~~4. If an owner or operator decides to comply with this section no longer, the owner or operator must notify the department in writing that the work practice standard described in subsections 1 through 5 of section 33-24-05-427 will be followed.~~

**History:** Effective December 1, 1991; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-432. Alternative standard for valves in gas or vapor service or in light liquid service - Skip period leak detection and repair.**

1. **Alternatives.**

~~a.~~ An owner or operator subject to the requirements of section 33-24-05-427 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subdivisions b and c of subsection 2.

~~b.~~ An owner or operator must notify the department before implementing one of the alternative work practices.

2. **Requirements.**

- a. An owner or operator shall comply with the requirements for valves, as described in section 33-24-05-427, except as described in subdivisions b and c.
- b. After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip one of the quarterly leak detection periods (for example, monitor for leaks once every six months) for the valves subject to the requirements in section 33-24-05-427.
- c. After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, an owner or operator may begin to skip three of the quarterly leak detection periods (for example, monitor for leaks once every year) for the valves subject to the requirements in section 33-24-05-427.
- d. If the percentage of valves leaking is greater than two percent, the owner or operator shall monitor monthly in compliance with the requirements in section 33-24-05-427, but may again elect to use this section after meeting the requirements of subdivision a of subsection 3 of section 33-24-05-427.

**History:** Effective December 1, 1991; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-433. Test methods and procedures.**

1. Each owner or operator subject to the provisions of sections 33-24-05-420 through 33-24-05-449 shall comply with the test methods and procedures requirements provided in this section.
2. Leak detection monitoring, as required in sections 33-24-05-422 through 33-24-05-432, must comply with the following requirements:
  - a. Monitoring must comply with reference method 21 in 40 CFR part 60.
  - b. The detection instrument must meet the performance criteria of reference method 21.
  - c. The instrument must be calibrated before use on each day of its use by the procedures specified in reference method 21.
  - d. Calibration gas must be:
    - (1) Zero air (less than ten parts per million of hydrocarbon in air).
    - (2) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand parts per million methane or n-hexane.
  - e. The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in reference method 21.
3. When equipment is tested for compliance with no detectable emissions, as required in subsection 5 of section 33-24-05-422, subsection 9 of section 33-24-05-423, section 33-24-05-424, and subsection 6 of section 33-24-05-427, the test must comply with the following requirements:
  - a. The requirements of subdivisions a through d of subsection 2 apply.
  - b. The background level must be determined as set forth in reference method 21.

- c. The instrument probe must be traversed around all potential leak interfaces as close to the interface as possible as described in reference method 21.
  - d. The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with five hundred parts per million for determining compliance.
4. In accordance with the waste analysis plan required by subsection 2 of section 33-24-05-04, an owner or operator of the facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds ten percent by weight using the following:
    - a. Methods described in American society for testing and materials methods D2267-88, E169-87, E168-88, E260-85 (incorporated by reference under section 33-24-01-05);
    - b. Method ~~9060 or 8260 of~~ 9060A (incorporated by reference under section 33-24-01-05) of "Test Methods for Evaluating Solid Waste." environmental protection agency publication SW-846, ~~(incorporated by reference under section 33-24-01-05)~~ for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or
    - c. Application of the knowledge of the nature of the hazardous waste stream or process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that must be used to support a determination under ~~the~~ this provision ~~includes~~ include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than ten percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.
  5. If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten percent by weight, the determination can be revised only after following the procedures in subdivision a or b of subsection 4.
  6. When an owner or operator and the department do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least ten percent by weight, the procedures in subdivision a or b of subsection 4 can be used to resolve the dispute.
  7. Samples used in determining the percent organic content must be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.
  8. To determine if pump or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by American society for testing and materials D-2879-86 (incorporated by reference under section 33-24-01-05).
  9. Performance tests to determine if control device achieves ninety-five weight percent organic emission reduction shall comply with the procedures of subdivisions a through d of subsection 3 of section 33-24-05-404.

**History:** Effective December 1, 1991; amended effective January 1, 1994; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-434. Recordkeeping requirements.**

1. Owner or operator.
  - a. Each owner or operator subject to the provisions of sections 33-24-05-420 through 33-24-05-449 shall comply with the recordkeeping requirements of this section.
  - b. An owner or operator of more than one hazardous waste management unit subject to the provisions of sections 33-24-05-420 through 33-24-05-449 may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.
2. Owners and operators must record the following information in the facility operating record:
  - a. For each piece of equipment to which sections 33-24-05-420 through 33-24-05-449 applies:
    - (1) Equipment identification number and hazardous waste management unit identification.
    - (2) Approximate locations within the facility, for example, identify the hazardous waste management unit on a facility plot plan.
    - (3) Type of equipment, for example, a pump or pipeline valve.
    - (4) Percent-by-weight total organics in the hazardous waste stream at the equipment.
    - (5) Hazardous waste state at the equipment, for example, gas/vapor or liquid.
    - (6) Method of compliance with the standard, for example, "monthly leak detection and repair" or "equipped with dual mechanical seals".
  - b. For facilities that comply with the provisions of subdivision b of subsection 1 of section 33-24-05-403, an implementation schedule as specified in subdivision b of subsection 1 of section 33-24-05-403.
  - c. Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in subdivision c of subsection 2 of section 33-24-05-405.
  - d. Documentation of compliance with section 33-24-05-430, including the detailed design documentation or performance test results specified in subdivision d of subsection 2 of section 33-24-05-405.
3. When each leak is detected as specified in sections 33-24-05-422, 33-24-05-423, 33-24-05-427, and 33-24-05-428, the following requirements apply:
  - a. A weatherproof and fully visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with subsection 1 of section 33-24-05-428, and the date the leak was detected, must be attached to the leaking equipment.
  - b. The identification on equipment, except on a valve, may be removed after it has been repaired.

- c. The identification on a valve may be removed after it has been monitored for two successive months as specified in subsection 3 of section 33-24-05-427 and no leak has been detected during those two months.
4. When each leak is detected as specified in sections 33-24-05-422, 33-24-05-423, 33-24-05-427, and 33-24-05-428, the following information must be recorded in an inspection log and must be kept in the facility operating record:
  - a. The instrument and operator identification numbers and the equipment identification number.
  - b. The date evidence of a potential leak was found in accordance with subsection 1 of section 33-24-05-428.
  - c. The date the leak was detected and the dates of each attempt to repair the leak.
  - d. Repair methods applied in each attempt to repair the leak.
  - e. "Above ten thousand" if the maximum instrument reading measured by the methods specified in subsection 2 of section 33-24-05-433 after each repair attempt is equal to or greater than ten thousand parts per million.
  - f. "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen calendar days after discovery of the leak.
  - g. Documentation supporting the delay of repair of a valve in compliance with subsection 3 of section 33-24-05-429.
  - h. The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.
  - i. The expected date of successful repair of the leak if a leak is not repaired within fifteen calendar days.
  - j. The date of successful repair of the leak.
5. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of section 33-24-05-430 must be recorded and kept up-to-date in the facility operating record as specified in subsection 3 of section 33-24-05-405. Design documentation as specified in subdivisions a and b of subsection 3 of section 33-24-05-405 and monitoring, operating, and inspection information in subdivisions c through h of subsection 3 of section 33-24-05-405.
6. For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the department will specify the appropriate recordkeeping requirements.
7. The following information pertaining to all equipment subject to the requirements in sections 33-24-05-422 through 33-24-05-430 must be recorded in a log that is kept in the facility operating record:
  - a. A list of identification numbers for equipment (except welded fitting) subject to the requirements of sections 33-24-05-420 through 33-24-05-449.
  - b. Equipment.
    - (1) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less

than five hundred parts per million above background, under the provisions of subsection 5 of section 33-24-05-422, subsection 9 of section 33-24-05-423, and subsection 6 of section 33-24-05-427.

- (2) The designation of this equipment as subject to the requirements of subsection 5 of section 33-24-05-422, subsection 9 of section 33-24-05-423, or subsection 6 of section 33-24-05-427 must be signed by the owner or operator.
  - c. A list of equipment identification numbers for pressure relief devices required to comply with subsection 1 of section 33-24-05-424.
  - d. Data.
    - (1) The dates of each compliance test required in subsection 5 of section 33-24-05-422, subsection 9 of section 33-24-05-423, section 33-24-05-424, and subsection 6 of section 33-24-05-427.
    - (2) The background level measured during each compliance test.
    - (3) The maximum instrument reading measured at the equipment during each compliance test.
  - e. A list of identification numbers for equipment in vacuum service.
  - f. Identification, either by list or location (area or group) of equipment that contains or contacts hazardous waste with an organic concentration of at least ten percent by weight for less than three hundred hours per calendar year.
8. The following information pertaining to all valves subject to the requirements of subsections 7 and 8 of section 33-24-05-427 must be recorded in a log that is kept in the facility operating record.
- a. A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.
  - b. A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the ~~plan~~planned schedule for monitoring each valve.
9. The following information must be recorded in the facility operating record for valves complying with section 33-24-05-432:
- a. A schedule of the monitoring.
  - b. The percent of valves found leaking during each monitoring period.
10. The following information must be recorded in a log that is kept in the facility operating record:
- a. Criteria required in paragraph 2 of subdivision e of subsection 4 of section 33-24-05-422 and subdivision b of subsection 5 of section 33-24-05-423 and an explanation of the design criteria.
  - b. Any changes to these criteria and the reasons for the changes.
11. The following information must be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of sections 33-24-05-420 through 33-24-05-449 and other specific sections:

- a. An analysis determining the design capacity of the hazardous waste management unit.
  - b. A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in sections 33-24-05-422 through 33-24-05-430 and an analysis determining whether these hazardous wastes are heavy liquids.
  - c. An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in sections 33-24-05-422 through 33-24-05-430. The record must include supporting documentation as required by subdivision c of subsection 4 of section 33-24-05-433 when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action, for example, changing the process that produced the waste, that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in sections 33-24-05-422 through 33-24-05-430, then a new determination is required.
12. Records of the equipment leak information required by subsection 4 and the operating information required by subsection 5 need be kept only three years.
  13. The owner or operator of any facility with equipment that is subject to sections 33-24-05-420 through 33-24-05-449 and to the regulations at 40 CFR parts 60, 61, or 63, may elect to determine compliance with sections 33-24-05-420 through 33-24-05-449 either by documentation pursuant to section 33-24-05-434, or by documentation of compliance with the regulations at 40 CFR parts 60, 61, or 63, pursuant to the relevant provisions of the regulations at 40 CFR parts 60, 61, or 63. The documentation of compliance under the regulations at 40 CFR parts 60, 61, or 63 must be kept with or made readily available with the facility operating record.

**History:** Effective December 1, 1991; amended effective January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-451. Definitions.**

As used in sections 33-24-05-450 through 33-24-05-474, all terms shall have the meaning given to them as defined below or as defined elsewhere in this article.

1. "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of section 33-24-05-454.
2. "Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (for example, a sampling port cap), manually operated (for example, a hinged access lid or hatch), or automatically operated (for example, a spring-loaded pressure relief valve).
3. "Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

4. "Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.
5. "Enclosure" means any structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.
6. "External floating roof" means a pontoon or double-deck type cover that rests on the surface of a material managed in a tank with no fixed roof.
7. "Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.
8. "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.
9. "Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.
10. "Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.
11. "In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals at 20 degrees Celsius; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kilopascals at 20 degrees Celsius is equal to or greater than twenty percent by weight.
12. "Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.
13. "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.
14. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.
15. "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (for example, temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of sections 33-24-05-450 through 33-24-05-474, maximum organic vapor pressure is determined using the procedures specified in subsection 3 of section 33-24-05-453.
16. "Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

17. "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in subsection 4 of section 33-24-05-453.
18. "Point of waste origination" means as follows:
  - a. When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in chapter 33-24-02.  
  
[Note: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.]
  - b. When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.
19. "Point of waste treatment" means the point where a hazardous waste to be treated in accordance with [subdivision 6 of subsection 3 of section 33-24-05-452](#) exits the treatment process. Any waste determination shall be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.
20. "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of sections 33-24-05-450 through 33-24-05-474, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.
21. "Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.
22. "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.
23. "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million as determined by direct measurement or by knowledge of the waste in accordance with the requirements of section 33-24-05-453. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^6$  atmospheres/gram-mole/m<sup>3</sup>] at 25 degrees Celsius must be included. Appendix VI presents a list of compounds known to have a Henry's law constant value less than the cutoff level.
24. "Waste determination" means performing all applicable procedures in accordance with the requirements of section 33-24-05-454 to determine whether a hazardous waste meets

standards specified in sections 33-24-05-450 through 33-24-05-474. Examples of a waste determination include performing the procedures in accordance with the requirements of section 33-24-05-454 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

25. "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method [9-959095B](#) (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification". This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-452. Standards - General.**

1. This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to sections 33-24-05-450 through 33-24-05-474.
2. The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in sections 33-24-05-454 through 33-24-05-457, as applicable to the hazardous waste management unit, except as provided for in subsection 3.
3. A tank, surface impoundment, or container is exempt from standards specified in sections 33-24-05-454 through 33-24-05-457, as applicable, provided that the waste management unit is one of the following:
  - a. A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than five hundred parts per million by weight. The average VO concentration shall be determined using the procedures specified in subsection 1 of section 33-24-05-453. The owner or operator shall review and update, as necessary, this determination at least once every twelve months following the date of the initial determination for the hazardous waste streams entering the unit.
  - b. A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:
    - (1) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit ( $C_t$ ) established for the process. The average VO concentration of the hazardous waste at the point of

waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in subsection 2 of section 33-24-05-453.

- (2) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than ninety-five percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than one hundred parts per million weight. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in subsection 2 of section 33-24-05-453.
- (3) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in subsection 2 of section 33-24-05-453.
- (4) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:
  - (a) The organic reduction efficiency (R) for the process is equal to or greater than ninety-five percent, and the organic biodegradation efficiency ( $R_{\text{bio}}$ ) for the process is equal to or greater than ninety-five percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in subsection 2 of section 33-24-05-453.
  - (b) The total actual organic mass biodegradation rate ( $MR_{\text{bio}}$ ) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in subsection 2 of section 33-24-05-453.
- (5) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:
  - (a) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in sections 33-24-05-454 through 33-24-05-457, as applicable to the waste management unit.
  - (b) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The department considers a drain system that meets the requirements of 40 CFR part 63, subpart RR - national emission standards for individual drain systems to be a closed system.
  - (c) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or five hundred parts per million weight, whichever value is lower. The average VO concentration of each individual waste stream at the point of

waste origination shall be determined using the procedures specified in subsection 1 of section 33-24-05-453. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in subsection 2 of section 33-24-05-453.

- (6) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than ninety-five percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than ten thousand parts per million weight. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination must be determined using the procedures specified in subsections 1 and 2 of section 33-24-05-453, respectively.
- (7) A hazardous waste incinerator for which the owner or operator has either:
  - (a) Been issued a final permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-144 through 33-24-05-159; or
  - (b) Has designed and operates the incinerator in accordance with the applicable interim status requirements of subsection 5 of section 33-24-06-16.
- (8) A boiler or industrial furnace for which the owner or operator has either:
  - (a) Been issued a final permit under chapter 33-24-06 which implements the requirements of sections 33-24-05-525 through 33-24-05-549; or
  - (b) Has designed and operates the boiler or industrial furnace in accordance with sections 33-24-05-525 through 33-24-05-549.
- (9) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of paragraphs 1 through 6, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:
  - (a) If method 25D in 40 CFR part 60, appendix A, is used for the analysis, one-half the blank value determined in the method at section 4.4 of method 25D in 40 CFR part 60, appendix A, or a value of twenty-five parts per million by weight, whichever is less.
  - (b) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase ( $0.1 Y/X$ ) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>] at twenty-five degrees Celsius.
- c. A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of paragraph 4 of subdivision b.
- d. A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:
  - (1) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in sections 33-24-05-250 through

33-24-05-299 under table "Treatment Standards for Hazardous Waste" in section 33-24-05-280; or

- (2) The organic hazardous constituents in the waste have been treated by the treatment technology established by the environmental protection agency for the waste in subsection 1 of section 33-24-05-282, or have been removed or destroyed by an equivalent method of treatment approved by the department environmental protection agency pursuant to subsection 2 of section 33-24-05-282.
- e. A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:
- (1) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF - national emission standards for benzene waste operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than ten megagrams per year;
  - (2) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and
  - (3) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.
4. The department may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:
- a. The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of subsection 1 of section 33-24-05-453. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of subsection 2 of section 33-24-05-453.
  - b. In performing a waste determination pursuant to subdivision a, the sample preparation and analysis shall be conducted as follows:
    - (1) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in paragraph 2.
    - (2) If the department determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the department may choose an appropriate method.
  - c. In a case when the owner or operator is requested to perform the waste determination, the department may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

- d. In a case when the results of the waste determination performed or requested by the department do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of subdivision a shall be used to establish compliance with the requirements of sections 33-24-05-450 through 33-24-05-474.
- e. In a case when the owner or operator has used an averaging period greater than one hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the department may elect to establish compliance with sections 33-24-05-450 through 33-24-05-474 by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a one-hour period as follows:
  - (1) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of subsection 1 of section 33-24-05-453.
  - (2) Results of the waste determination performed or requested by the department showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than five hundred parts per million weight shall constitute noncompliance with sections 33-24-05-450 through 33-24-05-474 except in a case as provided for in paragraph 3.
  - (3) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than one hour to be less than five hundred parts per million weight but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given one-hour period may be equal to or greater than five hundred parts per million weight, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (for example, test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of subsection 1 of section 33-24-05-453 and section 33-24-05-459 shall be considered by the department together with the results of the waste determination performed or requested by the department in establishing compliance with sections 33-24-05-450 through 33-24-05-474.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-453. Waste determination procedures.**

- 1. Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.
  - a. An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of subdivision a of subsection 3 of section 33-24-05-452 from using air emission controls in accordance with standards specified in sections 33-24-05-454 through 33-24-05-457, as applicable to the waste management unit.
    - (1) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste

stream is placed in a waste management unit exempted under the provisions of subdivision a of subsection 3 of section 33-24-05-452 from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

- (2) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in section 33-24-05-452.
- b. For a waste determination that is required by subdivision a, the average VO concentration of a hazardous waste at the point of waste origination may be determined ~~in accordance with the procedures specified in paragraphs 1 through 3.~~
- ~~(1)~~ ~~The average VO concentration of a hazardous waste at the point of waste origination must be determined~~ using either direct measurement as specified in ~~paragraph 2~~subdivision c or by knowledge as specified in ~~paragraph 3~~subdivision d.
- ~~(2)~~c. Direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.
- ~~(a)~~(1) Identification. The owner or operator shall identify and record the point of waste origination for the hazardous waste.
  - ~~(b)~~(2) Sampling. Samples of the hazardous waste stream must be collected at the point of waste origination in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.
- ~~[1]~~(a) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed one year.
- ~~[2]~~(b) A sufficient number of samples, but no less than four samples, must be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.
- ~~[3]~~(c) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained onsite in the facility operating records. An example of an acceptable ~~sampling plan includes a plan incorporating~~ sample collection and handling procedures ~~in accordance with the requirements specified in~~

~~"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05, or for a total volatile organic constituent concentration may be found in method 25D in 40 CFR part 60, appendix A.~~

- ~~[4]~~(d) Sufficient information, as specified in the "site sampling plan" required under ~~item 3 of subparagraph b of paragraph 3 of subdivision b, subparagraph c~~ shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.
- (e)(3) Analysis. Each collected sample must be prepared and analyzed in accordance with ~~one or more of the methods listed in items 1 through 9, including appropriate quality assurance and quality control checks and use of target compounds for calibration. If method 25D in 40 CFR part 60, appendix A, is not used, then one or more methods should be chosen that are appropriate to ensure that~~ for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed waste determination concentration accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/ mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole meters<sup>3</sup>] at twenty-five degrees Celsius. ~~Each of the analytical methods listed in items 2 through 7 has an associated list of approved chemical compounds, for which the department considers the method appropriate for measurement. If an owner or operator uses environmental protection agency method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A, to analyze one or more compounds that are not on that method's published list, the alternative test procedure contained in 40 CFR parts 136.4 and 136.5 must be followed. If an owner or operator uses environmental protection agency method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05 to analyze one or more compounds that are not on that method's published list, the procedures in item 8 must be followed. At the owner's or operator's discretion, the owner or operator may adjust test data measured~~ obtained by any appropriate method other than method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using method 25D in 40 CFR part 60, appendix A to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at twenty-five degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at twenty-five degrees Celsius contained in the waste. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in subparagraphs a or b and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole/m<sup>3</sup>] at twenty-five degrees Celsius, is met.

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[1] ~~Method 25D in 40 CFR part 60, appendix A.~~

~~[2] Method 624 in 40 CFR part 136, appendix A.~~

~~[3] Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in table 7 of the method.~~

~~[4] Method 1624 in 40 CFR part 136, appendix A.~~

~~[5] Method 1625 in 40 CFR part 136, appendix A.~~

~~[6] Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05. Maintain a formal quality assurance program consistent with the requirements of method 8260. The quality assurance program shall include the following elements:-~~

~~[a] Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.~~

~~[b] Measurement of the overall accuracy and precision of the specific procedures.~~

~~[7] Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05. Maintain a formal quality assurance program consistent with the requirements of method 8270. The quality assurance program shall include the following elements:-~~

~~[a] Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.~~

~~[b] Measurement of the overall accuracy and precision of the specific procedures.~~

~~[8](a) Any other environmental protection agency standard method that has been validated in accordance with "Alternative Validation Procedure for Environmental Protection Agency Waste and Wastewater Methods", 40 CFR part 63, appendix D. As an alternative, other environmental protection agency standard methods may be validated by the procedure specified in item 9.~~

~~[9](b) Any other analysis method that has been validated in accordance with the procedures specified in section 5.1 or 5.3, and the corresponding calculations in section 6.1 or section 6.3, of method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in section 6.1.5 or 6.3.3 of method 301. If correction is required under section 6.3.3 of method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of method 301 are not required.~~

~~(d)(4) Calculations.~~

~~1~~(a) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all waste determinations conducted in accordance with ~~subparagraph b and~~ paragraphs 2 and 3 and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

where:

C = Average VO concentration of the hazardous waste at the point of waste origination on a mass-weighted basis, parts per million weight.

i = Individual sample waste determination "i" of the hazardous waste.

n = Total number of waste determinations of the hazardous waste ~~collected~~ conducted (at least four) for the averaging period (not to exceed one year).

Q<sub>i</sub> = Mass quantity of hazardous waste stream represented by C<sub>i</sub>, kilograms per hour.

Q<sub>T</sub> = Total mass quantity of hazardous waste during the averaging period, kilograms per hour.

C<sub>i</sub> = Measured VO concentration of waste determination "i" as determined in accordance with the requirements of ~~subparagraph~~ paragraph 3 (for example, the average of the four or more samples specified in ~~item 2 of~~ subparagraph b of paragraph 2), parts per million weight.

~~2~~(b) For the purpose of determining C<sub>i</sub>, for individual waste samples analyzed in accordance with ~~subparagraph~~ paragraph 3, the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

~~a~~[1] If method 25D in 40 CFR part 60, appendix A, is used for the analysis, one-half the blank value determined in the method at section 4.4 of method 25D in 40 CFR part 60, appendix A.

~~b~~[2] If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/ mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8 x 10<sup>-6</sup> atmospheres/gram-mole/m<sup>3</sup>] at twenty-five degrees Celsius.

~~e~~(5) Provided that the test method is appropriate for the waste as required under ~~subparagraph~~ paragraph 3, the department will determine compliance based on the test method used by the owner or operator as recorded pursuant to subsection 56 of section ~~33-24-05-460~~ 33-24-05-459.

~~3~~d. Use of owner or operator knowledge to determine average VO concentration of a hazardous waste at the point of waste origination.

- (a)(1) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the hazardous waste stream's average VO concentration. Examples of information that may be used as the basis for knowledge include material balances for the source or process generating the hazardous waste stream; constituent-specific chemical test data for the hazardous waste stream from previous testing that are still applicable to the current waste stream; previous test data for other locations managing the same type of waste stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.
- (b)(2) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use organic concentration test data for the hazardous waste stream that are validated in accordance with method 301 in 40 CFR part 63, appendix A, as the basis for knowledge of the waste.
- (c)(3) An owner or operator using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous waste may adjust the test data to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using method 25D and 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ).
- (d)(4) In the event that the department and the owner or operator disagree on a determination of the average VO concentration for a hazardous waste stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in ~~paragraph 2~~ subdivision c must be used to establish compliance with the applicable requirements in sections 33-24-05-450 through 33-24-05-474. The department may perform or request that the owner or operator perform this determination using direct measurement. The owner or operator may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of ~~subparagraph c of paragraph 2~~ paragraph 3 of subdivision c.

2. Waste determination procedures for treated hazardous waste.

- a. An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of paragraphs 1 through 6 of subdivision b of subsection 3 of section 33-24-05-452 from using air emission controls in accordance with standards specified in sections 33-24-05-454 through 33-24-05-457, as applicable to the waste management unit.
- (1) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every twelve months following the date of the initial waste determination; and
- (2) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in subdivision b of subsection 3 of section 33-24-05-452 are not achieved.

- b. The waste determination for a treated hazardous waste must be performed in accordance with the procedures specified in ~~paragraphs 1 through 8~~subdivisions c through j, as applicable to the treated hazardous waste.
- ~~(1)~~c. The owner or operator shall designate and record the specific provision in subdivision b of subsection 3 of section ~~33-24-05-453~~33-24-05-452 under which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in ~~paragraphs 2 through 8~~subdivisions d through j.
- ~~(2)~~d. Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.
- ~~(a)~~(1) Identification. The owner or operator shall identify and record the point of waste treatment for the hazardous waste.
- ~~(b)~~(2) Sampling. Samples of the hazardous waste stream must be collected at the point of waste treatment in a manner such that volatilization of organics contained in the waste and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.
- ~~[1]~~(a) The averaging period to be used for determining the average VO concentration for the hazardous waste stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the hazardous waste stream but shall not exceed one.
- ~~[2]~~(b) A sufficient number of samples, but no less than four samples, must be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.
- ~~[3]~~(c) All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan must be maintained onsite in the facility operating records. An example of ~~an acceptable sampling plan includes a plan incorporating~~ sample collection and handling procedures for a total volatile organic constituent concentration may be found in ~~accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05, or method 25D in 40 CFR part 60, appendix A.~~
- ~~[4]~~(d) Sufficient information, as specified in the "site sampling plan" required under ~~item 3 of subparagraph b of paragraph 3 of subdivision b and subparagraph b of paragraph 2 of subdivision b~~subparagraph c shall be prepared and recorded to document the waste quantity represented by the samples and, as

applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

(e)(3) Analysis. Each collected sample must be prepared and analyzed in accordance with ~~one or more of the methods listed in items 1 through 9, including appropriate quality assurance and quality control checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of paragraphs 1 through 6 of subdivision b of subsection 3 of section 33-24-05-452 are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If method 25D in 40 CFR part 60, appendix A, is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed waste concentration~~ accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as  $1.8 \times 10^{-6}$  atmospheres/gram-mole meters<sup>3</sup>] at twenty-five degrees Celsius. ~~Each of the analytical methods listed in items 2 through 7 has an associated list of approved chemical compounds, for which the department considers the method appropriate for measurement. If an owner or operator uses environmental protection agency method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A, to analyze one or more compounds that are not on that method's published list, the alternative test procedure contained in 40 CFR parts 136.4 and 136.5 must be followed. If an owner or operator uses environmental protection agency method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05 to analyze one or more compounds that are not on that method's published list, the procedures in item 8 must be followed.~~When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of paragraphs 1 through 6 of subdivision b of subsection 3 of section 33-24-05-452 are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. At the owner's or operator's discretion, the owner or operator may adjust test data measured by a method other than method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using method 25D in 40 CFR part 60, appendix A obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at twenty-five degrees Celsius. To adjust these data the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor ( $f_{m25D}$ ). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at twenty-five degrees Celsius contained in the waste. Constituent-specific adjustment factors ( $f_{m25D}$ ) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and

Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in subparagraph a or b of paragraph 3 of subdivision c of subsection 1 and provided the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8 x 10<sup>-6</sup> atmospheres/gram-mole/m<sup>3</sup>] at twenty-five degrees Celsius, is met.

~~[1] Method 25D in 40 CFR part 60, appendix A.~~

~~[2] Method 624 in 40 CFR part 136, appendix A.~~

~~[3] Method 625 in 40 CFR part 136, appendix A. Perform corrections to the compounds for which the analysis is being conducted based on the "accuracy as recovery" using the factors in table 7 of the method.~~

~~[4] Method 1624 in 40 CFR part 136, appendix A.~~

~~[5] Method 1625 in 40 CFR part 136, appendix A.~~

~~[6] Method 8260 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05. Maintain a formal quality assurance program consistent with the requirements of method 8260. The quality assurance program shall include the following elements:-~~

~~[a] Documentation of site specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.~~

~~[b] Measurement of the overall accuracy and precision of the specific procedures.~~

~~[7] Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05. Maintain a formal quality assurance program consistent with the requirements of method 8270. The quality assurance program must include the following elements:-~~

~~[a] Documentation of site specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, preparation, introduction, and analysis steps.~~

~~[b] Measurement of the overall accuracy and precision of the specific procedures.~~

~~[8](a) Any other environmental protection agency standard method that has been validated in accordance with "Alternative Validation Procedure for Environmental Protection Agency Waste and Wastewater Methods", 40 CFR part 63, appendix D. As an alternative, other environmental protection agency standard methods may be validated by the procedure specified in item 9.~~

~~[9](b) Any other analysis method that has been validated in accordance with the procedures specified in section 5.1 or 5.3 and the corresponding calculations~~

in section 6.1 or section 6.3 of method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in section 6.1.5 or 6.3.3 of method 301. If correction is required under section 6.3.3 of method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of method 301 are not required.

- (d)(4) Calculations. The average VO concentration (C) on a mass-weighted basis must be calculated by using the results for all waste determinations conducted in accordance with ~~subparagraphs b and c~~paragraphs 2 and 3 and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

where:

C = Average VO concentration of the hazardous waste at the point of waste treatment on a mass-weighted basis, parts per million weight.

i = Individual sample waste determination "i" of the hazardous waste.

n = Total number of waste determinations of the hazardous waste conducted for the averaging period (not to exceed one year).

Q<sub>i</sub> = Mass quantity of hazardous waste stream represented by C<sub>i</sub>, kilograms per hour.

Q<sub>T</sub> = Total mass quantity of hazardous waste during the averaging period, kilograms per hour.

C<sub>i</sub> = Measured VO concentration of waste determination "i" as determined in accordance with the requirements of ~~subparagraph c~~paragraph 3 (for example, the average of the four or more samples specified in ~~item 2 of~~ subparagraph b of paragraph 32), parts per million weight.

- (e)(5) Provided that the test method is appropriate for the waste as required under paragraph 3, compliance shall be determined based on the test method used by the owner or operator as recorded pursuant to subdivision a of subsection 56 of section ~~33-24-05-460~~33-24-05-459.

(3)e. Procedure to determine the exit concentration limit (C<sub>i</sub>) for a treated hazardous waste.

(a)(1) The point of waste origination for each hazardous waste treated by the process at the same time must be identified.

(b)(2) If a single hazardous waste stream is identified in ~~subparagraph a~~paragraph 1, then the exit concentration limit (C<sub>i</sub>) must be five hundred parts per million weight.

(e)(3) If more than one hazardous waste stream is identified in ~~subparagraph a~~paragraph 1, then the average VO concentration of each hazardous waste stream at the point of waste origination must be determined in accordance

with the requirements of subsection 1. The exit concentration limit ( $C_t$ ) must be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_t = \frac{\sum_{x=1}^m (Q_x \times \bar{C}_x) + \sum_{y=1}^n (Q_y \times 500 \text{ ppmw})}{\sum_{x=1}^m Q_x + \sum_{y=1}^n Q_y}$$

where:

$C_t$  = Exit concentration limit for treated hazardous waste, parts per million weight.

$x$  = Individual hazardous waste stream "x" that has an average VO concentration less than five hundred parts per million weight at the point of waste origination as determined in accordance with the requirements of ~~paragraph 1 of subdivision b of~~ subsection 1.

$y$  = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than five hundred parts per million weight at the point of waste origination as determined in accordance with the requirements of ~~paragraph 1 of subdivision b of~~ subsection 1.

$m$  = Total number of "x" hazardous waste streams treated by process.

$n$  = Total number of "y" hazardous waste streams treated by process.

$Q_x$  = Annual mass quantity of hazardous waste stream "x", ~~kg/yr~~ kilograms per year.

$Q_y$  = Annual mass quantity of hazardous waste stream "y", ~~kg/yr~~ kilograms per year.

$C_x$  = Average VO concentration of hazardous waste stream "x" at the point of waste origination as determined in accordance with the requirements of ~~paragraph 1 of subdivision b of~~ subsection 1, parts per million weight.

~~(4)~~f. Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

~~(a)~~(1) The organic reduction efficiency (R) for a treatment process must be determined based on results for a minimum of three consecutive runs.

~~(b)~~(2) All hazardous waste streams entering the treatment process and all hazardous waste streams exiting the treatment process must be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the hazardous waste in the process.

~~(c)~~(3) For each run, information must be determined for each hazardous waste stream identified in ~~subparagraph b~~ ~~paragraph 2~~ using the following procedures:

- ~~1~~(a) The mass quantity of each hazardous waste stream entering the process ( $Q_b$ ) and the mass quantity of each hazardous waste stream exiting the process ( $Q_a$ ) must be determined.
- ~~2~~(b) The average VO concentration at the point of waste origination of each hazardous waste stream entering the process ( $C_b$ ) during the run must be determined in accordance with the requirements of ~~paragraph 2~~—of subdivision ~~b~~c of subsection 1. The average VO concentration at the point of waste treatment of each waste stream exiting the process ( $C_a$ ) during the run must be determined in accordance with the requirements of ~~paragraph 2~~subdivision d.
- ~~(d)~~(4) The waste volatile organic mass flow entering the process ( $E_b$ ) and the waste volatile organic mass flow exiting the process ( $E_a$ ) must be calculated by using the results determined in accordance with ~~subparagraph e~~paragraph 3 and the following equations:

$$E_b = \frac{1}{10^6} \sum_{j=1}^m (Q_{bj} \times \overline{C_{bj}})$$

$$E_a = \frac{1}{10^6} \sum_{j=1}^m (Q_{aj} \times \overline{C_{aj}})$$

where:

$E_a$  = Waste volatile organic mass flow exiting process, kilograms per hour.

$E_b$  = Waste volatile organic mass flow entering process, kilograms per hour.

$m$  = Total number of runs (at least three).

$j$  = Individual run "j".

$Q_b$  = Mass quantity of hazardous waste entering process during run "j", kilograms per hour.

$Q_a$  = Average mass quantity of hazardous waste exiting process during run "j", kilograms per hour.

$C_a$  = Average VO concentration of hazardous waste exiting process during run "j" as determined in accordance with the requirements of ~~paragraph 2~~subdivision d, parts per million weight.

$C_b$  = Average VO concentration of hazardous waste entering process during run "j" as determined in accordance with the requirements of ~~paragraph 2~~ of subdivision ~~b~~c of subsection 1, parts per million weight.

- ~~(e)~~(5) The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with ~~subparagraph d~~paragraph 4 and the following equation:~~where:~~

$$R = \frac{E_b - E_a}{E_b} \times 100\%$$

where:

R = Organic reduction efficiency, percent.

$E_b$  = Waste volatile organic mass flow entering process as determined in accordance with the requirements of ~~subparagraph d~~ paragraph 4, kilograms per hour.

$E_a$  = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of ~~subparagraph d~~ paragraph 4, kilograms per hour.

~~(5)~~g. Procedure to determine the organic biodegradation efficiency ( $R_{bio}$ ) for a treated hazardous waste.

~~(a)~~(1) The fraction of organics biodegraded ( $F_{bio}$ ) must be determined using the procedure specified in 40 CFR part 63, appendix C.

~~(b)~~(2) The  $R_{bio}$  must be calculated by using the following equation:

$$R_{bio} = F_{bio} \times 100\%$$

where:

$R_{bio}$  = Organic biodegradation efficiency, percent.

$F_{bio}$  = Fraction of organic biodegraded as determined in accordance with the requirements of ~~subparagraph a~~ paragraph 1.

~~(6)~~h. Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

~~(a)~~(1) All of the hazardous waste streams entering the treatment process must be identified.

~~(b)~~(2) The average VO concentration of each hazardous waste stream at the point of waste origination must be determined in accordance with the requirements of ~~paragraph 1 of subdivision b~~ of subsection 1.

~~(c)~~(3) For each individual hazardous waste stream that has an average VO concentration equal to or greater than five hundred parts per million weight at the point of waste origination, the average volumetric flow rate and the density of the hazardous waste stream at the point of waste origination must be determined.

~~(d)~~(4) The RMR must be calculated by using the average VO concentration, average volumetric flow rate, and density determined for each individual hazardous waste stream, and the following equation:

where: RMR = Required organic mass removal rate, kilograms per hour.

y = Individual hazardous waste stream "y" that has an average VO concentration equal to or greater than five hundred parts per million weight at the point of waste origination as determined in accordance with the requirements of ~~paragraph 1 of subdivision b~~ of subsection 1.

n = Total number of "y" hazardous waste streams treated by process.

$V_y$  = Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, meters<sup>3/hr</sup> per hour.

$K_y$  = Density of hazardous waste stream, "y", kg/kilograms per meters<sup>3</sup>.

$C_y$  = Average VO concentration of hazardous waste stream "y" at the point of waste origination as determined in accordance with the requirements of ~~paragraph 1 of subdivision b of~~ subsection 1, parts per million weight.

~~(7)~~i. Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

~~(a)~~(1) The MR shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run must be one hour.

~~(b)~~(2) The waste volatile organic mass flow entering the process ( $E_b$ ) and the waste volatile organic mass flow exiting the process ( $E_a$ ) must be determined in accordance with the requirements of ~~subparagraph d of~~ paragraph 4 of subdivision f.

~~(c)~~(3) The MR must be calculated by using the mass flow rate determined in accordance with the requirements of ~~subparagraph b of~~ paragraph 2 and the following equation:

$$MR = E_b - E_a$$

\_\_\_\_\_ where:

MR = Actual organic mass removal rate, kilograms per hour.

$E_b$  = Waste volatile organic mass flow entering process as determined in accordance with the requirements of ~~subparagraph d of~~ paragraph 4 of subdivision f, kilograms per hour.

$E_a$  = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of ~~subparagraph d of~~ paragraph 4 of subdivision f, kilograms per hour.

~~(8)~~j. Procedure to determine the actual organic mass biodegradation rate ( $MR_{bio}$ ) for a treated hazardous waste.

~~(a)~~(1) The  $MR_{bio}$  must be determined based on results for a minimum of three consecutive runs. The sampling time for each run must be one hour.

~~(b)~~(2) The waste organic mass flow entering the process ( $E_b$ ) must be determined in accordance with the requirements of ~~subparagraph d of~~ paragraph 4 of subdivision f.

~~(c)~~(3) The fraction of organic biodegraded ( $F_{bio}$ ) must be determined using the procedure specified in 40 CFR part 63, appendix C.

~~(d)~~(4) The  $MR_{bio}$  must be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of ~~subparagraphs b and c of~~ paragraphs 2 and 3, respectively, and the following equation:

$$MR_{bio} = E_b \times F_{bio}$$

where:

$MR_{bio}$  = Actual organic mass biodegradation rate, kilograms per hour.

$E_b$  = Waste organic mass flow entering process as determined in accordance with the requirements of ~~subparagraph d~~ of paragraph 4 of subdivision f, kilograms per hour.

$F_{bio}$  = Fraction of organic biodegraded as determined in accordance with the requirements of ~~subparagraph e~~paragraph 3.

3. Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.
- a. An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using tank level 1 controls in accordance with standards specified in subsection 3 of section 33-24-05-454.
- b. The maximum organic vapor pressure of the hazardous waste may be determined ~~in accordance with the procedures specified below:~~

~~(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using tank level 1 controls in accordance with the standards specified in section 33-24-05-454.~~

~~(2) An owner or operator shall use using either direct measurement as specified in ~~paragraph 3~~subdivision c or knowledge of the waste as specified in ~~paragraph 4~~subdivision d to determine the maximum organic vapor pressure which is representative of the hazardous waste composition stored or treated in the tank.~~

~~(3)~~c. Direct measurement to determine the maximum organic vapor pressure of a hazardous waste.

~~(a)~~(1) Sampling. A sufficient number of samples must be collected to be representative of the waste contained in the tank. All samples must be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained onsite in the facility operating records. An example of ~~an acceptable sampling plan includes a plan incorporating~~ sample collection and handling procedures ~~in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05, or~~may be found in method 25D in 40 CFR part 60, appendix A.

~~(b)~~(2) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous waste:

~~[1]~~(a) Method 25E in 40 CFR part 60, appendix A;

~~[2]~~(b) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks", as incorporated by reference in section 33-24-01-05;

~~[3]~~(c) Methods obtained from the standard reference texts;

~~[4]~~(d) ASTM method 2879-92, as incorporated by reference in section 33-24-01-05; or

~~5~~(e) Any other method approved by the department.

(4)d. Use of knowledge to determine the maximum organic vapor pressure of the hazardous waste. Documentation must be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum organic vapor pressure of the hazardous waste is less than the maximum vapor pressure limit listed in paragraph 1 of subdivision a of subsection 2 of section 33-24-05-454 for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

4. The procedure for determining no detectable organic emissions for the purpose of complying with sections 33-24-05-450 through 33-24-05-474 must be conducted in accordance with the procedures specified below:
  - a. The test must be conducted in accordance with the procedures specified in method 21 of 40 CFR part 60, appendix A. Each potential leak interface (for example, a location where organic vapor leakage could occur) on the cover and associated closure devices must be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.
  - b. The test must be performed when the unit contains a hazardous waste having an organic concentration representative of the range of concentrations for the hazardous waste expected to be managed in the unit. During the test, the cover and closure devices must be secured in the closed position.
  - c. The detection instrument must meet the performance criteria of method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of method 21 must be for the average composition of the organic constituents in the hazardous waste placed in the waste management unit, not for each individual organic constituent.
  - d. The detection instrument must be calibrated before use on each day of its use by the procedures specified in method 21 of 40 CFR part 60, appendix A.
  - e. Calibration gases must be as follows:
    - (1) Zero air (less than ten parts per million volume hydrocarbon in air); and
    - (2) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand parts per million volume methane or n-hexane.
  - f. The background level must be determined according to the procedures in method 21 of 40 CFR part 60, appendix A.
  - g. Each potential leak interface must be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface must be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (for example, some pressure relief devices), the instrument probe inlet must be placed at approximately the center of the exhaust area to the atmosphere.

- h. The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of five hundred parts per million volume except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison must be as specified in subdivision i. If the difference is less than five hundred parts per million volume, then the potential leak interface is determined to operate with no detectable organic emissions.
- i. For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level must be compared with the value of ten thousand parts per million weight. If the difference is less than ten thousand parts per million weight, then the potential leak interface is determined to operate with no detectable organic emissions.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-454. Standards - Tanks.**

- 1. The provisions of this section apply to the control of air pollutant emissions from tanks for which subsection 2 of section 33-24-05-452 references the use of this section for such air emission control.
- 2. The owner or operator shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:
  - a. For a tank that manages hazardous waste that meets all of the conditions specified in paragraphs 1 through 3, the owner or operator shall control air pollutant emissions from the tank in accordance with the tank level 1 controls specified in subsection 3 or the tank level 2 controls specified in subsection 4.
    - (1) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:
      - (a) For a tank design capacity equal to or greater than 5,330 feet<sup>3</sup> [151 meters<sup>3</sup>], the maximum organic vapor pressure limit for the tank is 5.2 kilopascals.
      - (b) For a tank design capacity equal to or greater than 2,650 feet<sup>3</sup> [75 meters<sup>3</sup>] but less than 5,330 feet<sup>3</sup> [151 meters<sup>3</sup>], the maximum organic vapor pressure limit for the tank is 27.6 kilopascals.
      - (c) For a tank design capacity less than 2,650 feet<sup>3</sup> [75 meters<sup>3</sup>], the maximum organic vapor pressure limit for the tank is 76.6 kilopascals.
    - (2) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with paragraph 1.
    - (3) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as defined in section 33-24-05-451.
  - b. For a tank that manages hazardous waste that does not meet all of the conditions specified in paragraphs 1 through 3 [of subdivision a](#), the owner or operator shall control air pollutant emissions from the tank by using tank level 2 controls in accordance with the requirements of subsection 4. Examples of tanks required to use tank level 2 controls

include a tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph 1 [of subdivision a](#).

3. Owners and operators controlling air pollutant emissions from a tank using tank level 1 controls shall meet the requirements specified in subdivisions a through d:
  - a. The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using tank level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure must be determined using the procedures specified in subsection 3 of section 33-24-05-453. Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph 1 of subdivision a of subsection 2, as applicable to the tank.
  - b. The tank must be equipped with a fixed roof designed to meet the following specifications:
    - (1) The fixed roof and its closure devices must be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank (for example, a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (for example, a horizontal cylindrical tank equipped with a hatch).
    - (2) The fixed roof must be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.
    - (3) Each opening in the fixed roof, and any manifold system associated with the fixed roof, must be either:
      - (a) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or
      - (b) Connected by a closed-vent system that is vented to a control device. The control device must remove or destroy organics in the vent stream, and must be operating whenever hazardous waste is managed in the tank, except as provided for in items 1 and 2.
        - [1] During periods when it is necessary to provide access to the tank for performing the activities of item 2, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.
        - [2] During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

- (4) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices include organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.
- c. Whenever a hazardous waste is in the tank, the fixed roof must be installed with each closure device secured in the closed position except as follows:
- (1) Opening of closure devices or removal of the fixed roof is allowed at the following times:
    - (a) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.
    - (b) To remove accumulated sludge or other residues from the bottom of the tank.
  - (2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device must be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens must be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.
  - (3) Opening of a safety device, as defined in section 33-24-05-451, is allowed at any time conditions require doing so to avoid an unsafe condition.
- d. The owner or operator shall inspect the air emission control equipment in accordance with the following requirements:
- (1) The fixed roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

- (2) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in subsection 12.
  - (3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection 11.
  - (4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-05-459.
4. Owners and operators controlling air pollutant emissions from a tank using tank level 2 controls shall use one of the following tanks:
  - a. A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in subsection 5;
  - b. A tank equipped with an external floating roof in accordance with the requirements specified in subsection 6;
  - c. A tank vented through a closed-vent system to a control device in accordance with the requirements specified in subsection 7;
  - d. A pressure tank designed and operated in accordance with the requirements specified in subsection 8; or
  - e. A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in subsection 9.
5. The owner or operator who controls air pollutant emissions from a tank using a fixed-roof with an internal floating roof shall meet the requirements specified in subdivisions a through c.
  - a. The tank must be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:
    - (1) The internal floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.
    - (2) The internal floating roof must be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:
      - (a) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in section 33-24-05-451; or
      - (b) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.
    - (3) The internal floating roof must meet the following specifications:
      - (a) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.
      - (b) Each opening in the internal floating roof must be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

- (c) Each penetration of the internal floating roof for the purpose of sampling must have a slit fabric cover that covers at least ninety percent of the opening.
  - (d) Each automatic bleeder vent and rim space vent must be gasketed.
  - (e) Each penetration of the internal floating roof that allows for passage of a ladder must have a gasketed sliding cover.
  - (f) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof must have a flexible fabric sleeve seal or a gasketed sliding cover.
- b. The owner or operator shall operate the tank in accordance with the following requirements:
- (1) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and must be completed as soon as practical.
  - (2) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.
  - (3) Prior to filling the tank, each cover, access hatch, gauge float well, or lid on any opening in the internal floating roof must be bolted or fastened closed (for example, no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.
- c. The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:
- (1) The floating roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to the internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than ten percent open area.
  - (2) The owner or operator shall inspect the internal floating roof components as follows except as provided in paragraph 3:
    - (a) Visually inspect the internal floating roof components through openings on the fixed roof (for example, manholes and roof hatches) at least once every twelve months after initial fill; and
    - (b) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every ten years.
  - (3) As an alternative to performing the inspection specified in paragraph 2 for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five years.

- (4) Prior to each inspection required by paragraph 2 or 3, the owner or operator shall notify the department in advance of each inspection to provide the department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the department of the date and location of the inspection as follows:
    - (a) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the owner or operator so that it is received by the department at least thirty calendar days before refilling the tank except when an inspection is not planned as provided for in subparagraph b.
    - (b) When a visual inspection is not planned and the owner or operator could not have known about the inspection thirty calendar days before refilling the tank, the owner or operator shall notify the department as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the department at least seven calendar days before refilling the tank.
  - (5) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection 11.
  - (6) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-05-459.
  - d. Safety devices, as defined in section 33-24-05-451, may be installed and operated as necessary on any tank complying with the requirements of this subsection.
6. The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in subdivisions a through c.
- a. The owner or operator shall design the external floating roof in accordance with the following requirements:
    - (1) The external floating roof must be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.
    - (2) The floating roof must be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.
      - (a) The primary seal must be a liquid-mounted seal or a metallic shoe seal, as defined in section 33-24-05-451. The total area of the gaps between the tank wall and the primary seal may not exceed 10.0 inches<sup>2</sup> per foot [212 square centimeters per meter] of tank diameter, and the width of any portion of these gaps may not exceed 1.5 inches [3.8 centimeters]. If a metallic shoe seal is used for the primary seal, the metallic shoe seal must be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least sixty-one centimeters above the liquid surface.
      - (b) The secondary seal must be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal may not exceed 1.0 inches<sup>2</sup> per foot [21.2 square centimeters per meter] of tank diameter, and the

width of any portion of these gaps must not exceed 0.5 inches [1.3 centimeters].

- (3) The external floating roof must meet the following specifications:
  - (a) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof must provide a projection below the liquid surface.
  - (b) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be equipped with a gasketed cover, seal, or lid.
  - (c) Each access hatch and each gauge float well must be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.
  - (d) Each automatic bleeder vent and each rim space vent must be equipped with a gasket.
  - (e) Each roof drain that empties into the liquid managed in the tank must be equipped with a slotted membrane fabric cover that covers at least ninety percent of the area of the opening.
  - (f) Each unslotted and slotted guide pole well must be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.
  - (g) Each unslotted guide pole must be equipped with a gasketed cap on the end of the pole.
  - (h) Each slotted guide pole must be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.
  - (i) Each gauge hatch and each sample well must be equipped with a gasketed cover.
- b. The owner or operator shall operate the tank in accordance with the following requirements:
  - (1) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling must be continuous and must be completed as soon as practical.
  - (2) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof must be secured and maintained in a closed position at all times except when the closure device must be open for access.
  - (3) Covers on each access hatch and each gauge float well must be bolted or fastened when secured in the closed position.
  - (4) Automatic bleeder vents must be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.
  - (5) Rim space vents must be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

- (6) The cap on the end of each unslotted guide pole must be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.
  - (7) The cover on each gauge hatch or sample well must be secured in the closed position at all times except when the hatch or well must be opened for access.
  - (8) Both the primary seal and the secondary seal must completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.
- c. The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:
- (1) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:
    - (a) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within sixty calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five years.
    - (b) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within sixty calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.
    - (c) If a tank ceases to hold hazardous waste for a period of one year or more, subsequent introduction of hazardous waste into the tank must be considered an initial operation for the purposes of subparagraphs a and b.
    - (d) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:
      - [1] The seal gap measurements must be performed at one or more floating roof levels when the roof is floating off the roof supports.
      - [2] Seal gaps, if any, must be measured around the entire perimeter of the floating roof in each place where a 0.125-inch [0.32-centimeter] diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.
      - [3] For a seal gap measured under this subdivision, the gap surface area must be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.
      - [4] The total gap area must be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph 2 of subdivision a.

- (e) If the seal gap measurements do not conform to the specifications in paragraph 2 of subdivision a, the owner or operator shall repair the defect in accordance with the requirements of subsection 11.
  - (f) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-05-459.
- (2) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:
- (a) The floating roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.
  - (b) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection 12.
  - (c) If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection 11.
  - (d) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-05-459.
- (3) Prior to each inspection required by paragraph 1 or 2 ~~of subdivision e~~, the owner or operator shall notify the department in advance of each inspection to provide the department with the opportunity to have an observer present during the inspection. The owner or operator shall notify the department of the date and location of the inspection as follows:
- (a) Prior to each inspection to measure external floating roof seal gaps as required under paragraph 1 ~~of subdivision e~~, written notification must be prepared and sent by the owner or operator so that it is received by the department at least thirty calendar days before the date the measurements are scheduled to be performed.
  - (b) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification must be prepared and sent by the owner or operator so that it is received by the department at least thirty calendar days before refilling the tank except when an inspection is not planned as provided for in subparagraph c ~~of paragraph 3 of subdivision e~~.
  - (c) When a visual inspection is not planned and the owner or operator could not have known about the inspection thirty calendar days before refilling the tank, the owner or operator shall notify the department as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the

explanation for the unplanned inspection, may be sent so that it is received by the department at least seven calendar days before refilling the tank.

- d. Safety devices, as defined in section 33-24-05-451, may be installed and operated as necessary on any tank complying with the requirements of this subsection.
7. The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in subdivisions a through c.
    - a. The tank must be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:
      - (1) The fixed roof and its closure devices must be designed to form a continuous barrier over the entire surface area of the liquid in the tank.
      - (2) Each opening in the fixed roof not vented to the control device must be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices must be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device must be designed to operate with no detectable organic emissions.
      - (3) The fixed roof and its closure devices must be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices include organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.
      - (4) The closed-vent system and control device must be designed and operated in accordance with the requirements of section 33-24-05-457.
    - b. Whenever a hazardous waste is in the tank, the fixed roof must be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:
      - (1) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:
        - (a) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.
        - (b) To remove accumulated sludge or other residues from the bottom of a tank.
      - (2) Opening of a safety device, as defined in section 33-24-05-451, is allowed at any time conditions require doing so to avoid an unsafe condition.

- c. The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:
  - (1) The fixed roof and its closure devices must be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.
  - (2) The closed-vent system and control device must be inspected and monitored by the owner or operator in accordance with the procedures specified in section 33-24-05-457.
  - (3) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in subsection 12.
  - (4) If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of subsection 11.
  - (5) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in subsection 2 of section 33-24-05-459.
- 8. The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements:
  - a. The tank must be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.
  - b. All tank openings must be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in subsection 4 of section 33-24-05-453.
  - c. Whenever a hazardous waste is in the tank, the tank must be operated as a closed system that does not vent to the atmosphere except under either of the following conditions as specified in paragraph 1 or 2:
    - (1) At those times when opening of a safety device, as defined in section 33-24-05-451, is required to avoid an unsafe condition.
    - (2) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of section 33-24-05-457.
- 9. The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in subdivisions a through d.
  - a. The tank must be located inside an enclosure. The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall

perform the verification procedure for the enclosure as specified in section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

- b. The enclosure must be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in section 33-24-05-457.
  - c. Safety devices, as defined in section 33-24-05-451, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of subdivisions a and b.
  - d. The owner or operator shall inspect and monitor the closed-vent system and control device as specified in section 33-24-05-457.
10. The owner or operator shall transfer hazardous waste to a tank subject to this section in accordance with the following requirements:
- a. Transfer of hazardous waste, except as provided in subdivision b, to the tank from another tank subject to this section or from a surface impoundment subject to section 33-24-05-455 must be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR - National Emission Standards for Individual Drain Systems.
  - b. The requirements of subdivision a do not apply when transferring a hazardous waste to the tank under any of the following conditions:
    - (1) The hazardous waste meets the average VO concentration conditions specified in subdivision a of subsection 3 of section 33-24-05-452 at the point of waste origination.
    - (2) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in subdivision b of subsection 3 of section 33-24-05-452.
    - (3) The hazardous waste meets the requirements of subdivision d of subsection 3 of section 33-24-05-452.
11. The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of subdivision d of subsection 3, subdivision c of subsection 5, subdivision c of subsection 6, or subdivision c of subsection 7 as follows:
- a. The owner or operator shall make first efforts at repair of the defect no later than five calendar days after detection, and repair shall be completed as soon as possible but no later than forty-five calendar days after detection except as provided in subdivision b.
  - b. Repair of a defect may be delayed beyond forty-five calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

12. Following the initial inspection and monitoring of the cover as required by the applicable provisions of sections 33-24-05-450 through 33-24-05-474, subsequent inspection and monitoring may be performed at intervals longer than one year under the following special conditions:
  - a. If inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:
    - (1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.
    - (2) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of sections 33-24-05-450 through 33-24-05-474, as frequently as practicable during those times when a worker can safely access the cover.
  - b. If a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (for example, fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-456. Standards - Containers.**

1. The provisions of this section apply to the control of air pollutant emissions from containers for which subsection 2 of section 33-24-05-452 references the use of this section for such air emission control.
2. General requirements.
  - a. The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in subdivision b apply to the container.
    - (1) For a container having a design capacity greater than 3.5 feet<sup>3</sup> [0.1 meter<sup>3</sup>] and less than or equal to 16.25 feet<sup>3</sup> [0.46 meter<sup>3</sup>], the owner or operator shall control air pollutant emissions from the container in accordance with the container level 1 standards specified in subsection 3.
    - (2) For a container having a design capacity greater than 16.25 feet<sup>3</sup> [0.46 meter<sup>3</sup>] that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the container level 1 standards specified in subsection 3.
    - (3) For a container having a design capacity greater than 16.25 feet<sup>3</sup> [0.46 meter<sup>3</sup>] that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the container level 2 standards specified in subsection 4.
  - b. When a container having a design capacity greater than 3.5 feet<sup>3</sup> [0.1 meter<sup>3</sup>] is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the container

level 3 standards specified in subsection 5 at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

3. Container level 1 standards.

- a. A container using container level 1 controls is one of the following:
  - (1) A container that meets the applicable department of transportation regulations on packaging hazardous materials for transportation as specified in subsection 6.
  - (2) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (for example, a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (for example, a "portable tank" or bulk cargo container equipped with a screw-type cap).
  - (3) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.
- b. A container used to meet the requirements of paragraph 2 or 3 of subdivision a must be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall only include organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.
- c. Whenever a hazardous waste is in a container using container level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:
  - (1) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:
    - (a) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.
    - (b) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within fifteen minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

- (2) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:
    - (a) For the purpose of meeting the requirements of this section, an empty container as defined in ~~subsection 2~~subsections 3, 4, and 5 of section 33-24-02-07 may be open to the atmosphere at any time (for example, covers and closure devices are not required to be secured in the closed position on an empty container).
    - (b) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in ~~subsection 2~~subsections 3, 4, and 5 of section 33-24-02-07, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within fifteen minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.
  - (3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.
  - (4) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.
  - (5) Opening of a safety device, as defined in section 33-24-05-451, is allowed at any time conditions require doing so to avoid an unsafe condition.
- d. The owner or operator of containers using container level 1 controls shall inspect the containers and their covers and closure devices as follows:
- (1) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty-four hours after the container is accepted at the facility (for example, does not meet the conditions for an empty container as specified in ~~subsection 2~~subsections 3, 4, and 5 of section 33-24-02-07), the owner or operator shall visually inspect the container and its cover and closure devices to

check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (for example, the date the container becomes subject to the container standards in sections 33-24-05-450 through 33-24-05-474). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on item 20 of the uniform hazardous waste manifest in appendix I to chapter 33-24-03 (environmental protection agency forms 8700-22 and 8700-22A), as required by section 33-24-05-38. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph 3.

- (2) In the case when a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every twelve months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph 3.
  - (3) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than twenty-four hours after detection and repair shall be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.
- e. The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 16.25 feet<sup>3</sup> [0.46 meter<sup>3</sup>] or greater, which do not meet applicable department of transportation regulations as specified in subsection 6, are not managing hazardous waste in light material service.
4. Container level 2 standards.
- a. A container using container level 2 controls is one of the following:
    - (1) A container that meets the applicable department of transportation regulations on packaging hazardous materials for transportation as specified in subsection 6.
    - (2) A container that operates with no detectable organic emissions as defined in section 33-24-05-451 and determined in accordance with the procedure specified in subsection 7.
    - (3) A container that has been demonstrated within the preceding twelve months to be vapor-tight by using 40 CFR part 60, appendix A, method 27 in accordance with the procedure specified in subsection 8.
  - b. Transfer of hazardous waste in or out of a container using container level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the department considers to meet the requirements of this subdivision include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery

system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

- c. Whenever a hazardous waste is in a container using container level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:
- (1) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:
    - (a) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.
    - (b) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within fifteen minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.
  - (2) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:
    - (a) For the purpose of meeting the requirements of this section, an empty container as defined in ~~subsection 2~~subsections 3, 4, and 5 of section 33-24-02-07 may be open to the atmosphere at any time (for example, covers and closure devices are not required to be secured in the closed position on an empty container).
    - (b) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in ~~subsection 2~~subsections 3, 4, and 5 of section 33-24-02-07, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within fifteen minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.
  - (3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.
  - (4) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed

during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

- (5) Opening of a safety device, as defined in section 33-24-05-451, is allowed at any time conditions require doing so to avoid an unsafe condition.
- d. The owner or operator of containers using container level 2 controls shall inspect the containers and their covers and closure devices as follows:
- (1) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within twenty-four hours after the container is accepted at the facility (for example, does not meet the conditions for an empty container as specified in ~~subsection 2~~ subsections 3, 4, and 5 of section 33-24-02-07), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (for example, the date the container becomes subject to the container standards in sections 33-24-05-450 through 33-24-05-474). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on item 20 of the uniform hazardous waste manifest in appendix I to chapter 33-24-03 (environmental protection agency forms 8700-22 and 8700-22A), as required by section 33-24-05-38. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph 3.
  - (2) In the case when a container used for managing hazardous waste remains at the facility for a period of one year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every twelve months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph 3.
  - (3) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than twenty-four hours after detection, and repair shall be completed as soon as possible but no later than five calendar days after detection. If repair of a defect cannot be completed within five calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

5. Container level 3 standards.
  - a. A container using container level 3 controls is one of the following:
    - (1) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph 2 of subdivision b.
    - (2) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs 1 and 2 of subdivision b.
  - b. The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:
    - (1) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.
    - (2) The closed-vent system and control device shall be designed and operated in accordance with the requirements of section 33-24-05-457.
  - c. Safety devices, as defined in section 33-24-05-451, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of subdivision a.
  - d. Owners and operators using container level 3 controls in accordance with the provisions of sections 33-24-05-450 through 33-24-05-474 shall inspect and monitor the closed-vent systems and control devices as specified in section 33-24-05-457.
  - e. Owners and operators that use container level 3 controls in accordance with the provisions of sections 33-24-05-450 through 33-24-05-474 shall prepare and maintain the records specified in subsection 4 of section 33-24-05-459.
  - f. Transfer of hazardous waste in or out of a container using container level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the department considers to meet the requirements of this subdivision include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.
6. For the purpose of compliance with paragraph 1 of subdivision a of subsection 3 or paragraph 1 of subdivision a of subsection 4, containers shall be used that meet the applicable department of transportation regulations on packaging hazardous materials for transportation as follows:

- a. The container meets the applicable requirements specified in 49 CFR part 178 - Specifications for Packaging or 49 CFR part 179 - Specifications for Tank Cars.
  - b. Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B - Exemptions; 49 CFR part 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173 - Shippers - General Requirements for Shipments and Packages; and 49 CFR part 180 - Continuing Qualification and Maintenance of Packagings.
  - c. For the purpose of complying with sections 33-24-05-450 through 33-24-05-474, no exceptions to the 49 CFR part 178 or 179 regulations are allowed except as provided for in subdivision d.
  - d. For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with sections 33-24-05-450 through 33-24-05-474, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).
7. To determine compliance with the no detectable organic emissions requirement of paragraph 2 of subdivision a of subsection 4, the procedure specified in subsection 4 of section 33-24-05-453 shall be used.
- a. Each potential leak interface (for example, a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to, the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.
  - b. The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous waste expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.
8. Procedure for determining a container to be vapor-tight using method 27 of 40 CFR part 60, appendix A, for the purpose of complying with paragraph 3 of subdivision a of subsection 4.
- a. The test shall be performed in accordance with method 27 of 40 CFR part 60, appendix A.
  - b. A pressure measurement device shall be used that has a precision of plus or minus 0.1 inch [plus or minus 2.5 millimeters] water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.
  - c. If the test results determined by method 27 indicate that the container sustains a pressure change less than or equal to seven hundred fifty pascals within five minutes after it is pressurized to a minimum of four thousand five hundred pascals, then the container is determined to be vapor-tight.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-457. Standards - Closed-vent systems and control devices.

1. This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of sections 33-24-05-450 through 33-24-05-474.
2. The closed-vent system shall meet the following requirements:
  - a. The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection 3.
  - b. The closed-vent system shall be designed and operated in accordance with the requirements specified in subsection 11 of section 33-24-05-403.
  - c. In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph 1 or a seal or locking device as specified in paragraph 2. For the purpose of complying with this subdivision, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.
    - (1) If a flow indicator is used to comply with this subdivision, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this **paragraph subdivision**, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.
    - (2) If a seal or locking device is used to comply with this subdivision, the device shall be placed on the mechanism by which the bypass device position is controlled (for example, valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.
  - d. The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in subsection 12 of section 33-24-05-403.
3. The control device shall meet the following requirements:
  - a. The control device shall be one of the following devices:
    - (1) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least ninety-five percent by weight;
    - (2) An enclosed combustion device designed and operated in accordance with the requirements of subsection 3 of section 33-24-05-403; or
    - (3) A flare designed and operated in accordance with the requirements of subsection 4 of section 33-24-05-403.

- b. The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs 1 through 6.
- (1) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, shall not exceed two hundred forty hours per year.
  - (2) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during periods of planned routine maintenance.
  - (3) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during a control device system malfunction.
  - (4) The owner or operator shall demonstrate compliance with the requirements of paragraph 1 (for example, planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, shall not exceed two hundred forty hours per year) by recording the information specified in paragraph 5 of subdivision a of subsection 5 of section 33-24-05-459.
  - (5) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.
  - (6) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (for example, periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, ~~and/or~~ fumes, or any combination, to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.
- c. The owner or operator using a carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the following requirements:
- (1) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of subsection 7 or 8 of section 33-24-05-403.
  - (2) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of subsection 14 of section 33-24-05-403, regardless of the average volatile organic concentration of the carbon.
- d. An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the requirements of subsection 10 of section 33-24-05-403.
- e. The owner or operator shall demonstrate that a control device achieves the performance requirements of subdivision a as follows:
- (1) An owner or operator shall demonstrate using either a performance test as specified in paragraph 3 or a design analysis as specified in paragraph 4 the performance of each control device except for the following:

- (a) A flare;
  - (b) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;
  - (c) A boiler or process heater into which the vent stream is introduced with the primary fuel;
  - (d) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under chapter 33-24-06 and has designed and operates the unit in accordance with the requirements of sections 33-24-05-525 through 33-24-05-549; or
  - (e) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with sections 33-24-05-525 through 33-24-05-549.
- (2) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in subsection 5 of section 33-24-05-403.
  - (3) For a performance test conducted to meet the requirements of paragraph 1, the owner or operator shall use the test methods and procedures specified in subdivisions a through d of subsection 3 of section 33-24-05-404.
  - (4) For a design analysis conducted to meet the requirements of paragraph 1, the design analysis shall meet the requirements specified in paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405.
  - (5) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subdivision a based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.
- f. If the owner or operator and the department do not agree on a demonstration of control device performance using a design analysis, then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph 3 of subdivision e. The department may choose to have an authorized representative observe the performance test.
  - g. The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in subdivision b of subsection 6 and subsection 12 of section 33-24-05-403. The readings from each monitoring device required by subdivision b of subsection 6 of section 33-24-05-403 shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of section 33-24-05-457.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-460. Reporting requirements.**

- 1. Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of subsection 3 of

section 33-24-05-452 shall report to the department each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in subdivision a or b of subsection 3 of section 33-24-05-452, as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than five hundred parts per million weight at the point of waste origination; or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in paragraphs 1 through 6 of subdivision b of subsection 3 of section 33-24-05-452. The owner or operator shall submit a written report within fifteen calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

2. Each owner or operator using air emission controls on a tank in accordance with the requirements of subsection 3 of section 33-24-05-454 shall report to the department each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in subsection 2 of section 33-24-05-454. The owner or operator shall submit a written report within fifteen calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.
3. Each owner or operator using a control device in accordance with the requirements of section 33-24-05-457 shall submit a semiannual written report to the department except as provided for in subsection 4. The written report must be signed and dated by the owner or operator or that person's designated representative and shall include the identification number, facility name and address, an explanation why the control device could not be returned to compliance within twenty-four hours, and actions taken to correct the noncompliance and shall describe each occurrence during the previous six-month period when either:
  - a. A control device is operated continuously for twenty-four hours or longer in noncompliance with the applicable operating values defined in subdivision d of subsection 3 of section 33-24-05-405; or
  - b. A flare is operated with visible emissions for five minutes or longer in a two-hour period, as defined in subsection 4 of section 33-24-05-403.
4. A report to the department in accordance with the requirements of subsection 3 is not required for a six-month period during which all control devices subject to sections 33-24-05-450 through 33-24-05-474 are operated by the owner or operator such that:
  - a. During no period of twenty-four hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in subdivision d of subsection 3 of section 33-24-05-405; and
  - b. No flare was operated with visible emissions for five minutes or longer in a two-hour period, as defined in subsection 4 of section 33-24-05-403.

~~5. For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in subparagraph e of paragraph 1 of subdivision b of subsection 1 of section 33-24-05-453, the owner or operator shall record the information~~

~~used for each waste determination (such as, test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of section 33-24-05-454.~~

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-475. Applicability to containment buildings.**

The requirements of sections 33-24-05-475 through 33-24-05-500 apply to owners or operators who store or treat hazardous waste in units designed and operated under section 33-24-05-476. ~~These provisions will become effective on February 18, 1993, although owner or operator may notify the department of his intent to be bound by this section at an earlier time.~~ The owner or operator is not subject to the definition of land disposal in Resource Conservation and Recovery Act section 3004(k) provided that the unit:

1. Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;
2. Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;
3. If the unit is used to manage liquids, has:
  - a. A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;
  - b. A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and
  - c. A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under subdivision d of subsection 2 of section 33-24-05-476;
4. Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in paragraph 4 of subdivision a of subsection 3 of section 33-24-05-476; and
5. Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

**History:** Effective January 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-476. Design and operating standards.

1. All containment buildings must comply with the following design standards:
  - a. The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements (for example, precipitation, wind, run-on) and to assure containment of managed wastes.
  - b. The floor and containment walls of the unit, including the secondary containment system if required under subsection 2, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. The department will consider standards established by professional organizations generally recognized by the industry such as the American concrete institute or the American society of testing materials in judging the structural integrity requirements of this ~~subdivision~~ subsection. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for lightweight doors and windows that meet these criteria:
    - (1) They provide an effective barrier against fugitive dust emissions under paragraph 4 of subdivision a of subsection 3; and
    - (2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.
  - c. Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.
  - d. A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.
2. For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:
  - a. A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).
  - b. A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:
    - (1) The primary barrier must be sloped to drain liquids to the associated collection system; and
    - (2) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

- c. A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.
    - (1) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:
      - (a) Constructed with a bottom slope of one percent or more; and
      - (b) Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  centimeters per second or more and a thickness of twelve inches [30.5 centimeters] or more, or constructed of synthetic or geonet drain materials with a transmissivity of  $3 \times 10^{-5}$  square meters per second.
    - (2) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.
    - (3) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of subdivision a of subsection 45 of section 33-24-05-106. In addition, the containment building must meet the requirements of subsection 2 of section 33-24-05-106 and subdivisions a and b of subsection 3 of section 33-24-05-106 to be considered an acceptable secondary containment system for a tank.)
  - d. For existing units other than ninety-day generator units, the department may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of sections 33-24-05-475 through 33-24-05-500. In making this demonstration, the owner or operator must:
    - (1) Provide written notice to the department of the request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;
    - (2) Respond to any comments from the department on these plans within thirty days; and
    - (3) Fulfill the terms of the revised plans, if such plans are approved by the department.
3. Owners or operators of all containment buildings must:
- a. Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:
    - (1) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

- (2) Maintain the level of the stored or treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;
  - (3) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and
  - (4) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, method 22 Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR part 60 subpart 292 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.
- b. Obtain and keep onsite a certification by a qualified ~~registered~~ professional engineer that the containment building design meets the requirements of subsections 1, 2, and 3. ~~For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (onsite files for generators who are not formally required to have operating records) no later than sixty days after the date of initial operation of the unit. After February 18, 1993, professional engineer certification will be required prior to operation of the unit.~~
- c. Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures.
- (1) Upon detection of a condition that has ~~lead~~led to a release of hazardous waste (for example, upon detection of leakage from the primary barrier) the owner or operator must:
    - (a) Enter a record of the discovery in the facility operating record;
    - (b) Immediately remove the portion of the containment building affected by the condition from service;
    - (c) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and
    - (d) Within seven days after the discovery of the condition, notify the department of the condition, and within fourteen working days, provide a written notice to the department with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.
  - (2) The department will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.
  - (3) Upon completing all repairs and cleanup the owner or operator must notify the department in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according

to the written plan submitted in accordance with subparagraph d of paragraph 1 of subdivision c of subsection 3.

- d. Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring ~~equipment~~ and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.
4. For containment buildings that contain both areas ~~both~~ with and without secondary containment, the owner or operator must:
    - a. Design and operate each area in accordance with the requirements enumerated in subsections 1, 2, and 3;
    - b. Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and
    - c. Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.
  5. Notwithstanding any other provision of sections 33-24-05-475 through 33-24-05-500, the department may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-477. Closure and postclosure care.**

1. At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, ~~etc. for example~~), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless subsection 4 of section 33-24-02-03 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in sections 33-24-05-59 through 33-24-05-88.
2. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection 1, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, ~~he~~ the owner or operator must close the facility and perform postclosure care in accordance with the closure and postclosure requirements that apply to landfills (section 33-24-05-180). In addition, for the purposes of closure, postclosure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in sections 33-24-05-59 through 33-24-05-88.

**History:** Effective January 1, 1994; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-502. Assessment of existing drip pad integrity.**

1. For each existing drip pad as defined in section 33-24-05-501, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of ~~this section~~ [sections 33-24-05-501 through 33-24-05-524](#), except the requirements for liners and leak detection systems of subsection 2 of section 33-24-05-504. No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by ~~an independent,~~ [a](#) qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of section 33-24-05-504 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of section 33-24-05-504, except the standards for liners and leak detection systems, specified in subsection 2 of section 33-24-05-504.
2. The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of subsection 2 of section 33-24-05-504, and submit the plan to the department no later than two years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of section 33-24-05-504. The plan must be reviewed and certified by ~~an independent,~~ [a](#) qualified registered professional engineer.
3. Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the department, the as-built drawings for the drip pad together with a certification by ~~an independent,~~ [a](#) qualified registered professional engineer attesting that the drip pad conforms to the drawings.
4. If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of subsection 13 of section 33-24-05-504 or close the drip pad in accordance with section 33-24-05-506.

**History:** Effective January 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-504. Design and operating requirements.**

1. Drip pads must:
  - a. Be constructed of nonearthen materials, excluding wood and nonstructurally supported asphalt;
  - b. Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;
  - c. Have a curb or berm around the perimeter;
  - d. Drip pads must meet and have on file the following:
    - (1) Have a hydraulic conductivity of less than or equal to  $1 \times 10^{-7}$  centimeters per second (for example, existing concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to  $1 \times 10^{-7}$  centimeters per second), such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps

that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with subsection 2 of section 33-24-05-503 instead of subsection 1 of section 33-24-05-503.

- (2) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by ~~an independent,~~ a qualified ~~registered~~-professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for subsection 2.
- e. Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily operations (for example, variable and moving loads such as vehicle traffic, movement of wood, etc.).

Note: The department will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American concrete institute (ACI) or the American society of testing and materials (ASTM) in judging the structural integrity requirement of this subdivision.

2. If an owner or operator elects to comply with subsection 1 of section 33-24-05-503 instead of subsection 2 of section 33-24-05-503, the drip pad must have:
  - a. A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or ground water or surface water during the active life of the facility. The liner must be:
    - (1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);
    - (2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
    - (3) Installed to cover all surrounding earth that could come in contact with the waste or leakage.
  - b. A leakage detection system immediately above the liner that is designed, constructed, maintained, and operated to detect leakage from the drip pad. The leakage detection system must be:
    - (1) Constructed of materials that are:
      - (a) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and
      - (b) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

- (2) Designed and operated to function without clogging through the scheduled closure of the drip pad; and
  - (3) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.
- c. A leakage collection system immediately above the liner that is designed, constructed, maintained, and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed must be documented in the operating log.
3. Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See subsection 13 of section 33-24-05-504 for remedial action required if deterioration or leakage is detected.

- 4. The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent runoff.
- 5. Unless protected by a structure, as described in subsection 2 of section 33-24-05-501, the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a twenty-four-hour, twenty-five-year storm, unless the system has sufficient excess capacity to contain any runoff that might enter the system.
- 6. Unless protected by a structure or cover as described in subsection 2 of section 33-24-05-501, the owner or operator, must design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.
- 7. The drip pad must be evaluated to determine that it meets the requirements of subsections 1 through 6 and the owner or operator must obtain a statement from ~~an independent,~~ a qualified ~~registered~~ professional engineer certifying that the drip pad design meets the requirements of this section.
- 8. Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.
- 9. The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner or operator must determine if the residues are hazardous as per section 33-24-03-02 and, if so, must manage them under article 33-24-~~and Resource Conservation and Recovery Act (RCRA) section 3010~~.
- 10. Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.
- 11. After being removed from the treatment vessel, treated wood from pressure and nonpressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

12. Collection and holding units associated with run-on and runoff control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.
13. Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:
  - a. Upon detection of a condition that may have caused or has caused a release of hazardous waste (for example, upon detection of leakage in the leak detection system), the owner or operator must:
    - (1) Enter a record of the discovery in the facility operating log;
    - (2) Immediately remove the portion of the drip pad affected by the condition from service;
    - (3) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs; and
    - (4) Within twenty-four hours after discovery of the condition, notify the department of the condition and, within ten working days, provide written notice to the department with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.
  - b. The department will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and ~~clean-up~~cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.
  - c. Upon completing all repairs and clean-up, the owner or operator must notify the department in writing and provide a certification signed by an independent, qualified registered professional engineer, that the repairs and clean-up have been completed according to the written plan submitted in accordance with paragraph 4 of subdivision a.
14. Should a permit be necessary, the department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.
15. The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-505. Inspections.**

1. During construction or installation, liners and cover systems (for example, membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (for example, holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of section

33-24-05-504 by ~~an independent,~~ a qualified ~~registered~~ professional engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

2. While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:
  - a. Deterioration, malfunctions, or improper operation of run-on and runoff control systems.
  - b. The presence of leakage in and proper functioning of leak detection system.
  - c. Deterioration or cracking of the drip pad surface.

Note: See subsection 13 of section 33-24-05-504 for remedial action required if deterioration or leakage is detected.

**History:** Effective January 1, 1994; amended effective July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-506. Closure.**

1. At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.
2. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection 1, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, ~~he~~ [the owner or operator](#) must close the facility and perform postclosure care in accordance with closure and postclosure care requirements that apply to landfills in section 33-24-05-180. For permitted units, the requirement to have a permit continues throughout the postclosure period. In addition, for the purpose of closure, postclosure, and financial responsibility, such a drip pad is then considered to be landfill, and the owner or operator must meet all of the requirements for landfills specified in sections 33-24-05-59 through 33-24-05-88.
3. Drip pad:
  - a. The owner or operator of an existing drip pad, as defined in section 33-24-05-501, that does not comply with the liner requirements of subdivision a of subsection 2 of section 33-24-05-504 must:
    - (1) Include in the closure plan for the drip pad under section 33-24-05-61 both a plan for complying with subsection 1 and a contingent plan for complying with subsection 2 in case not all contaminated subsoils can be practicably removed at closure; and
    - (2) Prepare a contingent postclosure plan under section 33-24-05-67 for complying with subsection 2 in case not all contaminated subsoils can be practicably removed at closure.
  - b. The cost estimates calculated under sections 33-24-05-61 and 33-24-05-76 for closure and postclosure care of a drip pad must include the cost of complying with the contingent

closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under subsection 1.

**History:** Effective January 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-525. Applicability to hazardous waste burned in boilers and industrial furnaces.**

1. The regulations of sections 33-24-05-525 through 33-24-05-549 apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in section 33-24-01-04) irrespective of the purpose of burning or processing, except as provided by subsections 2, 3, 4, 7, and 8. In sections 33-24-05-525 through 33-24-05-549, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of sections 33-24-05-529 through 33-24-05-532 apply to facilities operating under interim status or under a hazardous waste operating permit as specified in sections 33-24-05-527 and 33-24-05-528.
2. Integration of the maximum achievable control technology standards.
  - a. Except as provided by ~~subdivision~~[subdivisions b through d](#), the standards of sections 33-24-05-525 through 33-24-05-549 [do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to hazardous waste permit requirements after October 12, 2005; or](#) no longer apply when an ~~affected source~~[owner or operator of an existing hazardous waste boiler or industrial furnace unit](#) demonstrates compliance with the maximum achievable control technology requirements of 40 CFR part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the department a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with the requirements of [40 CFR part 63](#), subpart EEE. Nevertheless, even after this demonstration of compliance with the maximum achievable control technology standards, [hazardous waste](#) permit conditions that were based on the standards of sections 33-24-05-525 through 33-24-05-549 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.
  - b. The following standards continue to apply:
    - (1) If a permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, subdivision a of subsection 5 of section 33-24-05-527 requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and paragraph 3 of subdivision b of subsection 5 of section 33-24-05-527 requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;
    - (2) The closure requirements of subdivision k of subsection 5 of section 33-24-05-527 and subsection 12 of section 33-24-05-528;
    - (3) The standards for direct transfer of section 33-24-05-536;
    - (4) The standards for regulation of residues of section 33-24-05-537; and
    - (5) The applicable requirements of sections 33-24-05-01 through 33-24-05-88, 33-24-05-420 through 33-24-05-474, and subsection 5 of section 33-24-06-16.

- c. The owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR section 63.2 and the owner or operator elects not to comply with the emission standards under 40 CFR sections 63.1216, 63.1217, and 63.1218 for particulate matter, semivolatile and low volatile metals, and total chlorine, the owner or operator also remains subject to:
    - (1) Section 33-24-05-530 - Standards to control particulate matter;
    - (2) Section 33-24-05-531 - Standards to control metals emissions, except for mercury; and
    - (3) Section 33-24-05-532 - Standards to control hydrogen chloride and chlorine gas.
  - d. The particulate matter standard of section 33-24-05-530 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR sections 63.1216(e) and 63.1217(e).
3. The following hazardous wastes and facilities are not subject to regulation under sections 33-24-05-525 through 33-24-05-549:
- a. Used oil burned for energy recovery that is also hazardous waste solely because it exhibits a characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14. Such used oil is subject to regulation under sections 33-24-05-600 through 33-24-05-689;
  - b. Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
  - c. Hazardous wastes that are exempt from regulation under section 33-24-02-04 and paragraphs 4 through 6 of subdivision c of subsection 1 of section 33-24-02-06, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under section 33-24-02-05; and
  - d. Coke ovens, if the only hazardous waste burned is hazardous waste number K087, decanter tank tar sludge from coking operations.
4. Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under sections 33-24-05-525 through 33-24-05-549, except for sections 33-24-05-526 and 33-24-05-537.
- a. To be exempt from sections 33-24-05-527 through 33-24-05-536, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of subdivision c, and owners or operators of lead recovery furnaces that are subject to regulation under the secondary lead smelting national emission standard for hazardous air pollutants must comply with the requirements of subsection 8:
    - (1) Provide a one-time written notice to the department indicating the following:
      - (a) The owner or operator claims exemption under this subsection;

- (b) The hazardous waste is burned solely for metal recovery consistent with the provisions of subdivision b;
  - (c) The hazardous waste contains recoverable levels of metals; and
  - (d) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection;
- (2) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this subsection ~~under procedures specified by test methods for evaluating solid waste, physical/chemical methods, environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05 or alternative methods that meet or exceed the environmental protection agency publication SW-846 method performance capabilities. If environmental protection agency publication SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method~~ by using appropriate methods; and
- (3) Maintain at the facility for at least three years records to document compliance with the provisions of ~~section 33-24-05-525~~ this subsection, including limits on levels of toxic organic constituents and British thermal unit value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.
- b. A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:
- (1) The hazardous waste has a total concentration of organic compounds listed in appendix V of chapter 33-24-02 exceeding five hundred parts per million by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the five hundred parts per million limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the five hundred parts per million limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph 3 of subdivision a; or
  - (2) The hazardous waste has a heating value of five thousand British thermal units per pound or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the five thousand British thermal units per pound limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the five thousand British thermal units per pound limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph 3 of subdivision a.
- c. To be exempt from sections 33-24-05-527 through 33-24-05-536, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the secondary lead smelting national emission standards for hazardous air pollutants), or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the department identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this subdivision or subdivision a. The owner or operator must comply with the requirements of subdivision a for those wastes claimed to be exempt under that subdivision and must comply with the requirements below for those wastes claimed to be

exempt under subdivision a and must comply with the requirements below for those wastes claimed to be exempt under this subdivision.

- (1) The hazardous wastes listed in appendices XXVI, XXVII, and XXVIII of chapter 33-24-05, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of subdivision a, provided that:
    - (a) A waste listed in appendix XXVI must contain recoverable levels of lead, a waste listed in appendix XXVII must contain recoverable levels of nickel or chromium, a waste listed in appendix XXVIII must contain recoverable levels of mercury and contain less than five hundred parts per million organic constituents listed in appendix V of chapter 33-24-02 and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal;
    - (b) The waste does not exhibit the toxicity characteristic of section 33-24-02-14 for an organic constituent;
    - (c) The waste is not a hazardous waste listed in sections 33-24-02-15 through 33-24-02-19 because it is listed for an organic constituent as identified in appendix IV of chapter 33-24-02; and
    - (d) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of subdivision c and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph 2 of subdivision a and records to document compliance with subdivision c shall be kept for at least three years.
  - (2) The department may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XXVI, XXVII, or XXVIII of chapter 33-24-05 that contains a total concentration of more than five hundred parts per million toxic organic compounds listed in appendix V of chapter 33-24-02, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of sections 33-24-05-525 through 33-24-05-549. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of sections 33-24-05-525 through 33-24-05-549 when burning that material. In making the hazard determination, the department will consider the following factors:
    - (a) The concentration and toxicity of organic constituents in the material;
    - (b) The level of destruction of toxic organic constituents provided by the furnace; and
    - (c) Whether the acceptable ambient levels established in appendix XIX or XX of chapter 33-24-05 may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average offsite ground level concentration.
5. The standards for direct transfer operations under section 33-24-05-536 apply only to facilities subject to the permit standards of section 33-24-05-527 or the interim status standards of section 33-24-05-528.
  6. The management standards for residues under section 33-24-05-537 apply to any boiler or industrial furnace burning hazardous waste.

7. Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, irridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under sections 33-24-05-525 through 33-24-05-549, except for section 33-24-05-537. To be exempt from sections 33-24-05-526 through 33-24-05-536, an owner or operator must:
  - a. Provide a one-time written notice to the department indicating the following:
    - (1) The owner or operator claims exemption under this subsection;
    - (2) The hazardous waste is burned for legitimate recovery of precious metal; and
    - (3) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection;
  - b. Sample and analyze the hazardous waste as necessary to document that the waste ~~is burned for recovery of~~contains economically significant amounts of the metals and that the treatment recovers economically significant amounts of precious ~~metal using procedures specified by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05 or alternative methods that meet or exceed the environmental protection agency publication SW-846 method performance capabilities. If environmental protection agency publication SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method~~metals; and
  - c. Maintain at the facility, for at least three years, records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.
8. Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the secondary lead smelting national emission standards for hazardous air pollutants are conditionally exempt from regulation under sections 33-24-05-525 through 33-24-05-549, except for section 33-24-05-526. To be exempt, an owner or operator must provide a one-time notice to the department identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this subsection. The notice also must state that the waste burned has a total concentration of nonmetal compounds listed in appendix V of chapter 33-24-02 of less than five hundred parts per million by weight as fired and as provided in paragraph 1 of subdivision b of subsection 4, or is listed in appendix XXVI of chapter 33-24-05.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-10

### **33-24-05-526. Management prior to burning.**

1. **Generators.** Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to chapter 33-24-03.
2. **Transporters.** Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to chapter 33-24-04.

### 3. Storage and treatment facilities.

- a. Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of sections 33-24-05-01 through 33-24-05-190, sections 33-24-05-300 through 33-24-05-524, sections 33-24-05-550 through 33-24-05-559, sections 33-24-05-800 through 33-24-05-819, sections 33-24-05-950 through 33-24-05-1149, applicable requirements of subsection 5 of section 33-24-06-16, and chapter 33-24-06, except as provided by subdivision b. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.
- b. Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of section 33-24-05-533, hazardous waste that they generate are exempt from regulation under sections 33-24-05-01 through 33-24-05-190, sections 33-24-05-300 through 33-24-05-524, sections 33-24-05-550 through 33-24-05-559, sections 33-24-05-800 through 33-24-05-819, sections 33-24-05-950 through 33-24-05-1149, applicable requirements of subsection 5 of section 33-24-06-16, and chapter 33-24-06, applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in subdivision a.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-527. Permit standards for burners.**

##### **1. Applicability.**

- a. General. Owners and operators of boilers and industrial furnaces burning hazardous waste and not operating under interim status must comply with the requirements of this section and subdivision ff of subsection 2 of section 33-24-06-17 and subsection 4 of section 33-24-06-19, unless exempt under the small quantity burner exemption of section 33-24-05-533.
- b. Applicability of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, ~~and~~ 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819 standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, ~~and~~ 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819, except as provided otherwise by sections 33-24-05-525 through 33-24-05-549:
  - (1) Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to section- 23-20.3-08 of the North Dakota Century Code or 7003 of the Resource Conservation and Recovery Act;
  - (2) In sections 33-24-05-02 through 33-24-05-14, sections 33-24-05-02 through 33-24-05-09;
  - (3) In sections 33-24-05-15 through 33-24-05-25, sections 33-24-05-15 through 33-24-05-20;

- (4) In sections 33-24-05-26 through 33-24-05-36, sections 33-24-05-26 through 33-24-05-31;
- (5) In sections 33-24-05-37 through 33-24-05-46, the applicable provisions of sections 33-24-05-38 through 33-24-05-44;
- (6) In sections 33-24-05-47 through 33-24-05-58, sections 33-24-05-47 and 33-24-05-58;
- (7) In sections 33-24-05-59 through 33-24-05-73, sections 33-24-05-60 through 33-24-05-64;
- (8) In sections 33-24-05-74 through 33-24-05-88, 33-24-05-75, 33-24-05-76, 33-24-05-77, and 33-24-05-79 through 33-24-05-81, except that the state and federal governments are exempt from the requirements of sections 33-24-05-74 through 33-24-05-88; and
- (9) Sections 33-24-05-420 through 33-24-05-449, except subsection 1 of section 33-24-05-420.

## 2. **Hazardous waste analysis.**

- a. The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix V of chapter 33-24-02 that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by using appropriate analytical procedures prescribed by Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846 as incorporated by reference in section 33-24-01-05. Alternative methods that meet or exceed the method performance capabilities of environmental protection agency publication SW-846 methods may be used. If environmental protection agency publication SW-846 does not prescribe a method for a particular determination, the owner or operator shall use the best available method. The appendix V of chapter 33-24-02 constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by sections 33-24-05-525 through 33-24-05-549 and subdivision ff of subsection 2 of section 33-24-06-17 and subsection 4 of section 33-24-06-19 and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis must be included as a portion of the part B permit application, or, for facilities operating under the interim status standards of sections 33-24-05-525 through 33-24-05-549, as a portion of the trial burn plan that may be submitted before the part B application under provisions of subdivision g of subsection 4 of section 33-24-06-19 as well as any other analysis required by the permit authority department in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards must provide the information required by subdivision ff of subsection 2 of section 33-24-06-17 or subdivision c of subsection 4 of section 33-24-06-19 in the part B application to the greatest extent possible.
- b. Throughout normal operation, the owner or operator must conduct sampling and analysis as necessary to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace are within the physical and chemical composition limits specified in the permit.

3. **Emissions standards.** Owners and operators must comply with emissions standards provided by sections 33-24-05-529 through 33-24-05-532.

#### 4. Permits.

- a. The owner or operator may burn only hazardous wastes specified in the facility permit and only under the operating conditions specified under subsection 5, except in approved trial burns under the conditions specified in subsection 4 of section 33-24-06-19.
- b. Hazardous wastes not specified in the permit may not be burned until operating conditions have been specified under a new permit or permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with part B of a permit application under subdivision ff of subsection 2 of section 33-24-06-17.
- c. Boilers and industrial furnaces operating under the interim status standards of section 33-24-05-528 are permitted under procedures provided by subdivision g of subsection 4 of section 33-24-06-19.
- d. A permit for a new boiler or industrial furnace (those boilers and industrial furnaces not operating under the interim status standards) must establish appropriate conditions for each of the applicable requirements [of this section](#), including but not limited to allowable hazardous waste firing rates and operating conditions necessary to meet the requirements of subsection 5, in order to comply with the following standards:
  - (1) For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the device to a point of operational readiness to conduct a trial burn, not to exceed a duration of seven hundred twenty hours operating time when burning hazardous waste, the operating requirements must be those most likely to ensure compliance with the emission standards of section 33-24-05-529 through 33-24-05-532, based on the department's engineering judgment. If the applicant is seeking a waiver from a trial burn to demonstrate conformance with a particular emission standard, the operating requirements during this initial period of operation shall include those specified by the applicable provisions of section 33-24-05-529, 33-24-05-530, 33-24-05-531, or 33-24-05-532. The department may extend the duration of this period for up to seven hundred twenty additional hours when good cause for the extension is demonstrated by the applicant.
  - (2) For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the emissions standards of sections 33-24-05-529 through 33-24-05-532 and must be in accordance with the approved trial burn plan.
  - (3) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, review of the trial burn results and modification of the facility permit by the department to reflect the trial burn results, the operating requirements must be those likely to ensure compliance with the emission standards sections 33-24-05-529 through 33-24-05-532 based on the department's engineering judgment.
  - (4) For the remaining duration of the permit, the operating requirements must be those demonstrated in a trial burn or by alternative data specified in subdivision ff of subsection 2 of section 33-24-06-17, as sufficient to ensure compliance with the emissions standards of sections 33-24-05-529 through 33-24-05-532.

#### 5. Operating requirements.

- a. General. A boiler or industrial furnace burning hazardous waste must be operated in accordance with the operating requirements specified in the permit at all times where there is hazardous waste in the unit.
- b. Requirements to ensure compliance with the organic emissions standards:
  - (1) Destruction and removal efficiency standard. Operating conditions will be specified either on a case-by-case basis for each hazardous waste burned as those demonstrated (in a trial burn or by alternative data as specified in subdivision ff of subsection 2 of section 33-24-06-17) to be sufficient to comply with the destruction and removal efficiency performance standard of subsection 1 of section 33-24-05-529 or as those special operating requirements provided by subdivision d of subsection 1 of section 33-24-05-529 for the waiver of the destruction and removal efficiency trial burn. When the destruction and removal efficiency trial burn is not waived under subdivision d of subsection 1 of section 33-24-05-529, each set of operating requirements will specify the composition of the hazardous waste (including acceptable variations in the physical and chemical properties of the hazardous waste which will not affect compliance with the destruction and removal efficiency performance standard) to which the operating requirements apply. For each such hazardous waste, the permit will specify acceptable operating limits including, but not limited to, the following conditions as appropriate:
    - (a) Feed rate of hazardous waste and other fuels measured and specified as prescribed in subdivision f;
    - (b) Minimum and maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subdivision f;
    - (c) Appropriate controls of the hazardous waste firing system;
    - (d) Allowable variation in boiler or industrial furnace system design or operating procedures;
    - (e) Minimum combustion gas temperature measured at a location indicative of combustion chamber temperature, measured and specified as prescribed in subdivision f;
    - (f) An appropriate indicator of combustion gas velocity, measured and specified as prescribed in subdivision f, unless documentation is provided under subsection 4 of section 33-24-06-19 demonstrating adequate combustion gas residence time; and
    - (g) Such other operating requirements as are necessary to ensure that the destruction and removal efficiency performance standards of subsection 1 of section 33-24-05-529 are met.
  - (2) Carbon monoxide and hydrocarbon standards. The permit must incorporate a carbon monoxide limit and, as appropriate, a hydrocarbon limit as provided by subsections 2 through 6 of section 33-24-05-529. The permit limits will be specified as follows:
    - (a) When complying with the carbon monoxide standard of subdivision a of subsection 2 of section 33-24-05-529, the permit limit is one hundred parts per million by volume.

- (b) When complying with the alternative carbon monoxide standard under subsection 3 of section 33-24-05-529, the permit limit for carbon monoxide is based on the trial burn and is established as the average overall valid runs of the highest hourly rolling average carbon monoxide level of each run, and the permit limit for hydrocarbon is twenty parts per million by volume (as defined in subdivision a of subsection 3 of section 33-24-05-529), except as provided in subsection 6 of section 33-24-05-529.
  - (c) When complying with the alternative hydrocarbon limit for industrial furnaces under subsection 6 of section 33-24-05-529, the permit limit for hydrocarbon and carbon monoxide is the baseline level when hazardous waste is not burned as specified by that subsection.
- (3) Startup and shutdown. During startup and shutdown of the boiler or industrial furnace, hazardous waste (except waste fed solely as an ingredient under the tier I (or adjusted tier I) feed rate screening limits for metals and chloride/chlorine, and except low risk waste exempt from the trial burn requirements under subdivision e of subsection 1 of section 33-24-05-529 ~~and~~ sections 33-24-05-530, 33-24-05-531, and 33-24-05-532) must not be fed into the device unless the device is operating within the conditions of operation specified in the permit.
- c. Requirements to ensure conformance with the particulate standard.
- (1) Except as provided in paragraphs 2 and 3, the permit shall specify the following operating requirements to ensure conformance with the particulate standard specified in section 33-24-05-530:
    - (a) Total ash feed rate to the device from hazardous waste, other fuels, and industrial furnace feedstocks, measured and specified as prescribed in subdivision f;
    - (b) Maximum device production rate when producing normal product expressed in appropriate units, and measured and specified as prescribed in subdivision f;
    - (c) Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
    - (d) Allowable variation in boiler or industrial furnace system design, including any air pollution control system or operating procedures; and
    - (e) Such other operating requirements as are necessary to ensure that the particulate standard in subsection 1 of section 33-24-05-530 is met.
  - (2) Permit conditions to ensure conformance with the particulate matter standard shall not be provided for facilities exempt from the particulate matter standard under subsection 2 of section 33-24-05-530.
  - (3) For cement kilns and lightweight aggregate kilns, permit conditions to ensure compliance with the particulate standard shall not limit the ash content of hazardous waste or other feed materials.
- d. Requirements to ensure conformance with the metals emissions standard.
- (1) For conformance with the tier I (or adjusted tier I) metals feed rate screening limits of subsection 2 or 5 of section 33-24-05-531, the permit shall specify the following operating requirements:

- (a) Total feed rate of each metal in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified under provisions of subdivision f;
  - (b) Total feed rate of hazardous waste measured and specified as prescribed in subdivision f; and
  - (c) A sampling and metals analysis program for the hazardous waste, other fuels, and industrial furnace feedstocks;
- (2) For conformance with the tier II metals emission rate screening limits under subsection 3 of section 33-24-05-531 and the tier III metals controls under subsection 4 of section 33-24-05-531, the permit shall specify the following operating requirements:
- (a) Maximum emission rate for each metal specified as the average emission rate during the trial burn;
  - (b) Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in paragraph 1 of subdivision f; and
  - (c) Feed rate of each metal in the following feedstreams, measured and specified as prescribed in subdivision f:
    - [1] Total feedstreams;
    - [2] Total hazardous waste feed;
    - [3] Total pumpable hazardous waste feed;
    - [4] Total feed rate of chlorine and chloride in total feedstreams measured and specified as prescribed in subdivision f;
    - [5] Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subdivision f;
    - [6] Maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in subdivision f;
    - [7] Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subdivision f;
    - [8] Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
    - [9] Allowable variation in boiler or industrial furnace system design including any air pollution control system or operating procedures; and
    - [10] Such other operating requirements as are necessary to ensure that the metal standards under subsection 3 of section 33-24-05-531 or subsection 4 of section 33-24-05-531 are met; and
- (3) For conformance with an alternative implementation approach approved by the department under subsection 6 of section 33-24-05-531, the permit will specify the following operating requirements:

- (a) Maximum emission rate for each metal specified as the average emission rate during the trial burn;
  - (b) Feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in paragraph 1 of subdivision f;
  - (c) Feed rate of each metal in the following feedstreams, measured and specified as prescribed in subdivision f:
    - [1] Total hazardous waste feed; and
    - [2] Total pumpable hazardous waste feed;
  - (d) Total feed rate of chlorine and chloride in total feedstreams measured and specified prescribed in subdivision f;
  - (e) Maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subdivision f;
  - (f) Maximum flue gas temperature at the inlet to the particulate matter air pollution control system measured and specified as prescribed in subdivision f;
  - (g) Maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subdivision f;
  - (h) Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
  - (i) Allowable variation in boiler or industrial furnace system design including any air pollution control system or operating procedures; and
  - (j) Such other operating requirements as are necessary to ensure that the metals standards under subsection 3 of section 33-24-05-531 or subsection 4 of section 33-24-05-531 are met.
- e. Requirements to ensure conformance with the hydrogen chloride and chlorine gas standards.
- (1) For conformance with the tier I total chloride and chlorine feed rate screening limits of subdivision a of subsection 2 of section 33-24-05-532, the permit will specify the following operating requirements:
    - (a) Feed rate of total chloride and chlorine in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified as prescribed in subdivision f;
    - (b) Feed rate of total hazardous waste measured and specified as prescribed in subdivision f; and
    - (c) A sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks; and
  - (2) For conformance with the tier II hydrogen chloride and for chlorine emission rate screening limits under subdivision b of subsection 2 of section 33-24-05-532 and the tier III hydrogen chloride and chlorine controls under subsection 3 of section 33-24-05-532, the permit will specify the following operating requirements:

- (a) Maximum emission rate for hydrogen chloride and for chlorine specified as the average emission rate during the trial burn;
  - (b) Feed rate of total hazardous waste measured and specified as prescribed in subdivision f;
  - (c) Total feed rate of chlorine and chloride in total feedstreams, measured and specified as prescribed in subdivision f;
  - (d) Maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subdivision f;
  - (e) Appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
  - (f) Allowable variation in boiler or industrial furnace system design including any air pollution control system or operating procedures; and
  - (g) Such other operating requirements as are necessary to ensure that the hydrogen chloride and chlorine standards under subdivision b of subsection 2 or subsection 3 of section 33-24-05-532 are met.
- f. Measuring parameters and establishing limits based on trial burn data.
- (1) General requirements. As specified in subdivisions b through e, each operating parameter shall be measured, and permit limits on the parameter shall be established, according to either of the following procedures:
    - (a) Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (for example, the value that occurs at any time) and the permit limit specified as the time-weighted average during all valid runs of the trial burn; or
    - (b) Hourly rolling average.
      - [1] The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:
        - [a] A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen seconds, and computes and records the average value at least every sixty seconds.
        - [b] An hourly rolling average is the arithmetic mean of the sixty most recent one-minute average values recorded by the continuous monitoring system.
      - [2] The permit limit for the parameter shall be established based on trial burn data as the average overall valid test runs of the highest hourly rolling average value for each run.
  - (2) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (for example, arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by paragraph 1 ~~of subdivision f~~ or on (up to) a twenty-four hour rolling average basis. If the owner or operator elects to use an average period from two to twenty-four hours:

- (a) The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;
  - (b) The continuous monitor shall meet the following specifications:
    - [1] A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen seconds, and computes and records the average value at least every sixty seconds;
    - [2] The rolling average for the selected averaging period is defined as the arithmetic mean of one-hour block averages for the averaging period. A one-hour block average is the arithmetic mean of the one-minute averages recorded during the sixty-minute period beginning at one minute after the beginning of the preceding clock hour; and
  - (c) The permit limit for the feed rate of each metal shall be established based on trial burn data as the average overall valid test runs of the highest hourly rolling average feed rate for each run.
- (3) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (for example, metals, chloride and chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of paragraphs 1 and 2.
- (4) Conduct of trial burn testing.
- (a) If compliance with all applicable emissions standards of sections 33-24-05-529 through 33-24-05-532 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.
  - (b) Prior to obtaining test data for purposes of demonstrating compliance with the emissions standards of sections 33-24-05-529 through 33-24-05-532 or establishing limits on operating parameters under this section, the facility must operate under trial burn conditions for a sufficient period to reach steady-state operations. The department may determine, however, that industrial furnaces that recycle collected particulate matter back into the furnace and that comply with an alternative implementation approach for metals under subsection 6 of section 33-24-05-531 need not reach steady-state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals emissions.
  - (c) Trial burn data on the level of an operating parameter for which a limit must be established in the permit must be obtained during emission sampling for the pollutant(s) (for example, metals, particulate matter, hydrogen chloride, and chlorine organic compounds) for which the parameter must be established as specified by this subsection.
- g. General requirements.
- (1) Fugitive emissions. Fugitive emissions must be controlled by:

- (a) Keeping the combustion zone totally sealed against fugitive emissions;
  - (b) Maintaining the combustion zone pressure lower than atmospheric pressure;  
or
  - (c) An alternate means of control demonstrated (with part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.
- (2) Automatic waste feed cutoff. A boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when operating conditions deviate from those established under this section. The department may limit the number of cutoffs per an operating period on a case-by-case basis. In addition:
- (a) The permit limit for (the indicator of) minimum combustion chamber temperature must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber;
  - (b) Exhaust gases must be ducted to the air pollution control system operated in accordance with the permit requirements while hazardous waste or hazardous waste residues remain in the combustion chamber; and
  - (c) Operating parameters for which permit limits are established must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the permit limits. For parameters that may be monitored on an instantaneous basis, the department will establish a minimum period of time after a waste feed cutoff during which the parameter must not exceed the permit limit before the hazardous waste feed may be restarted.
- (3) Changes. A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits as specified in the permit.
- h. Monitoring and inspections.
- (1) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:
- (a) If specified by the permit, feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks, and feed rates of ash, metals, and total chloride and chlorine;
  - (b) If specified by the permit, carbon monoxide, hydrocarbons, and oxygen on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with operating requirements specified in paragraph 2 of subdivision b. Carbon monoxide, hydrocarbon, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in appendix XXIV of chapter 33-24-05; and
  - (c) Upon the request of the department, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feedstocks as appropriate), residues, and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the applicable

standards of sections 33-24-05-529, 33-24-05-530, 33-24-05-531, and 33-24-05-532.

- (2) All monitors shall record data in units corresponding to the permit limit unless otherwise specified in the permit.
- (3) The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, et cetera) must be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.
- (4) The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the applicant demonstrates to the department that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing must be conducted at least once every thirty days.
- (5) These monitoring and inspection data must be recorded and the records must be placed in the operating record required by section 33-24-05-40.
  - i. Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator must comply with section 33-24-05-536.
  - j. Recordkeeping. The owner or operator must **keep/maintain** in the operating record of the facility all information and data required by this section ~~until closure of the facility~~**for five years**.
  - k. Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace.

**History:** Effective July 1, 1997; amended effective December 1, 2003; **January 1, 2016**.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-528. Interim status standards for burners.**

#### **1. Purpose, scope, applicability.**

##### **a. General.**

- (1) The purpose **of this section** is to establish minimum national standards for owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste where such standards define the acceptable management of hazardous waste during the period of interim status. The standards **of this section** apply to owners and operators of existing facilities until either a permit is issued under subsection 4 of section 33-24-05-527 or until closure responsibilities identified in this section are fulfilled.
- (2) Existing or in existence means a boiler or industrial furnace that on or before August 1, 1991, is either in operation burning or processing hazardous waste or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either:

- (a) A continuous onsite, physical construction program has begun; or
  - (b) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.
- (3) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the facility must comply with the applicable regulations dealing with permit modifications in section 33-24-06-14 or changes in interim status in subsection 5 of section 33-24-06-16.
- b. Exemptions. The requirements of this section do not apply to hazardous waste and facilities exempt under subsection 2 of section 33-24-05-525, or section 33-24-05-533.
  - c. Prohibition on burning dioxin-listed wastes. The following hazardous waste listed for dioxin and hazardous waste derived from any of these wastes may not be burned in a boiler or industrial furnace operating under interim status: F020, F021, F022, F023, F026, and F027.
  - d. Applicability of interim status standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste and are operating under interim status are subject to the following provisions:
    - (1) Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to section [23-20.3-08 of the North Dakota Century Code](#) or 7003 of the Resource Conservation and Recovery Act;
    - (2) General facility standards, sections 33-24-05-02 through 33-24-05-08;
    - (3) Preparedness and prevention, sections 33-24-05-15 through 33-24-05-20;
    - (4) Contingency plan and emergency procedures, sections 33-24-05-26 through 33-24-05-31;
    - (5) Manifest system, recordkeeping and reporting, sections 33-24-05-38 through 33-24-05-44, except that sections 33-24-05-38, 33-24-05-39, and 33-24-05-43 do not apply to owners and operators of onsite facilities that do not receive any hazardous waste from offsite sources;
    - (6) Closure and postclosure, sections 33-24-05-60 through 33-24-05-64;
    - (7) Financial requirements, sections 33-24-05-75 through 33-24-05-77 and sections 33-24-05-79 through 33-24-05-81, except that states and the federal government are exempt from the financial requirements; and
    - (8) Air emission standards for equipment leaks, sections 33-24-05-420 through ~~33-24-05-435~~[33-24-05-449](#), except subsection 1 of section 33-24-05-420.
  - e. Special requirements for furnaces. The following controls apply during interim status to industrial furnaces (for example, kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see paragraph 2) at any location other than the hot end where products are normally discharged or where fuels are normally fired:
    - (1) Controls.
      - (a) The hazardous waste shall be fed at a location where combustion gas temperatures are at least one thousand eight hundred degrees Fahrenheit [982.2 degrees Celsius];

- (b) The owner or operator must determine that adequate oxygen is present in combustion gases to combust organic constituents in the waste and retain documentation of such determination in the facility record;
  - (c) For cement kiln systems, the hazardous waste shall be fed into the kiln; and
  - (d) The hydrocarbon controls of subsection 3 of section 33-24-05-529 or subdivision e of subsection 3 ~~of this section~~ apply upon certification of compliance under subsection 3 irrespective of the carbon monoxide level achieved during the compliance test.
- (2) Burning hazardous waste solely as an ingredient. A hazardous waste is burned for a purpose other than solely as an ingredient if it meets either of these criteria:
- (a) The hazardous waste has a total concentration of nonmetal compounds listed in appendix V of chapter 33-24-02 exceeding five hundred parts per million by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the five hundred parts per million limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the five hundred parts per million limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the facility record; or
  - (b) The hazardous waste has a heating value of five thousand British thermal units per pound or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the five thousand British thermal units per pound limit by bona fide treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the five thousand British thermal units per pound limit is prohibited and documentation that the waste has not been impermissibly blended must be retained in the facility record.
- f. Restrictions on burning hazardous waste that is not a fuel. Prior to certification of compliance under subsection 3, owners and operators shall not feed hazardous waste that has a heating value less than five thousand British thermal units per pound as-generated (except that the heating value of a waste as-generated may be increased to above the five thousand British thermal units per pound limit by bona fide treatment; however, blending to augment the heating value to meet the five thousand British thermal units per pound limit is prohibited and records must be kept to document that impermissible blending has not occurred) in a boiler or industrial furnace, except that:
- (1) Hazardous waste may be burned solely as an ingredient;
  - (2) Hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed seven hundred twenty hours;
  - (3) Such waste may be burned if the department has documentation to show that, prior to August 21, 1991:
    - (a) The boiler or industrial furnace is operating under the interim status standards for incinerators or thermal treatment units provided by subsection 5 of section 33-24-06-16;
    - (b) The boiler or industrial furnace met the interim status eligibility requirements under subsection 5 of section 33-24-06-16; and

- (c) Hazardous waste with a heating value less than five thousand British thermal units per pound was burned prior to that date; or
- (4) Such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under subsection 5 of section 33-24-02-02 prior to February 21, 1991, and documentation is kept on file supporting this claim.
- g. Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator must comply with section 33-24-05-536.

## 2. Certification of precompliance.

- a. General. The owner or operator must provide complete and accurate information specified in subdivision b to the department on or before August 21, 1991, and must establish limits for the operating parameters specified in subdivision c. Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in subdivision c, the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, and hydrogen chloride and chlorine are not likely to exceed the limits provided by sections 33-24-05-530, 33-24-05-531, and 33-24-05-532. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under subdivision c until the owner or operator submits a revised certification of precompliance under subdivision h or a certification of compliance under subsection 3, or until a permit is issued.
- b. Information required. The following information must be submitted with the certification of precompliance to support the determination that the limits established for the operating parameters identified in subdivision c are not likely to result in an exceedance of the allowable emission rates for particulate matter, metals, and hydrogen chloride and chlorine:
  - (1) General facility information:
    - (a) Identification number;
    - (b) Facility name, contact person, telephone number, and address;
    - (c) Description of boilers and industrial furnaces burning hazardous waste, including type and capacity of device;
    - (d) A scaled plot plan showing the entire facility and location of the boilers and industrial furnaces burning hazardous waste; and
    - (e) A description of the air pollution control system on each device burning hazardous waste, including the temperature of the flue gas at the inlet to the particulate matter control system.
  - (2) Except for facilities complying with the tier I or adjusted tier I feed rate screening limits for metals or total chlorine and chloride provided by subsection 2 or 5 of section 33-24-05-531 and subdivision a of subsection 2 or subsection 5 of section 33-24-05-532 respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by section 33-24-05-531, and hydrogen chloride and chlorine, and the following information to support such determinations:

- (a) The feed rate (pound per hour) of ash, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks).
  - (b) The estimated partitioning factor to the combustion gas for the materials identified in subparagraph a and the basis for the estimate and an estimate of the partitioning to hydrogen chloride and chlorine of total chloride and chlorine in feed materials. To estimate the partitioning factor, the owner or operator must use either best engineering judgment or the procedures specified in appendix XXIV of chapter 33-24-05.
  - (c) For industrial furnaces that recycle collected particulate matter back into the furnace and that will certify compliance with the metals emissions standards under subparagraph a of paragraph 2 of subdivision c of subsection 3, the estimated enrichment factor for each metal. To estimate the enrichment factor, the owner or operator must use either best engineering judgment or the procedures specified in "Alternative Methodology for Implementing Metals Controls" in appendix XXIV of chapter 33-24-05.
  - (d) If best engineering judgment is used to estimate partitioning factors or enrichment factors under subparagraph b or c respectively, the basis for the judgment. When best engineering judgment is used to develop or evaluate data or information and make determinations under this section, the determinations must be made by a qualified, registered professional engineer and a certification of his or her determinations in accordance with subsection 4 of section 33-24-06-03 must be provided in the certification of precompliance.
- (3) For facilities complying with the tier I or adjusted tier I feed rate screening limits for metals or total chlorine and chloride provided by subsection 2 or 5 of section 33-24-05-531 and subdivision a of subsection 2 or subsection 5 of section 33-24-05-532, the feed rate (pound per hour) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks).
- (4) For facilities complying with the tier II or tier III emission limits for metals or hydrogen chloride and chlorine (under subsection 3 or 4 of section 33-24-05-531 or subdivision b of subsection 2 or subsection 3 of section 33-24-05-532), the estimated controlled (outlet of the air pollution control system) emissions rates of particulate matter, each metal controlled by section 33-24-05-531, and hydrogen chloride and chlorine, and the following information to support such determinations:
- (a) The estimated air pollution control system removal efficiency for particulate matter, hydrogen chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium.
  - (b) To estimate air pollution control system removal efficiency, the owner or operator must use either best engineering judgment or the procedures prescribed in appendix XXIV of chapter 33-24-05.
  - (c) If best engineering judgment is used to estimate air pollution control system removal efficiency, the basis for the judgment. Use of best engineering judgment must be in conformance with provisions of subparagraph d of paragraph 2.

- (5) Determination of allowable emissions rates for hydrogen chloride, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium, and the following information to support such determinations:
  - (a) For all facilities:
    - [1] Physical stack height;
    - [2] Good engineering practice stack height as defined by 40 CFR 51.100(ii);
    - [3] Maximum flue gas flow rate;
    - [4] Maximum flue gas temperature;
    - [5] Attach a United States geological service topographic map (or equivalent) showing the facility location and surrounding land within five kilometers of the facility;
    - [6] Identify terrain type: complex or noncomplex; and
    - [7] Identify land use: urban or rural.
  - (b) For owners and operators using tier III site-specific dispersion modeling to determine allowable levels under subsection 4 of section 33-24-05-531 or subsection 3 of section 33-24-05-532, or adjusted tier I feed rate screening limits under subsection 5 of section 33-24-05-531 or subsection 5 of section 33-24-05-532:
    - [1] Dispersion model and version used;
    - [2] Source of meteorological data;
    - [3] The dilution factor in micrograms per cubic meter per gram per second of emissions for the maximum annual average offsite (unless onsite is required) ground level concentration (maximum exposed individual location); and
    - [4] Indicate the maximum exposed individual location on the map required under ~~item~~bracket 5 of subparagraph a;
- (6) For facilities complying with the tier II or tier III emissions rate controls for metals or hydrogen chloride and chlorine, a comparison of the estimated controlled emissions rates determined under paragraph 4 with the allowable emission rates determined under paragraph 5;
- (7) For facilities complying with the tier I (or adjusted tier I) feed rate screening limits for metals or total chloride and chlorine, a comparison of actual feed rates of each metal and total chlorine and chloride determined under paragraph 3 to the tier I allowable feed rates;
- (8) For industrial furnaces that feed hazardous waste for any purpose other than solely as an ingredient (as defined by paragraph 2 of subdivision e of subsection 1) at any location other than the product discharge end of the device, documentation of compliance with the requirements of subparagraph a, b, or c of paragraph 1 of subdivision e of subsection 1; and

- (9) For industrial furnaces that recycle collected particulate matter back into the furnace and that will certify compliance with the metals emissions standards under subparagraph a of paragraph 2 of subdivision c of subsection 3:
  - (a) The applicable particulate matter standard in pound per hour; and
  - (b) The precompliance limit on the concentration of each metal in collected particulate matter.
- c. Limits on operating conditions. The owner and operator shall establish limits on the following parameters consistent with the determinations made under [paragraph 2 of subdivision b](#) and certify (under provisions of subdivision i) to the department that the facility will operate within the limits during interim status when there is hazardous waste in the unit until revised certification of precompliance under subdivision h or certification of compliance under subsection 3:
  - (1) Feed rate of total hazardous waste and (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531) pumpable hazardous waste;
  - (2) Feed rate of each metal in the following feedstreams:
    - (a) Total feedstreams, except that industrial furnaces that comply with the alternative metals implementation approach under subdivision d must specify limits on the concentration of each metal in collected particulate matter in lieu of feed rate limits for total feedstreams;
    - (b) Total hazardous waste feed, unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531; and
    - (c) Total pumpable hazardous waste feed, unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531;
  - (3) Total feed rate of chlorine and chloride in total feedstreams;
  - (4) Total feed rate of ash in total feedstreams, except that the ash feed rate for cement kilns and lightweight aggregate kilns is not limited; and
  - (5) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the tier I or adjusted tier I feed rate screening limits for chlorine under subdivision a of subsection 2 or subsection 5 of section 33-24-05-532 and for all metals under subsection 2 or 5 of section 33-24-05-531, and the uncontrolled particulate emissions do not exceed the standard under section 33-24-05-530.
- d. Operating requirements for furnaces that recycle particulate matter. Owners and operators of furnaces that recycle collected particulate matter back into the furnace and that will certify compliance with the metals emissions controls under subparagraph a of paragraph 2 of subdivision c of subsection 3 must comply with the special operating requirements provided in "Alternative Methodology for Implementing Metals Controls" in appendix XXIV of chapter 33-24-05.
- e. Measurement of feed rates and production rate.

- (1) General requirements. Limits on each of the parameters specified in subdivision c (except for limits on metals concentrations in collected particulate matter for industrial furnaces that recycle collected particulate matter) must be established and continuously monitored under either of the following methods:
    - (a) Instantaneous limits. A limit for a parameter may be established and continuously monitored and recorded on an instantaneous basis (for example, the value that occurs at any time) not to be exceeded at any time; or
    - (b) Hourly rolling average limits. A limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:
      - [1] A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen seconds, and computes and records the average value at least every sixty seconds.
      - [2] An hourly rolling average is the arithmetic mean of the sixty most recent one-minute average values recorded by the continuous monitoring system.
  - (2) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subparagraph b of paragraph 1 or on (up to) a twenty-four hour rolling average basis. If the owner or operator elects to use an averaging period from two to twenty-four hours:
    - (a) The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis; and
    - (b) The continuous monitor shall meet the following specifications:
      - [1] A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen seconds, and computes and records the average value at least every sixty seconds.
      - [2] The rolling average for the selected averaging period is defined as the arithmetic mean of one-hour block averages for the averaging period. A one-hour block average is the arithmetic mean of the one-minute averages recorded during the sixty-minute period beginning at one minute after the beginning of preceding clock hour.
  - (3) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (for example, metals, chloride ~~or~~, chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of paragraphs 1 and 2.
- f. Public notice requirements at precompliance. On or before August 21, 1991, the owner or operator must submit a notice with the following information for publication in a major local newspaper of general circulation and send a copy of the notice to the appropriate units of state and local government. The owner or operator must provide to the department with the certification of precompliance evidence of submitting the notice for publication. The notice, which shall be entitled "Notice of Certification of Precompliance

with Hazardous Waste Burning Requirements of subsection 2 of section 33-24-05-528", must include:

- (1) Name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;
  - (2) Date that the certification of precompliance is submitted to the department;
  - (3) Brief description of the regulatory process required to comply with the interim status requirements including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and hydrogen chloride and chlorine;
  - (4) Types and quantities of hazardous waste burned including source, whether solids or liquids, as well as an appropriate description of the waste;
  - (5) Type of device or devices in which the hazardous waste is burned including a physical description and maximum production rate of each device;
  - (6) Types and quantities of other fuels and industrial furnace feedstocks fed to each unit;
  - (7) Brief description of the basis for this certification of precompliance as specified in subdivision b;
  - (8) Locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:
    - (a) The administrative record kept by the department where the supporting documentation was submitted or another location designated by the department; and
    - (b) The boiler and industrial furnace correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the department and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of state site visit reports submitted to the owner or operator;
  - (9) Notification of the establishment of a facility mailing list whereby interested parties shall notify the department that they wish to be placed on the mailing list to receive future information and notices about this facility; and
  - (10) Location (mailing address) of the department, where further information can be obtained on regulation of hazardous waste burning.
- g. Monitoring other operating parameters. When the monitoring systems for the operating parameters listed in paragraphs 5 through 13 of subdivision a of subsection 3 are installed and operating in conformance with vendor specifications or (for carbon monoxide, hydrocarbon, and oxygen) specifications provided by appendix XXIV of chapter 33-24-05, as appropriate, the parameters shall be continuously monitored and records shall be maintained in the operating record.
- h. Revised certification of precompliance. The owner or operator may revise at any time the information and operating conditions documented under subdivisions b and c in the

certification of precompliance by submitting a revised certification of precompliance under procedures provided by those ~~paragraphs~~subdivisions.

- (1) The public notice requirements of subdivision f do not apply to recertifications.
  - (2) The owner and operator must operate the facility within the limits established for the operating parameters under subdivision c until a revised certification is submitted under this ~~paragraph~~subdivision or a certification of compliance is submitted under subsection 3.
- i. Certification of precompliance statement. The owner or operator must include the following signed statement with the certification of precompliance submitted to the department:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of subsection 2 ~~of section 33-24-05-528~~ are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I also acknowledge that the operating limits established in this certification pursuant to paragraphs c and d of subsection 2 ~~of section 33-24-05-528~~ are enforceable limits at which the facility can legally operate during interim status until: (1) A revised certification of precompliance is submitted, (2) a certification of compliance is submitted, or (3) an operating permit is issued."

3. **Certification of compliance.** The owner or operator shall conduct emissions testing to document compliance with the emissions standards of subsections 2 through 5 of section 33-24-05-529, sections 33-24-05-530, 33-24-05-531, and 33-24-05-532, and subparagraph d of paragraph 1 of subdivision e of subsection 1, under the procedures prescribed by this ~~paragraph~~subsection, except under extensions of time provided by subdivision g. Based on the compliance test, the owner or operator shall submit to the department, on or before August 21, 1992, a complete and accurate "certification of compliance" (under subdivision d) with those emission standards establishing limits on the operating parameters specified in subdivision a.
- a. Limits on operating conditions. The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph 4 of subdivision d) and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and all applicable emissions standards of subsections 2 through 5 of section 33-24-05-529, sections 33-24-05-530 through 33-24-05-532, and subparagraph d of paragraph 1 of subdivision e of subsection 1 ~~of section 33-24-05-528~~ at all times when there is hazardous waste in the unit until an operating permit is issued.
- (1) Feed rate of total hazardous waste and (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531), pumpable hazardous waste;
  - (2) Feed rate of each metal in the following feedstreams:

- (a) Total feedstreams, except that:
  - [1] Facilities that comply with tier I or adjusted tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under subsection 2 or 5 of section 33-24-05-531; and
  - [2] Industrial furnaces that must comply with the alternative metals implementation approach under paragraph 2 of subdivision c must specify limits on the concentration of each metal in collected particulate matter in lieu of feed rate limits for total feedstreams;
- (b) Total hazardous waste feed (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531); and
- (c) Total pumpable hazardous waste feed (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531);
- (3) Total feed rate of chlorine and chloride in total feedstreams, except that facilities that comply with tier I or adjusted tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under subdivision a of subsection 1 or subsection 5 of section 33-24-05-532;
- (4) Total feed rate of ash in total feedstreams, except that the ash feed rate for cement kilns and lightweight aggregate kilns is not limited;
- (5) Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas. When complying with the carbon monoxide controls of subsection 2 of section 33-24-05-529, the carbon monoxide limit is one hundred parts per million by volume, and when complying with the hydrocarbon controls of subsection 3 of section 33-24-05-529, the hydrocarbon limit is twenty parts per million by volume. When complying with the carbon monoxide controls of subsection 3 of section 33-24-05-529, the carbon monoxide limit is established based on the compliance test;
- (6) Maximum production rate of the device in appropriate units when producing normal product, except that facilities that comply with tier I or adjusted tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under subdivision a of subsection 1 or subsection 5 of section 33-24-05-532 and for all metals under subsection 2 or 5 of section 33-24-05-531, and the uncontrolled particulate emissions do not exceed the standard under section 33-24-05-530;
- (7) Maximum combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible and is upstream of any quench water injection (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531);
- (8) Maximum flue gas temperature entering a particulate matter control device (unless complying with tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531 and the total chlorine and chloride feed rate screening limits under subsection 2 or 5 of section 33-24-05-532);
- (9) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with the tier I or adjusted tier I metals feed rate screening limits under

subsection 2 or 5 of section 33-24-05-531 and the total chlorine and chloride feed rate screening limits under subdivision a of subsection 2 or subsection 5 of section 33-24-05-531):

- (a) Minimum liquid to flue gas ratio;
  - (b) Minimum scrubber blowdown from the system or maximum suspended solids content of scrubber water; and
  - (c) Minimum pH level of the scrubber water;
- (10) For systems using venturi scrubbers, the minimum differential gas pressure across the venturi (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531 and the total chlorine and chloride feed rate screening limits under subdivision a of subsection 2 or subsection 5 of section 33-24-05-532);
- (11) For systems using dry scrubbers (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531 and the total chlorine and chloride feed rate screening limits under subdivision a of subsection 2 or subsection 5 of section 33-24-05-532):
- (a) Minimum caustic feed rate; and
  - (b) Maximum flue gas flow rate;
- (12) For systems using wet ionizing scrubbers or electrostatic precipitators (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531 and the total chlorine and chloride feed rate screening limits under subdivision a of subsection 2 or subsection 5 of section 33-24-05-532):
- (a) Minimum electrical power in kilovolt amperes (kVA) to the precipitator plates; and
  - (b) Maximum flue gas flow rate;
- (13) For systems using fabric filters (baghouses), the minimum pressure drop (unless complying with the tier I or adjusted tier I metals feed rate screening limits under subsection 2 or 5 of section 33-24-05-531 and the total chlorine and chloride feed rate screening limits under subdivision a of subsection 2 of subsection 5 of section 33-24-05-532).
- b. Prior notice of compliance testing. At least thirty days prior to the compliance testing required by subdivision c, the owner or operator shall notify the department and submit the following information:
- (1) General facility information including:
    - (a) Identification number;
    - (b) Facility name, contact person, telephone number, and address;
    - (c) Person responsible for conducting compliance test, including company name, address, and telephone number, and a statement of qualifications; and
    - (d) Planned date of the compliance test;

- (2) Specific information on each device to be tested including:
  - (a) Description of boiler or industrial furnace;
  - (b) A scaled plot plan showing the entire facility and location of the boiler or industrial furnace;
  - (c) A description of the air pollution control system;
  - (d) Identification of the continuous emission monitors that are installed, including:
    - [1] Carbon monoxide monitor;
    - [2] Oxygen monitor; and
    - [3] Hydrocarbon monitor, specifying the minimum temperature of the system and, if the temperature is less than one hundred fifty degrees Celsius, an explanation of why a heated system is not used (see subdivision e) and a brief description of the sample gas conditioning system;
  - (e) Indication of whether the stack is shared with another device that will be in operation during the compliance test; and
  - (f) Other information useful to an understanding of the system design or operation; and
- (3) Information on the testing planned, including a complete copy of the test protocol and quality assurance/quality control plan, and a summary description for each test providing the following information at a minimum:
  - (a) Purpose of the test (for example, demonstrate compliance with emissions of particulate matter); and
  - (b) Planned operating conditions, including levels for each pertinent parameter specified in subdivision a.

c. Compliance testing.

- (1) General. Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under subsection 2 and under conditions established in the notification of testing required by subdivision b. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar onsite unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The department shall provide a written approval to use compliance test data in lieu of testing a similar unit if the department finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of subsection 3 ~~of section 33-24-05-528~~.
- (2) Special requirements for industrial furnaces that recycle collected particulate matter. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter from the air pollution control system must comply with one of the following procedures for testing to determine compliance with the metals standards of subsection 3 or 4 of section 33-24-05-531:

- (a) The special testing requirements prescribed in "Alternative Method for Implementing Metals Controls" in appendix XXIV of chapter 33-24-05; or
  - (b) Stack emissions testing for a minimum of six hours each day while hazardous waste is burned during interim status. The testing must be conducted when burning normal hazardous waste for that day at normal feed rates for that day and when the air pollution control system is operated under normal conditions. During interim status, hazardous waste analysis for metals content must be sufficient for the owner or operator to determine if changes in metals content may affect the ability of the facility to meet the metals emissions standards established under subsection 3 or 4 of section 33-24-05-531. Under this option, operating limits (under subdivision a) must be established during compliance testing under subdivision c only on the following parameters:
    - [1] Feed rate of total hazardous waste;
    - [2] Total feed rate of chlorine and chloride in total feedstreams;
    - [3] Total feed rate of ash in total feedstreams, except that the ash feed rate for cement kilns and lightweight aggregate kilns is not limited;
    - [4] Carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas; and
    - [5] Maximum production rate of the device in appropriate units when producing normal product; or
  - (c) Conduct compliance testing to determine compliance with the metals standards to establish limits on the operating parameters of subdivision a only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the compliance test must be fed at the feed rates that will be fed during the compliance test.
- (3) Conduct of compliance testing.
- (a) If compliance with all applicable emissions standards of sections 33-24-05-529 through 33-24-05-532 is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.
  - (b) Prior to obtaining test data for purposes of demonstrating compliance with the applicable emissions standards of sections 33-24-05-529 through 33-24-05-532 or establishing limits on operating parameters under this section, the facility must operate under compliance test conditions for a sufficient period to reach steady-state operations. Industrial furnaces that recycle collected particulate matter back into the furnace and that comply with subparagraph a or b of paragraph 2 ~~of subdivision c~~, however, need not reach steady-state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals.
  - (c) Compliance test data on the level of an operating parameter for which a limit must be established in the certification of compliance must be obtained during emissions sampling for the pollutant or pollutants (for example, metals,

particulate matter, hydrogen chloride and chlorine, organic compounds) for which the parameter must be established as specified by subdivision a.

d. Certification of compliance. Within ninety days of completing compliance testing, the owner or operator must certify to the department compliance with the emissions standards of subsections 2, 3, and 5 of section 33-24-05-529, sections 33-24-05-530, 33-24-05-531, and 33-24-05-532, and subparagraph d of paragraph 1 of subdivision e of subsection 1. The certification of compliance must include the following information:

(1) General facility and testing information including:

- (a) Identification number;
- (b) Facility name, contact person, telephone number, and address;
- (c) Person responsible for conducting compliance testing, including company name, address, and telephone number, and a statement of qualifications;
- (d) Date or dates of each compliance test;
- (e) Description of boiler or industrial furnace tested;
- (f) Person responsible for quality assurance/quality control, title, and telephone number, and statement that procedures prescribed in the quality assurance/quality control plan submitted under paragraph 3 of subdivision b ~~of subsection 3 of section 33-24-05-528~~ have been followed, or a description of any changes and an explanation of why changes were necessary;
- (g) Description of any changes in the unit configuration prior to or during testing that would alter any of the information submitted in the prior notice of compliance testing under subdivision b, and an explanation of why the changes were necessary;
- (h) Description of any changes in the planned test conditions prior to or during the testing that alter any of the information submitted in the prior notice of compliance testing under subdivision b, and an explanation of why the changes were necessary; and
- (i) The complete report on results of emissions testing.

(2) Specific information on each test including:

- (a) Purpose or purposes of test (for example, demonstrate conformance with the emissions limits for particulate matter, metals, hydrogen chloride, chlorine, and carbon monoxide).
- (b) Summary of test results for each run and for each test including the following information:
  - [1] Date of run;
  - [2] Duration of run;
  - [3] Time-weighted average and highest hourly rolling average carbon monoxide level for each run and for the test;
  - [4] Highest hourly rolling average hydrocarbon level, if hydrocarbon monitoring is required for each run and for the test;

- [5] If dioxin and furan testing is required under subsection 5 of section 33-24-05-529, time-weighted average emissions for each run and for the test of chlorinated dioxin and furan emissions, and the predicted maximum annual average ground level concentration of the toxicity equivalency factor;
  - [6] Time-weighted average particulate matter emissions for each run and for the test;
  - [7] Time-weighted average hydrogen chloride and chlorine emissions for each run and for the test;
  - [8] Time-weighted average emissions for the metals subject to regulation under section 33-24-05-531 for each run and for the test; and
  - [9] Quality assurance and quality control results.
- (3) Comparison of the actual emissions during each test with the emissions limits prescribed by subsections 2, 3, and 5 of section 33-24-05-529 ~~and~~ sections 33-24-05-530, 33-24-05-531, and 33-24-05-532 and established for the facility in the certification of precompliance under subsection 2.
- (4) Determination of operating limits based on all valid runs of the compliance test for each applicable parameter listed in subdivision a using either of the following procedures:
- (a) Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (for example, the value that occurs at any time) and the operating limit specified as the time-weighted average during all runs of the compliance test; or
  - (b) Hourly rolling average basis.
    - [1] The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:
      - [a] A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen seconds, and computes and records the average value at least every sixty seconds.
      - [b] An hourly rolling average is the arithmetic mean of the sixty most recent one-minute average values recorded by the continuous monitoring system.
    - [2] The operating limit for the parameter shall be established based on compliance test data as the average overall test runs of the highest hourly rolling average value for each run.
  - (c) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (for example, arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subparagraph b ~~of paragraph 4 of subdivision d~~ or on (up to) a twenty-four hour rolling average basis. If the owner or operator elects to use an averaging period from two to twenty-four hours:

- [1] The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed on an hourly rolling average basis;
  - [2] The continuous monitor shall meet the following specifications:
    - [a] A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each fifteen seconds, and computes and records the average value at least every sixty seconds; and
    - [b] The rolling average for the selected averaging period is defined as the arithmetic mean of one-hour block averages for the averaging period. A one-hour block average is the arithmetic mean of the one-minute averages recorded during the sixty-minute period beginning at one minute after the beginning of preceding clock hour; and
  - [3] The operating limit for the feed rate of each metal shall be established based on compliance test data as the average overall test runs of the highest hourly rolling average feed rate for each run.
- (d) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (for example, metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of subparagraphs a through c ~~of paragraph 4 of subdivision d.~~
- (5) Certification of compliance statement. The following statement shall accompany the certification of compliance:
- "I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of subsection 3 of section 33-24-05-528 are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
- I also acknowledge that the operating conditions established in this certification pursuant to paragraph 4 of subdivision d of subsection 3 of section 33-24-05-528 are enforceable limits at which the facility can legally operate during interim status until a revised certification of compliance is submitted."
- e. Special requirements for hydrocarbon monitoring systems. When an owner or operator is required to comply with the hydrocarbon controls provided by subsection 3 of section 33-24-05-529 or subparagraph d of paragraph 1 of subdivision e of subsection 1, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix XXIV of chapter 33-24-05 provided that the owner or operator

submits a certification of compliance without using extensions of time provided by subdivision g.

- f. Special operating requirements for industrial furnaces that recycle collected particulate matter. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter from the air pollution control system must:
  - (1) When complying with the requirements of subparagraph a of paragraph 2 of subdivision c, comply with the operating requirements prescribed in "Alternative Method to Implement the Metals Controls" in appendix XXIV of chapter 33-24-05; and
  - (2) When complying with the requirements of subparagraph b of paragraph 2 of subdivision c, comply with the operating requirements prescribed by that subparagraph.
- g. Extensions of time.
  - (1) If the owner or operator does not submit a complete certification of compliance for all of the applicable emissions standards of sections 33-24-05-529, 33-24-05-530, 33-24-05-531, and 33-24-05-532 by August 21, 1992, an owner or operator must either:
    - (a) Stop burning hazardous waste and begin closure activities under subsection 12 for the hazardous waste portion of the facility;
    - (b) Limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of seven hundred twenty hours for the period of time beginning August 21, 1992, submit a notification to the department by August 21, 1992, stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993; or
    - (c) Obtain a case-by-case extension of time under paragraph 2 ~~of subdivision g~~.
  - (2) The owner or operator may request a case-by-case extension of time to extend any time limit provided by this subsection if compliance with the time limit is not practicable for reasons beyond the control of the owner or operator.
    - (a) In granting an extension, the department may apply conditions as the facts warrant to ensure timely compliance with the requirements of this section and that the facility operates in a manner that does not pose a hazard to human health and the environment;
    - (b) When an owner ~~and/or~~ operator ~~request~~~~requests~~ an extension of time to enable the facility to comply with the alternative hydrocarbon provision of subsection 6 of section 33-24-05-529 and to obtain a hazardous waste operating permit because the facility cannot meet the hydrocarbon limit of subsection 3 of section 33-24-05-529:
      - [1] The department shall, in considering whether to grant the extension:
        - [a] Determine whether the owner and operator have submitted in a timely manner a complete part B permit application that includes information required under subdivision ff of subsection 2 of section 33-24-06-17; and

- [b] Consider whether the owner or operator have made a good-faith effort to certify compliance with all other emission controls, including the controls on dioxins and furans of subsection 5 of section 33-24-05-529 and the controls on particulate matter, metals, and hydrogen chloride and chlorine.
  - [2] If an extension is granted, the department shall, as a condition of the extension, require the facility to operate under flue gas concentration limits on carbon monoxide and hydrocarbon that, based on available information, including information in the part B permit application, are baseline carbon monoxide and hydrocarbon levels as defined by subdivision a of subsection 6 of section 33-24-05-529.
- h. Revised certification of compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) under the following procedures:
- (1) Prior to submittal of a revised certification of compliance, hazardous waste may not be burned for more than a total of seven hundred twenty hours under operating conditions that exceed those established under a current certification of compliance, and such burning may be conducted only for purposes of determining whether the facility can operate under revised conditions and continue to meet the applicable emissions standards of sections 33-24-05-529 through 33-24-05-532;
  - (2) At least thirty days prior to first burning hazardous waste under operating conditions that exceed those established under a current certification of compliance, the owner or operator shall notify the department and submit the following information:
    - (a) Identification number, and facility name, contact person, telephone number, and address;
    - (b) Operating conditions that the owner or operator is seeking to revise and description of the changes in facility design or operation that prompted the need to seek to revise the operating conditions;
    - (c) A determination that when operating under the revised operating conditions, the applicable emissions standards of sections 33-24-05-529 through 33-24-05-532 are not likely to be exceeded. To document this determination, the owner or operator shall submit the applicable information required under subdivision b of subsection 2; and
    - (d) Complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of sections 33-24-05-529, 33-24-05-530, 33-24-05-531, and 33-24-05-532 when operating under revised operating conditions. The protocol shall include a schedule of pretesting and compliance testing. If the owner or operator revises the scheduled date for the compliance test, the owner or operator shall notify the department in writing at least thirty days prior to the revised date of the compliance test;
  - (3) Conduct a compliance test under the revised operating conditions and the protocol submitted to the department to determine compliance with the applicable emissions standards of sections 33-24-05-529, 33-24-05-530, 33-24-05-531, and 33-24-05-532; and
  - (4) Submit a revised certification of compliance under subdivision d.

4. **Periodic recertifications.** The owner or operator must conduct compliance testing and submit to the department a recertification of compliance under provisions of subsection 3 within ~~three~~five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, the owner or operator must comply with the requirements of subdivision h of subsection 3.
5. **Noncompliance with certification schedule.** If the owner or operator does not comply with the interim status compliance schedule provided by subsections 2 through 4, hazardous waste burning must terminate on the date that the deadline is missed, closure activities must begin under subsection 12, and hazardous waste burning may not resume except under an operating permit issued under subsection 4 of section 33-24-06-19. For purposes of compliance with the closure provisions of subsection 12 and subsection 5 of section 33-24-06-16 the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.
6. **Startup and shutdown.** Hazardous waste (except waste fed solely as an ingredient under the tier I (or adjusted tier I) feed rate screening limits for metals and chloride/chlorine) must not be fed into the device during startup and shutdown of the boiler or industrial furnace, unless the device is operating within the conditions of operation specified in the certification of compliance.
7. **Automatic waste feed cutoff.** During the compliance test required by subdivision c of subsection 3, and upon certification of compliance under subsection 3, a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in paragraphs 1 and 5 through 13 of subdivision a of subsection 3 deviate from those established in the certification of compliance. In addition:
  - a. To minimize emissions of organic compounds, the minimum combustion chamber temperature (or the indicator of combustion chamber temperature) that occurred during the compliance test must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber, with the minimum temperature during the compliance test defined as either:
    - (1) If compliance with the combustion chamber temperature limit is based on an hourly rolling average, the minimum temperature during the compliance test is considered to be the average overall runs of the lowest hourly rolling average for each run; or
    - (2) If compliance with the combustion chamber temperature limit is based on an instantaneous temperature measurement, the minimum temperature during the compliance test is considered to be the time-weighted average temperature during all runs of the test; and
  - b. Operating parameters limited by the certification of compliance must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the limits established in the certification of compliance.
8. **Fugitive emissions.** Fugitive emissions must be controlled by:
  - a. Keeping the combustion zone totally sealed against fugitive emissions;
  - b. Maintaining the combustion zone pressure lower than atmospheric pressure; or
  - c. An alternate means of control that the owner or operator can demonstrate provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower

than atmospheric pressure. Support for such demonstration shall be included in the operating record.

9. **Changes.** A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits specified in the certification of compliance.
10. **Monitoring and inspections.**
  - a. The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:
    - (1) Feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks, and feed rates of ash, metals, and total chloride and chlorine as necessary to ensure conformance with the certification of precompliance or certification of compliance.
    - (2) Carbon monoxide, oxygen, and if applicable, hydrocarbons, on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with the operating limits specified in the certification of compliance. Carbon monoxide, hydrocarbon, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in appendix XXIV of chapter 33-24-05.
    - (3) Upon the request of the department, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feed stocks as appropriate) and the stack gas emissions must be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of sections 33-24-05-529 through 33-24-05-532.
  - b. The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, et cetera) must be subjected to thorough visual inspection when they contain hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.
  - c. The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the owner or operator can demonstrate that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. Support for such demonstration shall be included in the operating record. At a minimum, operational testing must be conducted at least once every thirty days.
  - d. These monitoring and inspection data must be recorded and the records must be placed in the operating log.
11. **Recordkeeping.** The owner or operator must keep in the operating record of the facility all information and data required by this section ~~until closure of the boiler or industrial furnace unit~~ for five years.
12. **Closure.** At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace and must comply with the applicable standards of subsection 5 of section 33-24-06-16.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**33-24-05-529. Standards to control organic emissions.**

**1. Destruction and removal efficiency standard.**

- a. General. Except as provided in subdivision c, a boiler or industrial furnace burning hazardous waste must achieve a destruction and removal efficiency of 99.99 percent for all organic hazardous constituents in the waste feed. To demonstrate conformance with this requirement, 99.99 percent destruction and removal efficiency must be demonstrated during a trial burn for each principal organic hazardous constituent designated (under subdivision b) in its permit for each waste feed. Destruction and removal efficiency is determined for each principal organic hazardous constituent from the following equation:

$$\text{destruction and removal efficiency} = \left( 1 - \frac{W(\text{out})}{W(\text{in})} \right) \times 100$$

where:

$W_{\text{in}}$  = Mass feed rate of one principal organic hazardous constituent in the hazardous waste fired to the boiler or industrial furnace; and

$W_{\text{out}}$  = Mass emission rate of the same principal organic hazardous constituent present in stack gas prior to release to the atmosphere.

- b. Designation of principal organic hazardous constituents. Principal organic hazardous constituents are those compounds for which compliance with the destruction and removal efficiency requirements shall be demonstrated in a trial burn in conformance with procedures prescribed in subsection 4 of section 33-24-06-19. One or more principal organic hazardous constituents shall be designated by the department for each waste feed to be burned. Principal organic hazardous constituents shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with part B of the permit application. Principal organic hazardous constituents are most likely to be selected from among those compounds listed in appendix V of chapter 33-24-02 that are also present in the normal waste feed. However, if the applicant demonstrates to the department's satisfaction that a compound not listed in appendix V of chapter 33-24-02 or not present in the normal waste feed is a suitable indicator of compliance with the destruction and removal efficiency requirements, that compound may be designated as a principal organic hazardous constituent. Such principal organic hazardous constituents need not be toxic or organic compounds.
- c. Dioxin-listed waste. A boiler or industrial furnace burning hazardous waste containing (or derived from) hazardous waste numbers F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency of 99.9999 percent for each principal organic hazardous constituent designated (under subdivision b of subsection 1) in its permit. This performance must be demonstrated on principal organic hazardous constituents that are more difficult to burn than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. Destruction and removal efficiency is determined for each principal organic hazardous constituent from the equation in subdivision a. In addition, the owner or operator of the boiler or industrial furnace must

notify the department of intent to burn hazardous waste numbers F020, F021, F022, F023, F026, or F027.

- d. Automatic waiver of destruction and removal efficiency trial burn. Owners and operators of boilers operated under the special operating requirements provided by section 33-24-05-535 are considered to be in compliance with the destruction and removal efficiency standard of subdivision a and are exempt from the destruction and removal efficiency trial burn.
- e. Low risk waste. Owners and operators of boilers or industrial furnaces that burn hazardous waste in compliance with the requirements of subsection 1 of section 33-24-05-534 are considered to be in compliance with the destruction and removal efficiency standard of subdivision a and are exempt from the destruction and removal efficiency trial burn.

**2. Carbon monoxide standard.**

- a. Except as provided in subsection 3, the stack gas concentration of carbon monoxide from a boiler or industrial furnace burning hazardous waste cannot exceed one hundred parts per million by volume on an hourly rolling average basis (for example, over any sixty-minute period), continuously corrected to seven percent oxygen, dry gas basis.
- b. Carbon monoxide and oxygen shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in appendix XXIV of chapter 33-24-05.
- c. Compliance with the one hundred parts per million by volume carbon monoxide limit must be demonstrated during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). To demonstrate compliance, the highest hourly rolling average carbon monoxide level during any valid run of the trial burn or compliance test must not exceed one hundred parts per million by volume.

**3. Alternative carbon monoxide standard.**

- a. The stack gas concentration of carbon monoxide from a boiler or industrial furnace burning hazardous waste may exceed the one hundred parts per million by volume limit provided that stack gas concentrations of hydrocarbons do not exceed twenty parts per million by volume, except as provided by subsection 6 for certain industrial furnaces.
- b. Hydrocarbon limits must be established under this section on an hourly rolling average basis (for example, over any sixty-minute period), reported as propane, and continuously corrected to seven percent oxygen, dry gas basis.
- c. Hydrocarbon shall be continuously monitored in conformance with "Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste" in appendix XXIV of chapter 33-24-05. Carbon monoxide and oxygen shall be continuously monitored in conformance with subdivision b of subsection 2.
- d. The alternative carbon monoxide standard is established based on carbon monoxide data during the trial burn (for a new facility) and the compliance test (for an interim status facility). The alternative carbon monoxide standard is the average overall valid runs of the highest hourly average carbon monoxide level for each run. The carbon monoxide limit is implemented on an hourly rolling average basis, and continuously corrected to seven percent oxygen, dry gas basis.

4. **Special requirements for furnaces.** Owners and operators of industrial furnaces (for example, kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see paragraph 2 of subdivision e of subsection 1 of section 33-24-05-528) at any location other than the end where products are normally discharged and where fuels are normally fired must comply with the hydrocarbon limits provided by subsection 3 or 6 irrespective of whether stack gas carbon monoxide concentrations meet the one hundred parts per million by volume limit of subsection 2.
5. **Controls for dioxins and furans.** Owners and operators of boilers and industrial furnaces that are equipped with a dry particulate matter control device that operates within the temperature range of four hundred fifty degrees to seven hundred fifty degrees Fahrenheit [232.2 to 398.9 degrees Celsius], and industrial furnaces operating under an alternative hydrocarbon limit established under subsection 6 must conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual exceeding one in one hundred thousand:
  - a. During the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs/CDFs) using method 0023A, "Sampling Method for Polychlorinated Dibenzop-dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources", environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05;
  - b. Estimate the 2,3,7,8-TCDD toxicity equivalence of the tetra-octa chlorinated dibenzo-p-dioxins and dibenzofurans congeners using "Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzop-dioxin and Dibenzofuran Congeners" in appendix XXIV of chapter 33-24-05. Multiply the emission rates of chlorinated dibenzo-p-dioxins and dibenzofurans congeners with a toxicity equivalence greater than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8-TCDD;
  - c. Conduct dispersion modeling using methods recommended in appendix W of 40 CFR part 51 ("Guidelines on Air Quality Models (Revised)" (1986) and its supplements), the "Hazardous Waste Combustion Air Quality Screening Procedure", provided in appendix XXIV, or in "Screening Procedures for Estimating Air Quality Impact of Stationary Sources", revised as incorporated by reference in section 33-24-01-05 to predict the maximum annual average offsite ground level concentration of 2,3,7,8-TCDD equivalents determined under subdivision b. The maximum annual average concentration must be used when a person resides onsite; and
  - d. The ratio of the predicted maximum annual average ground level concentration of 2,3,7,8-TCDD equivalents to the risk-specific dose for 2,3,7,8-TCDD provided in appendix XX of chapter 33-24-05 ( $2.2 \times 10^{-7}$ ) shall not exceed 1.0.
6. **Monitoring carbon monoxide and hydrocarbon in the bypass duct of a cement kiln.** Cement kilns may comply with the carbon monoxide and hydrocarbon limits provided by subsections 2 through 4 by monitoring in the bypass duct provided that:
  - a. Hazardous waste is fired only into the kiln and not at any location downstream from the kiln exit relative to the direction of gas flow; and
  - b. The bypass duct diverts a minimum of ten percent of kiln off-gas into the duct.
7. **Use of emissions test data to demonstrate compliance and establish operating limits.** Compliance with the requirements of this section must be demonstrated simultaneously by

emissions testing or during separate runs under identical operating conditions. Further, data to demonstrate compliance with the carbon monoxide and hydrocarbon limits [of this section](#) or to establish alternative carbon monoxide or hydrocarbon limits under this section must be obtained during the time that destruction and removal efficiency testing, and where applicable, CCD/CDF testing under subsection 5 and comprehensive organic emissions testing under subsection 6 is conducted.

8. **Enforcement.** For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 33-24-05-527) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and reissuance of a permit under section 33-24-06-12.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-10

### **33-24-05-531. Standards to control metals emission.**

1. **General.** The owner or operator must comply with the metals standards provided by subsections 2 ~~through~~ [3, 4, 5, or 6](#) for each metal listed in subsection 2 that is present in the hazardous waste at detectable levels [by using appropriate analytical procedures](#) ~~specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05.~~
2. **Tier I feed rate screening limits.** Feed rate screening limits for metals are specified in appendix XVI as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subdivision g.
  - a. **Noncarcinogenic metals.** The feed rates of antimony, barium, lead, mercury, thallium, and silver in all feedstreams, including hazardous waste, fuels, and industrial furnace feedstocks shall not exceed the screening limits specified in appendix XVI of chapter 33-24-05.
    - (1) The feed rate screening limits for antimony, barium, mercury, thallium, and silver are based on either:
      - (a) An hourly rolling average as defined in subparagraph b of paragraph 1 of subdivision f of subsection 5 of section 33-24-05-527; or
      - (b) An instantaneous limit not to be exceeded at any time.
    - (2) The feed rate screening limit for lead is based on one of the following:
      - (a) An hourly rolling average as defined in subparagraph b of paragraph 1 of subdivision f of subsection 5 of section 33-24-05-527;
      - (b) An averaging period of two to twenty-four hours as defined in paragraph 2 of subdivision f of subsection 5 of section 33-24-05-527 with an instantaneous feed rate limit not to exceed ten times the feed rate that would be allowed on an hourly rolling average basis; or
      - (c) An instantaneous limit not to be exceeded at any time.
  - b. **Carcinogenic metals.**

- (1) The feed rates of arsenic, cadmium, beryllium, and chromium in all feedstreams, including hazardous waste, fuels, and industrial furnace feedstocks shall not exceed values derived from the screening limits specified in appendix XVI of chapter 33-24-05. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in appendix XVI of chapter 33-24-05 shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^n \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n = number of carcinogenic metals

AFR = actual feed rate to the device for metal "i"

FRSL = feed rate screening limit provided by appendix XVI of chapter 33-24-05 for metal "i".

- (2) The feed rate screening limits for the carcinogenic metals are based on either:
- An hourly rolling average; or
  - An averaging period of two to twenty-four hours as defined in paragraph 2 of subdivision f of subsection 5 of section 33-24-05-527 with an instantaneous feed rate limit not to exceed ten times the feed rate that would be allowed in an hourly rolling average basis.

c. Terrain-adjusted effective stack height (TESH).

- (1) The terrain-adjusted effective stack height is determined according to the following equation:

$$TESH = Ha + H1 - Tr$$

where:

Ha = Actual physical stack height

H1 = Plume rise as determined from appendix XXI of chapter 33-24-05 as a function of stack flow rate and stack gas exhaust temperature.

Tr = Terrain rise within five kilometers of the stack.

- (2) The stack height (Ha) may not exceed good engineering practice as specified in 40 CFR 51.100(ii).
- (3) If the terrain-adjusted effective stack height for a particular facility is not listed in the table in the appendices, the nearest lower terrain-adjusted effective stack height listed in the table shall be used. If the terrain-adjusted effective stack height is four meters or less, a value of four meters shall be used.

d. Terrain type. The screening limits are a function of whether the facility is located in noncomplex or complex terrain. A device located where any part of the surrounding terrain within five kilometers of the stack equals or exceeds the elevation of the physical

stack height ( $H_a$ ) is considered to be in complex terrain and the screening limits for complex terrain apply. Terrain measurements are to be made from United States geological survey 7.5-minute topographic maps of the area surrounding the facility.

- e. Land use. The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in appendix XXIV or XXV of chapter 33-24-05 shall be used.
- f. Multiple stacks. Owners and operators of facilities with more than one onsite stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls of metals emissions under a hazardous waste operating permit or interim status controls must comply with the screening limits for all such units assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics. The worst-case stack is determined from the following equation as applied to each stack:

$$K = HVT$$

where:

$K$  = a parameter accounting for relative influence of stack height and plume rise;

$H$  = physical stack height (meters);

$V$  = stack gas flow rate ( $m^3$ /second); and

$T$  = exhaust temperature ( $^{\circ}$ Kelvin).

The stack with the lowest value of  $K$  is the worst-case stack.

- g. Criteria for facilities not eligible for screening limits. If any criteria below are met, the tier I (and tier II) screening limits do not apply. Owners and operators of such facilities must comply with either the tier III standards provided by subsection 4 or with the adjusted tier I feed rate screening limits provided by subsection 5.
    - (1) The device is located in a narrow valley less than one kilometer wide;
    - (2) The device has a stack taller than twenty meters and is located such that the terrain rises to the physical height within one kilometer of the facility;
    - (3) The device has a stack taller than twenty meters and is located within five kilometers of a shoreline of a large body of water such as an ocean or large lake;
    - (4) The physical stack height of any stack is less than 2.5 times the height of any building within five building heights or five projected building widths of the stack and the distance from the stack to the closest boundary is within five building heights or five projected building widths of the associated building; or
    - (5) The department determines that standards based on site-specific dispersion modeling are required.
  - h. Implementation. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate screening limits are not exceeded.
3. **Tier II emission rate screening limits.** Emission rate screening limits are specified in appendix XVI of chapter 33-24-05 as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subdivision g of subsection 2.

- a. Noncarcinogenic metals. The emission rates of antimony, barium, lead, mercury, thallium, and silver shall not exceed the screening limits specified in appendix XVI of chapter 33-24-05.
- b. Carcinogenic metals. The emission rates of arsenic, cadmium, beryllium, and chromium shall not exceed values derived from the screening limits specified in appendix XVI of chapter 33-24-05. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission rate screening limit specified in appendix XVI of chapter 33-24-05 shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^n \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n = number of carcinogenic metals

AER = actual emission rate for metal "i"

ERSL = emission rate screening limit provided by appendix XVI for metal "i".

- c. Implementation. The emission rate limits must be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by paragraphs 1 and 2 of subdivision a of subsection 2 and paragraph 2 of subdivision b of subsection 2. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under section 33-24-05-527 or 33-24-05-528 are not exceeded.
  - d. Definitions and limitations. The definitions and limitations provided by subsection 2 for the following terms also apply to the tier II emission rate screening limits provided by this subsection: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.
  - e. Multiple stacks.
    - (1) Owners and operators of facilities with more than one onsite stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a hazardous waste operating permit or interim status controls must comply with the emissions screening limits for any such stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.
    - (2) The worst-case stack is determined by procedures provided in subdivision f of subsection 2.
    - (3) For each metal, the total emissions of the metal from those stacks shall not exceed the screening limit for the worst-case stack.
4. **Tier III and adjusted tier I site-specific risk assessment. The requirements of this subsection apply to facilities complying with either the tier III or adjusted tier I controls, except where specified otherwise.**

- a. General. Conformance with the tier III ~~or adjusted tier I~~ metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the tier III or adjusted tier I metals controls must be determined by air dispersion modeling to predict the maximum annual average offsite ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.
- b. Acceptable ambient levels. Appendices XIX and XX of chapter 33-24-05 list the acceptable ambient levels for purposes of this rule. Reference air concentrations are listed for the noncarcinogenic metals and  $10^{-5}$  risk-specific doses are listed for the carcinogenic metals. The risk-specific dose for a metal is the acceptable ambient level for that metal provided that only one of the four carcinogenic metals is emitted. If more than one carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the risk-specific dose as described in subdivision c ~~of subsection 4~~.
- c. Carcinogenic metals. For the carcinogenic metals arsenic, cadmium, beryllium, and chromium, the sum of the ratios of the predicted maximum annual average offsite ground level concentrations (except that onsite concentrations must be considered if a person resides onsite) to the risk-specific dose for all carcinogenic metals emitted shall not exceed 1.0 as determined by the following equation:

$$\sum_{i=1}^n \frac{\text{Predicted Ambient Concentration (i)}}{\text{Risk - Specific Dose (i)}} \leq 1.0$$

Where:

(n = number of carcinogenic metals)

- d. Noncarcinogenic metals. For the noncarcinogenic metals, the predicted maximum annual average offsite ground level concentration for each metal shall not exceed the reference air concentration.
  - e. Multiple stacks. Owners and operators of facilities with more than one onsite stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a hazardous waste operating permit or interim status controls must conduct emissions testing (except that facilities complying with adjusted tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such onsite stacks do not result in an exceedance of the acceptable ambient levels.
  - f. Implementation. Under tier III, the metals controls must be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by paragraphs 1 and 2 of subdivision a of subsection 2 and paragraph 2 of subdivision b of subsection 2. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under section 33-24-05-527 or 33-24-05-528 are not exceeded.
5. **Adjusted tier I feed rate screening limits.** The owner or operator may adjust the feed rate screening limits provided by appendix XVI of chapter 33-24-05 to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back-calculating from the acceptable ambient level provided by appendices XIX and XX of chapter 33-24-05 using dispersion modeling to determine the maximum allowable

emission rate. This emission rate becomes the adjusted tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals are implemented as prescribed in subdivision b of subsection 2.

6. **Alternative implementation approaches.**

- a. The department may approve on a case-by-case basis approaches to implement the tier II or tier III metals emission limits provided by subsection 3 or 4 alternative to monitoring the feed rate of metals in each feedstream.
- b. The emission limits provided by subsection 4 must be determined as follows:
  - (1) For each noncarcinogenic metal, by back-calculating from the reference air concentration provided in appendix XIX of chapter 33-24-05 to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection 8; and
  - (2) For each carcinogenic metal by:
    - (a) Back-calculating from the risk-specific dose provided in appendix XX of chapter 33-24-05 to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with subsection 8; and
    - (b) If more than one carcinogenic metal is emitted, selecting an emission limit for each carcinogenic metal not to exceed the emission rate determined by subparagraph a such that the sum for all carcinogenic metals of the ratios of the selected emission limit to the emission rate determined by that ~~paragraph~~subparagraph does not exceed 1.0.

7. **Emission testing.**

- a. General. Emission testing for metals shall be conducted using method 0060, "Determinations of Metals in Stack Emissions", environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05.
- b. Hexavalent chromium. Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in method 0061, "Determination of Hexavalent Chromium Emissions from Stationary Sources", environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05.

8. **Dispersion modeling.** Dispersion modeling required under this section shall be conducted according to methods recommended in appendix W of 40 CFR part 51 ("Guidelines on Air Quality Models (Revised)" (1986) and its supplements), the "Hazardous Waste Combustion Air Quality Screening Procedure" provided in appendix XXIV of chapter 33-24-05, or in "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, revised" (~~the latter document is~~ incorporated by reference, see in section 33-24-01-05) to predict the maximum annual average offsite ground level concentration. However, onsite concentrations must be considered when a person resides onsite.

9. **Enforcement.** For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under section 33-24-05-527) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions

is insufficient to ensure compliance with the requirements of this section may be "information" justifying modification or revocation and reissuance of a permit under section 33-24-06-12.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-09

**33-24-05-533. Small quantity onsite burner exemption.**

1. **Exempt quantities.** Owners and operators of facilities that burn hazardous waste in an onsite boiler or industrial furnace are exempt from the requirements of sections 33-24-05-525 through 33-24-05-549 provided that:

a. The quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in the following table based on the terrain-adjusted effective stack height as defined in subdivision c of subsection 2 of section 33-24-05-531:

Exempt Quantities for Small Quantity Burner Exemption			
Terrain-Adjusted Effective Stack Height of Device (Meters)	Allowable Hazardous Waste Burning Rate (Gallons/Month)	Terrain-Adjusted Effective Stack Height of Device (Meters)	Allowable Hazardous Waste Burning Rate (Gallons/Month)
0 to 3.9	0	40.0 to 44.9	210
4.0 to 5.9	13	45.0 to 49.9	260
6.0 to 7.9	18	50.0 to 54.9	330
8.0 to 9.9	27	55.0 to 59.9	400
10.0 to 11.9	40	60.0 to 64.9	490
12.0 to 13.9	48	65.0 to 69.9	610
14.0 to 15.9	59	70.0 to 74.9	680
16.0 to 17.9	69	75.0 to 79.9	760
18.0 to 19.9	76	80.0 to 84.9	850
20.0 to 21.9	84	85.0 to 89.9	960
22.0 to 23.9	93	90.0 to 94.9	1,100
24.0 to 25.9	100	95.0 to 99.9	1,200
26.0 to 27.9	110	100.0 to 104.9	1,300
28.0 to 29.9	130	105.0 to 109.9	1,500
30.0 to 34.9	140	110.0 to 114.9	1,700
35.0 to 39.9	170	115.0 or greater	1,900

b. The maximum hazardous waste firing rate does not exceed at any time one percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste;

c. The hazardous waste has a minimum heating value of five thousand British thermal units per pound as generated; and

d. The hazardous waste fuel does not contain (and is not derived from) hazardous waste number F020, F021, F022, F023, F026, or F027.

2. **Mixing with nonhazardous fuels.** If hazardous waste fuel is mixed with a nonhazardous fuel, the quantity of hazardous waste before such mixing is used to comply with subsection 1.

3. **Multiple stacks.** If an owner or operator burns hazardous waste in more than one onsite boiler or industrial furnace exempt under this section, the quantity limits provided by subdivision a of subsection 1 are implemented according to the following equation:

$$\sum_{i=1}^n \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} \leq 1.0$$

where:

n = number of stacks;

Actual quantity burned means the waste quantity burned per month in device "i";

Allowable quantity burned means the maximum allowable exempt quantity for stack "i" from the table in subdivision a of subsection 1.

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under section 33-24-02-05 may be burned in an offsite device under the exemption provided by section 33-24-05-533, but must be included in the quantity determination for the exemption.

4. **Notification requirements.** The owner or operator of facilities qualifying for the small quantity burner exemption under this section must provide a one-time signed, written notice to the department indicating the following:
  - a. The combustion unit is operating as a small quantity burner of hazardous waste;
  - b. The owner and operator are in compliance with the requirements of this section; and
  - c. The maximum quantity of hazardous waste that the facility may burn per month as provided by subdivision a of subsection 1 ~~of section 33-24-05-533~~.
5. **Recordkeeping requirements.** The owner or operator must maintain at the facility for at least three years sufficient records documenting compliance with the hazardous waste quantity, firing rate, and heating value limits. At a minimum, these records must indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month, and the heating value of the hazardous waste.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-534. Low risk waste exemption.**

1. **Waiver of destruction and removal efficiency standard.** The destruction and removal efficiency standard of subsection 1 of section 33-24-05-529 does not apply if the boiler or industrial furnace is operated in conformance with subdivision a of subsection 1 and the owner or operator demonstrates by procedures prescribed in subdivision b of subsection 1 that the burning will not result in unacceptable adverse health effects.
  - a. The device shall be operated as follows:
    - (1) A minimum of fifty percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the department on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The fifty percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

- (2) Primary fuels and hazardous waste fuels shall have a minimum as-fired heating value of eight thousand British thermal units per pound;
  - (3) The hazardous waste is fired directly into the primary fuel flame zone of the combustion chamber; and
  - (4) The device operates in conformance with the carbon monoxide controls provided by subdivision a of subsection 2 of section 33-24-05-529. Devices subject to the exemption provided by this section are not eligible for the alternative carbon monoxide controls provided by subsection 3 of section 33-24-05-529.
- b. Procedures to demonstrate that the hazardous waste burning will not pose unacceptable adverse public health effects are as follows:
- (1) Identify and quantify those nonmetal compounds listed in appendix V of chapter 33-24-02 that could reasonably be expected to be present in the hazardous waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained.
  - (2) Calculate reasonable, worst-case emission rates for each constituent identified in paragraph 1 by assuming the device achieves 99.9 percent destruction and removal efficiency. That is, assume that 0.1 percent of the mass weight of each constituent fed to the device is emitted.
  - (3) For each constituent identified in paragraph 1, use emissions dispersion modeling to predict the maximum annual average ground level concentration of the constituent.
    - (a) Dispersion modeling shall be conducted using methods specified in subsection 8 of section 33-24-05-531.
    - (b) Owners and operators of facilities with more than one onsite stack from a boiler or industrial furnace that is exempt under this section must conduct dispersion modeling of emissions from all stacks exempt under this section to predict ambient levels prescribed by this ~~paragraph~~subdivision.
  - (4) Ground level concentrations of constituents predicted under paragraph 3 must not exceed the following levels:
    - (a) For the noncarcinogenic compounds listed in appendix XIX of chapter 33-24-05, the levels established in appendix XIX of chapter 33-24-05;
    - (b) For the carcinogenic compounds listed in appendix XX of chapter 33-24-05, the sum for all constituents of the ratios of the actual ground level concentration to the level established in appendix XX of chapter 33-24-05 cannot exceed 1.0; and
    - (c) For constituents not listed in appendix XIX or XX of chapter 33-24-05, 0.1 micrograms per cubic meter.
2. **Waiver of ~~particular~~particulate matter standard.** The particulate matter standard of section 33-24-05-530 does not apply if:
- a. The destruction and removal efficiency standard is waived under subsection 1; and
  - b. The owner or operator complies with the tier I or adjusted tier I metals feed rate screening limits provided by subsection 2 or 5 of section 33-24-05-531.

**History:** Effective July 1, 1997; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-536. Standards for direct transfer.**

1. **Applicability.** The regulations in this section apply to owners and operators of boilers and industrial furnaces subject to section 33-24-05-527 or 33-24-05-528 if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.
2. **Definitions.**
  - a. When used in this section, the following terms have the meanings given below:
    - (1) Direct transfer equipment means any device (including but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (for example, transport vehicle) and a boiler or industrial furnace.
    - (2) Container means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (for example, tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.
  - b. This section references several requirements provided in sections 33-24-05-89 through 33-24-05-117 and subsection 5 of section 33-24-06-16. For purposes of this section, the term "tank systems" in those referenced requirements means direct transfer equipment as defined in subdivision a.
3. **General operating requirements.**
  - a. No direct transfer of a pumpable hazardous waste shall be conducted from an open-top container to a boiler or industrial furnace.
  - b. Direct transfer equipment used for pumpable hazardous waste shall always be closed, except when necessary to add or remove the waste, and shall not be opened, handled, or stored in a manner that may cause any rupture or leak.
  - c. The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not:
    - (1) Generate extreme heat or pressure, fire, explosion, or violent reaction;
    - (2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;
    - (3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
    - (4) Damage the structural integrity of the container or direct transfer equipment containing the waste;
    - (5) Adversely affect the capability of the boiler or industrial furnace to meet the standards provided by sections 33-24-05-529 through 33-24-05-632; or
    - (6) Threaten human health or the environment.

- d. Hazardous waste shall not be placed in direct transfer equipment if it could cause the equipment or its secondary containment system to rupture, leak, corrode, or otherwise fail.
  - e. The owner or operator of the facility shall use appropriate controls and practices to prevent spills and overflows from the direct transfer equipment or its secondary containment systems. These include at a minimum:
    - (1) Spill prevention controls (for example, check valves, dry discount couplings); and
    - (2) Automatic waste feed cutoff to use if a leak or spill occurs from the direct transfer equipment.
4. **Areas where direct transfer vehicles (containers) are located.** Applying the definition of container under this section, owners and operators must comply with the following requirements:
- a. The containment requirements of section 33-24-05-94;
  - b. The use and management requirements of ~~subsection 5 of section 33-24-06-16, sections 33-24-05-89 through 33-24-05-102 except for sections 33-24-05-89, 33-24-05-93, and 33-24-05-97, and~~ except that in lieu of the special requirements of section 33-24-05-95 for ignitable or reactive waste, the owner or operator may comply with the requirements ~~of this section~~ for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in tables 2-1 through 2-6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code", (1977 or 1981), as incorporated by reference, see section 33-24-01-05. The owner or operator must obtain and keep on file at the facility a written certification by the local fire marshal that the installation meets the subject National Fire Protection Association codes; and
  - c. The closure requirements of section 33-24-05-97.
5. **Direct transfer equipment.** Direct transfer equipment must meet the following requirements:
- a. Secondary containment. Owners and operators shall comply with the secondary containment requirements of ~~subsection 5 of section 33-24-06-16~~section 33-24-05-106, except for subsections 1, 4, 5, and 9:
    - (1) For all new direct transfer equipment, prior to their being put into service; and
    - (2) For existing direct transfer equipment within two years after August 21, 1991.
  - b. Requirements prior to meeting secondary containment requirements.
    - (1) For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by a qualified, registered professional engineer in accordance with subsection 4 of section 33-24-06-02 that attests to the equipment's integrity by August 21, 1992.
    - (2) This assessment shall determine whether the direct transfer equipment is adequately designed and has sufficient structural strength and compatibility with the waste or wastes to be transferred to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

- (a) Design standard or standards, if available according to which the direct transfer equipment was constructed;
  - (b) Hazardous characteristics of the waste or wastes that have been or will be handled;
  - (c) Existing corrosion protection measures;
  - (d) Documented age of the equipment, if available, (otherwise, an estimate of the age); and
  - (e) Results of a leak test or other integrity examination such that the effects of temperature variations, vapor pockets, cracks, leaks, corrosion, and erosion are accounted for.
- (3) If, as a result of the assessment specified above, the direct transfer equipment is found to be leaking or unfit for use, the owner or operator shall comply with the ~~applicable~~ requirements of ~~subsection 5~~ subsections 1 and 2 of section ~~33-24-06-16~~ 33-24-05-109.
- c. Inspections and recordkeeping.
- (1) The owner or operator must inspect at least once each operating hour when hazardous waste is being transferred from the transport vehicle (container) to the boiler or industrial furnace:
    - (a) Overfill/spill control equipment (for example, waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;
    - (b) The aboveground portions of the direct transfer equipment to detect corrosion, erosion, or releases of waste (for example, wet spots, dead vegetation); and
    - (c) Data gathered from monitoring equipment and leak-detection equipment (for example, pressure and temperature gauges) to ensure that the direct transfer equipment is being operated according to its design.
  - (2) The owner or operator must inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided by subsection 56 of section ~~33-24-06-16~~ 33-24-05-108.
  - (3) Records of inspections made under this subdivision shall be maintained in the operating record at the facility, and available for inspection for at least three years from the date of the inspection.
- d. Design and installation of new ancillary equipment. Owners and operators must comply with the ~~applicable~~ requirements of ~~subsection 5 of~~ section ~~33-24-06-16~~ 33-24-05-105.
- e. Response to leaks or spills. Owners and operators must comply with the ~~applicable~~ requirements of ~~subsection 5 of~~ section ~~33-24-06-16~~ 33-24-05-109.
- f. Closure. Owners and operators must comply with the ~~applicable~~ requirements of ~~subsection 5 of~~ section ~~33-24-06-16~~ 33-24-05-110 except for subdivisions b and d of section 3.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-537. Regulation of residues.

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under subdivision d, g, or h of subsection 2 of section 33-24-02-04 unless the device and the owner or operator meet the following requirements:

1. The device meets the following criteria:
  - a. Boilers. Boilers must burn at least fifty percent coal on a total heat input or mass input basis, whichever results in the greater mass feed rate or coal;
  - b. Ore or mineral furnaces. Industrial furnaces subject to subdivision g of subsection 2 of section 33-24-02-04 must process at least fifty percent by weight normal, nonhazardous raw materials; and
  - c. Cement kilns. Cement kilns must process at least fifty percent by weight normal cement-production raw materials;
2. The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:
  - a. Comparison of waste-derived residue with normal residue. The waste-derived residue must not contain appendix V of chapter 33-24-02 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix XXIII of chapter 33-24-05 that may be generated as products of incomplete combustion. ~~Sampling and analyses shall be in conformance with procedures prescribed in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, incorporated by reference in section 33-24-01-05.~~ For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of appendix XXIV of chapter 33-24-05.
    - (1) Normal residue. Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of ten samples representing a minimum of ten days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed twenty-four hours. The upper tolerance limit (at ninety-five percent confidence with a ninety-five percent proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically derived concentrations of the toxic constituents of concern in the normal residue, the statistically derived concentrations must be revised or statistically derived concentrations of toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Bevill Residue Determinations" in appendix XXIV of chapter 33-24-05;
    - (2) Waste-derived residue. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each

twenty-four-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under paragraph 1. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a twenty-four-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed twenty-four hours. If more than one sample is analyzed to characterize waste-derived residues generated over a twenty-four-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

b. Comparison of waste-derived residue concentrations with health-based limits.

- (1) Nonmetal constituents. The concentration of each nonmetal toxic constituent of concern (specified in subdivision a) in the waste-derived residue must not exceed the health-based level specified in appendix XXII of chapter 33-24-05, or the level of detection level (using analytical procedures prescribed in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix XXII of chapter 33-24-05, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures contained in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, or other appropriate methods which must be determined by using appropriate analytical procedures), whichever is higher, must be used. The levels specified in appendix XXII of chapter 33-24-05 (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in note 1 of appendix XXII of chapter 33-24-05) are administratively stayed under the condition, for those constituents specified in subdivision a, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in section 33-24-05-283 for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable department guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by section 33-24-05-283 for F039 nonwastewaters. In complying with the section 33-24-05-283 F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans;

~~Note to this paragraph: The administrative stay, under the condition that the owner or operator complies with the alternative levels defined as the land disposal restriction limits specified in section 33-24-05-283 for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the federal register and the code of federal regulations.~~

- (2) Metal constituents. The concentration of metals in an extract obtained using the toxicity characteristic leaching procedure of section 33-24-02-14 must not exceed the levels specified in appendix XXII of chapter 33-24-05; and

- (3) Sampling and analysis. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each twenty-four-hour period has concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a twenty-four-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed twenty-four hours. If more than one sample is analyzed to characterize waste-derived residues generated over a twenty-four-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and
3. Records sufficient to document compliance with the provisions must be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded:
  - a. Levels of constituents in appendix V of chapter 33-24-02, that are present in waste-derived residues; and
  - b. If the waste-derived residue is compared with normal residue under subdivision a of subsection 2:
    - (1) The levels of constituents in appendix V of chapter 33-24-02, that are present in normal residues; and
    - (2) Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-551. Grandfathered corrective action management units (CAMUs).**

1. To implement remedies under section 33-24-05-58 or Resource Conservation and Recovery Act section 3008(h), or to implement remedies at a permitted facility that is not subject to section 33-24-05-58, the department may designate an area at the facility as a corrective action management unit under the requirements of this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A corrective action management unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the corrective action management unit originated. One or more corrective action management units may be designated at a facility.
  - a. Placement of remediation wastes into or within a corrective action management unit does not constitute land disposal of hazardous wastes.
  - b. Consolidation or placement of remediation wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.
2. The department may designate a regulated unit as a corrective action management unit in accordance with the following:

- a. The department may designate a regulated unit (as defined in subdivision b of subsection 1 of section 33-24-05-47) as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:
    - (1) The regulated unit is closed or closing, meaning it has begun the closure process under section 33-24-05-62; and
    - (2) Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.
  - b. The sections 33-24-05-47 through 33-24-05-88 requirements and the unit-specific requirements of sections 33-24-05-01 through 33-24-05-190 ~~and sections 33-24-05-300 through 33-24-05-559~~ 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819 that applied to that regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.
3. The department shall designate a corrective action management unit in accordance with the following:
    - a. The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;
    - b. Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;
    - c. The corrective action management unit may include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;
    - d. Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management unit, shall be managed and contained so as to minimize future releases, to the extent practicable;
    - e. The corrective action management unit shall expedite the timing of remedial activity implementation, when appropriate and practicable;
    - f. The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and
    - g. The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.
  4. The owner or operator shall provide sufficient information to enable the department to designate a corrective action management unit in accordance with the criteria in section 33-24-05-552.
  5. The department shall specify, in the permit or order, requirements for corrective action management units to include the following:
    - a. The areal configuration of the corrective action management unit.

- b. Requirements for remediation waste management to include the specification of applicable design, operation, and closure requirements.
- c. Requirements for ground water monitoring that are sufficient to:
  - (1) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit; and
  - (2) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective action management unit in which wastes will remain in place after closure of the corrective action management unit.
- d. Closure and postclosure requirements.
  - (1) Closure of corrective action management units shall:
    - (a) Minimize the need for further maintenance; and
    - (b) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.
  - (2) Requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the department for a given corrective action management unit:
    - (a) Requirements for excavation, removal, treatment, or containment of wastes;
    - (b) For areas in which wastes will remain after closure of the corrective action management unit, requirements for capping of such areas; and
    - (c) Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the corrective action management unit.
  - (3) In establishing specific closure requirements for corrective action management units under this subsection, the department shall consider the following factors:
    - (a) Corrective action management unit characteristics;
    - (b) Volume of wastes which remain in place after closure;
    - (c) Potential for releases from the corrective action management unit;
    - (d) Physical and chemical characteristics of the waste;
    - (e) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and
    - (f) Potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.
  - (4) Postclosure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be

performed to ensure the integrity of any cap, final cover, or other containment system.

6. The department shall document the rationale for designating corrective action management units and shall make such documentation available to the public.
7. Incorporation of a corrective action management unit into an existing permit must be approved by the department according to the procedures for department-initiated permit modifications under section 33-24-06-12, or according to the permit modification procedures of section 33-24-06-14.
8. The designation of a corrective action management unit does not change the department's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-552. Corrective action management unit (CAMU).**

1. To implement remedies under section 33-24-05-58 or Resource Conservation and Recovery Act section 3008(h), or to implement remedies at a permitted facility that is not subject to section 33-24-05-58, the department may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing corrective action management unit-eligible wastes for implementing corrective action or cleanup at the facility. A corrective action management unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the corrective action management unit originated. One or more corrective action management units may be designated at a facility.
  - a. Corrective action management unit-eligible waste means:
    - (1) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not corrective action management unit-eligible wastes.
    - (2) Wastes that would otherwise meet the description in paragraph 1 ~~of subdivision a~~ are not "corrective action management unit-eligible wastes" where:
      - (a) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other nonland-based units found aboveground, unless the wastes are first placed in the tanks, containers, or nonland-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or
      - (b) The department exercises the discretion in subdivision b to prohibit the wastes from management in a corrective action management unit.
    - (3) Notwithstanding paragraph 1 ~~of subdivision a~~, where appropriate, as-generated nonhazardous waste may be placed in a corrective action management unit where such waste is being used to facilitate treatment or the performance of the corrective action management unit.

- b. The department may prohibit, where appropriate, the placement of waste in a corrective action management unit where the department has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of sections 33-24-05-250 through 33-24-05-299, or applicable unit design requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through ~~33-24-05-599~~33-24-05-559, and 33-24-05-800 through 33-24-05-819, or applicable unit design requirements under subsection 5 of section 33-24-06-16, or that noncompliance with other applicable requirements of ~~chapter 33-24-05~~article 33-24 likely contributed to the release of the waste.
  - c. Prohibition against placing liquids in corrective action management units.
    - (1) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any corrective action management unit is prohibited except where placement of such wastes facilitates the remedy selected for the waste.
    - (2) The requirements in subsection 43 of section 33-24-05-183 for placement of containers holding free liquids in landfills apply to placement in a corrective action management unit except where placement facilitates the remedy selected for the waste.
    - (3) The placement of any liquid which is not a hazardous waste in a corrective action management unit is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to subsection 65 of section 33-24-05-183.
    - (4) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with subsection 32 of section 33-24-05-183. Sorbents used to treat free liquids in corrective action management units must meet the requirements of subsection 54 of section 33-24-05-183.
  - d. Placement of corrective action management unit-eligible wastes into or within a corrective action management unit does not constitute land disposal of hazardous wastes.
  - e. Consolidation or placement of corrective action management unit-eligible wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.
2. Requirements for regulated units.
- a. The department may designate a regulated unit (as defined in subdivision b of subsection 1 of section 33-24-05-47) as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:
    - (1) The regulated unit is closed or closing, meaning it has begun the closure process under section 33-24-05-62 or applicable requirements of subsection 5 of section 33-24-06-16; and
    - (2) Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.
  - b. The requirements of sections 33-24-05-47 through 33-24-05-88 and the unit-specific requirements of ~~chapter 33-24-05~~sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819, or applicable requirements of subsection 5 of

section 33-24-06-16 that applied to the regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.

3. The department shall designate a corrective action management unit that will be used for storage or treatment, or both, only in accordance with subsection 6. The department shall designate all other corrective action management units in accordance with the following:
  - a. The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;
  - b. Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;
  - c. The corrective action management unit shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing corrective action management unit-eligible waste is more protective than management of such wastes at contaminated areas of the facility;
  - d. Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management unit, shall be managed and contained so as to minimize future releases, to the extent practicable;
  - e. The corrective action management unit shall expedite the timing of remedial activity implementation, when appropriate and practicable;
  - f. The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and
  - g. The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.
4. The owner or operator shall provide sufficient information to enable the department to designate a corrective action management unit in accordance with the criteria in this section. This must include, unless not reasonably available, information on:
  - a. The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal or release, or both);
  - b. Whether the waste was listed or identified as hazardous at the time of disposal or release, or both; and
  - c. Whether the disposal or release, or both, of the waste occurred before or after the land disposal requirements of section 33-24-05-250 through 33-24-05-299 were in effect for the waste listing or characteristic.
5. The department shall specify, in the permit or order, requirements for corrective action management units to include the following:
  - a. The areal configuration of the corrective action management unit.

- b. Except as provided in subsection 7, requirements for corrective action management unit-eligible waste management to include the specification of applicable design, operation, treatment, and closure requirements.
- c. Minimum design requirements. Corrective action management units, except as provided in subsection 6, into which wastes are placed must be designed in accordance with the following:
  - (1) Unless the department approves alternate requirements under paragraph 2, corrective action management units that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a thirty-centimeter depth of leachate over the liner. For purposes of this paragraph, composite liner means a system consisting of two components; the upper component must consist of a minimum thirty mil flexible membrane liner, and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeters per second. Flexible membrane liner components consisting of high density polyethylene must be at least sixty mil thick. The flexible membrane liner component must be installed in direct and uniform contact with the compacted soil component; and
  - (2) Alternate requirements. The department may approve alternate requirements if:
    - (a) The department finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph 1 ~~of subdivision e~~; or
    - (b) The corrective action management unit is to be established in an area with existing significant levels of contamination, and the department finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.
- d. Minimum treatment requirements. Unless the wastes will be placed in a corrective action management unit for storage or treatment, or both, only in accordance with subsection 6, corrective action management unit-eligible wastes that, absent this subdivision, would be subject to the treatment requirements of sections 33-24-05-250 through 33-24-05-299, and that the department determines contain principal hazardous constituents must be treated to the standards specified in paragraph 3.
  - (1) Principal hazardous constituents are those constituents that the department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.
    - (a) In general, the department will designate as principal hazardous constituents:
      - [1] Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above  $10^{-3}$ ; and
      - [2] Noncarcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.
    - (b) The department will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site;

when making such a designation, the department may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

- (c) The department may also designate other constituents as principal hazardous constituents that the department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.
- (2) In determining which constituents are "principal hazardous constituents", the department must consider all constituents which, absent this ~~paragraph~~subdivision, would be subject to the treatment requirements in sections 33-24-05-250 through 33-24-05-299.
  - (3) Waste that the department determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph 4 or 5.
  - (4) Treatment standards for wastes placed in corrective action management units.
    - (a) For nonmetals, treatment must achieve ninety percent reduction in total principal hazardous constituent concentrations, except as provided by ~~paragraph (e)(4)(iv)(C) of this section~~subparagraph c.
    - (b) For metals, treatment must achieve ninety percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the toxicity characteristic leaching procedure) or ninety percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by subparagraph c.
    - (c) When treatment of any principal hazardous constituent to a ninety percent reduction standard would result in a concentration less than ten times the universal treatment standard for that constituent, treatment to achieve constituent concentrations less than ten times the universal treatment standard is not required. Universal treatment standards are identified in section 33-24-05-288 table UTS.
    - (d) For waste exhibiting the hazardous characteristic of ignitability, corrosivity, or reactivity, the waste must also be treated to eliminate these characteristics.
    - (e) For debris, the debris must be treated in accordance with section 33-24-05-285, or by methods or to levels established under subparagraphs a through d or paragraph 5, whichever the department determines is appropriate.
    - (f) Alternatives to toxicity characteristic leaching procedure. For metal-bearing wastes for which metals removal treatment is not used, the department may specify a leaching test other than the toxicity characteristic leaching procedure (SW-846 method 1311, paragraph 5 of subdivision c of subsection 3 of section 33-24-01-05) to measure treatment effectiveness, provided the department determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.
  - (5) Adjusted standards. The department may adjust the treatment level or method in paragraph 4 to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

- (a) The technical impracticability of treatment to the levels or by the methods in paragraph 4;
- (b) The levels or methods in paragraph 4 would result in concentrations of principal hazardous constituents that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);
- (c) The views of the affected local community on the treatment levels or methods in paragraph 4 as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;
- (d) The short-term risks presented by the onsite treatment method necessary to achieve the levels or treatment methods in paragraph 4;
- (e) The long-term protection offered by the engineering design of the corrective action management unit and related engineering controls:
  - [1] Where the treatment standards in paragraph 4 are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility;
  - [2] Where cost-effective treatment has been used and the corrective action management unit meets the article 33-24 liner and leachate collection requirements for new land disposal units at subsection 3 or 4 of section 33-24-05-177;
  - [3] Where, after review of appropriate treatment technologies, the department determines that cost-effective treatment is not reasonably available, and the corrective action management unit meets the article 33-24 liner and leachate collection requirements for new land disposal units at subsection 3 ~~or~~ and 4 of section 33-24-05-177;
  - [4] Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or
  - [5] Where, after review of appropriate treatment technologies, the department determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the corrective action management unit meets or exceeds the liner standards for new, replacement, or laterally expanded corrective action management units in paragraphs 1 and 2 of subdivision c, or the corrective action management unit provides substantially equivalent or greater protection;.

~~(f)~~(6) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the corrective action management unit; ~~and~~.

~~(g)~~(7) For the purpose of determining whether wastes placed in corrective action management units have met site-specific treatment standards, the department may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

- e. Except as provided in subsection 6, requirements for ground water monitoring and corrective action that are sufficient to:
- (1) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit;
  - (2) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective action management unit in which wastes will remain in place after closure of the corrective action management unit; and
  - (3) Require notification to the department and corrective action as necessary to protect human health and the environment for releases to ground water from the corrective action management unit.
- f. Except as provided in subsection 6, closure and postclosure requirements:
- (1) Closure of corrective action management units shall:
    - (a) Minimize the need for further maintenance; and
    - (b) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.
  - (2) Requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the department for a given corrective action management unit:
    - (a) Requirements for excavation, removal, treatment, or containment of wastes; and
    - (b) Requirements for removal and decontamination of equipment, devices, and structures used in ~~remediation waste management activities within the~~ corrective action management unit eligible waste management activities within the corrective action management unit.
  - (3) In establishing specific closure requirements for corrective action management units under this subsection, the department shall consider the following factors:
    - (a) Corrective action management unit characteristics;
    - (b) Volume of wastes which remain in place after closure;
    - (c) Potential for releases from the corrective action management unit;
    - (d) Physical and chemical characteristics of the waste;
    - (e) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and
    - (f) Potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.
  - (4) Cap requirements:

- (a) At final closure of the corrective action management unit, for areas in which wastes will remain after closure of the corrective action management unit, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the corrective action management unit with a final cover designed and constructed to meet the following performance criteria, except as provided in subparagraph b:
    - [1] Provide long-term minimization of migration of liquids through the closed unit;
    - [2] Function with minimum maintenance;
    - [3] Promote drainage and minimize erosion or abrasion of the cover;
    - [4] Accommodate settling and subsidence so that the cover's integrity is maintained; and
    - [5] Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.
  - (b) The department may determine that modifications to subparagraph a are needed to facilitate treatment or the performance of the corrective action management unit (for example, to promote biodegradation).
- (5) Postclosure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.
6. Corrective action management units used for storage or treatment, or both, only are corrective action management units in which wastes will not remain after closure. Such corrective action management units must be designated in accordance with all of the requirements of this section, except as follows:
- a. Corrective action management units that are used for storage or treatment, or both, only and that operate in accordance with the time limits established in the staging pile regulations at paragraph 3 of subdivision a of subsection 4, subsection 8 and subsection 9 of section 33-24-05-554 are subject to the requirements for staging piles at paragraphs 1 and 2 of subdivision a of subsection 4, subdivision b of subsection 4, subsections 5, 6, 10, and 11 of section 33-24-05-554 in lieu of the performance standards and requirements for corrective action management units contained in subsection 3 and subdivisions c through f of subsection 5.
  - b. Corrective action management units that are used for storage or treatment, or both, only and that do not operate in accordance with the time limits established in the staging pile regulations at paragraph 3 of subdivision a of subsection 4, subsections 8 and 9 of section 33-24-05-554:
    - (1) Must operate in accordance with a time limit, established by the department, that is no longer than necessary to achieve a timely remedy selected for the waste; and
    - (2) Are subject to the requirements for staging piles at paragraphs 1 and 2 of subdivision a of subsection 4, subdivision b of subsection 4, and subsections 5, 6, 10, and 11 of section 33-24-05-554 in lieu of the performance standards and requirements for corrective action management units contained in subsection 3 and subdivisions d through f of subsection 5.

7. Corrective action management units into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph 1 of subdivision c of subsection 5, caps at paragraph 4 of subdivision f of subsection 5, ground water monitoring requirements at subdivision e of subsection 5 or, for treatment or storage, or both, only corrective action management units, the design standards at subsection 6.
8. The department shall provide public notice and a reasonable opportunity for public comment before designating a corrective action management unit. Such notice shall include the rationale for any proposed adjustments under paragraph 5 of subdivision d of subsection 5 to the treatment standards in paragraph 4 of subdivision d of subsection 5.
9. Notwithstanding any other provision of this section, the department may impose additional requirements as necessary to protect human health and the environment.
10. Incorporation of a corrective action management unit into an existing permit must be approved by the department according to the procedures for department-initiated permit modifications under section 33-24-06-12, or according to the permit modification procedures of section 33-24-06-14.
11. The designation of a corrective action management unit does not change the department's existing authority to address cleanup levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

**History:** Effective January 1, 1994; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-553. Temporary units (TU).**

1. For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under section 33-24-05-58 or Resource Conservation and Recovery Act section 3008(h), or at a permitted facility that is not subject to section 33-24-05-58, the department may designate a unit at the facility, as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the temporary unit originated. For temporary units, the department may replace the design, operating, or closure standard applicable to these units under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, [33-24-05-550 through 33-24-05-559](#), and 33-24-05-800 through 33-24-05-819, or the applicable requirements of subsection 5 of section 33-24-06-16, with alternative requirements which protect human health and the environment.
2. Any temporary unit to which alternative requirements are applied in accordance with subsection 1 must be:
  - a. Located within the facility boundary; and
  - b. Used only for treatment or storage of remediation wastes.
3. In establishing standards to be applied to a temporary unit, the department shall consider the following factors:
  - a. Length of time such unit will be in operation;
  - b. Type of unit;
  - c. Volumes of wastes to be managed;

- d. Physical and chemical characteristics of the wastes to be managed in the unit;
  - e. Potential for releases from the unit;
  - f. Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and
  - g. Potential for exposure of humans and environmental receptors if releases were to occur from the unit.
4. The department shall specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than a period of one year. The department shall also specify the design, operating, and closure requirements for the unit.
  5. The department may extend the operational period of a temporary unit once for no longer than a period of one year beyond that originally specified in the permit or order, if the department determines that:
    - a. Continued operation of the unit will not pose a threat to human health and the environment; and
    - b. Continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.
  6. Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit must be:
    - a. Approved in accordance with the procedures for department-initiated permit modifications under section 33-24-06-12; or
    - b. Requested by the owner or operator as a class II modification according to the procedures under section 33-24-06-14.
  7. The department shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

**History:** Effective January 1, 1994; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-554. Staging piles.**

1. A staging pile is an accumulation of solid, nonflowing remediation waste (as defined in section 33-24-01-04) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the department according to the requirements in this section.
  - a. For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.
  - b. [Reserved]
2. A staging pile may be used to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if the owner or operator follows the

standards and design criteria the department has designated for that staging pile. The department must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with the applicable requirements of subsection 5 of section 33-24-06-16). The department must establish conditions in the permit, closure plan, or order that comply with subsections 4 through 11.

3. An owner or operator that is seeking a staging pile designation must provide the following information:
  - a. Sufficient and accurate information to enable the department to impose standards and design criteria for the staging pile according to subsections 4 through 11;
  - b. Certification by ~~an independent, a~~ qualified, ~~registered~~ professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the department determines, based on information that the owner or operator provided, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and
  - c. Any additional information the department determines is necessary to protect human health and the environment.
4. Performance criteria for a staging pile. The department must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.
  - a. The standards and design criteria as established by the department in the permit closure plan or order must comply with the following:
    - (1) The staging pile must facilitate a reliable, effective, and protective remedy;
    - (2) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, and runoff and run-on controls, as appropriate); and
    - (3) The staging pile may not operate for a period of more than two years, except when the department grants an operating term extension under subsection 9. The owner or operator must measure the two-year limit, or other operating term specified by the department in the permit, closure plan, or order, from the first time remediation waste is placed into a staging pile. The owner or operator must maintain a record of the date when remediation waste is first placed into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.
  - b. In setting the standards and design criteria, the department must consider the following factors:
    - (1) Length of time the staging pile will be in operation;
    - (2) Volumes of wastes the owner or operator intends to store in the staging pile;
    - (3) Physical and chemical characteristics of the wastes to be stored in the unit;
    - (4) Potential for releases from the unit;
    - (5) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and
    - (6) Potential for human and environmental exposure to potential releases from the unit.

5. Ignitable or reactive remediation waste are prohibited from being placed in a staging pile. The owner or operator must not place ignitable or reactive remediation waste in a staging pile unless:
  - a. The owner or operator has treated, rendered, or mixed the remediation waste before being placed in the staging pile so that:
    - (1) The remediation waste no longer meets the definition of ignitable or reactive under section 33-24-02-11 or 33-24-02-13; and
    - (2) The owner or operator has complied with subsection 2 of section 33-24-05-08; or
  - b. The owner or operator manages the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.
6. Management of incompatible remediation wastes in a staging pile. The owner or operator must comply with the following requirements for incompatible wastes (as defined in section 33-24-01-04) in staging piles:
  - a. The owner or operator may not place incompatible remediation wastes in the same staging pile unless the owner or operator has complied with subsection 2 of section 33-24-05-08;
  - b. If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks, or land disposal units (for example, surface impoundments), the owner or operator must separate the incompatible materials, or protect them from one another by using a dike, berm, wall, or other device; and
  - c. The owner or operator must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with subsection 2 of section 33-24-05-08.
7. Land disposal restrictions and minimum technological requirements are not triggered by placing hazardous remediation wastes into a staging pile.
8. Staging pile operation time limits. The department may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. The owner or operator may use a staging pile no longer than the length of time designated by the department in the permit, closure plan, or order except as provided in subsection 9.
9. Extension of operation time limits.
  - a. The department may grant one operating term extension of up to one hundred eighty days beyond the operating term limit contained in the permit, closure plan, or order (see subsection 12 for modification procedures). To justify to the department the need for an extension, the owner or operator must provide sufficient and accurate information to enable the department to determine that continued operation of the staging pile:
    - (1) Will not pose a threat to human health and the environment; and
    - (2) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.
  - b. The department may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.
10. Closure requirements for a staging pile located in a previously contaminated area.

- a. Within one hundred eighty days after the operating term of the staging pile expires, the owner or operator must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all:
    - (1) Remediation waste;
    - (2) Contaminated containment system components; and
    - (3) Structures and equipment contaminated with waste and leachate.
  - b. The owner or operator must also decontaminate contaminated subsoils in a manner and according to a schedule that the department determines will protect human health and the environment.
  - c. The department must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.
11. Closure requirements for a staging pile located in an uncontaminated area.
- a. Within one hundred eighty days after the operating term of the staging pile expires, the owner or operator must close a staging pile located in an uncontaminated area of the site according to subsection 1 of section 33-24-05-135 and section 33-24-05-60.
  - b. The department must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.
12. Modifications to an existing permit, closure plan, or order to allow use of a staging pile.
- a. A permit, other than a ~~RAP~~ remedial action plan, may be modified to incorporate a staging pile or staging pile operating term extension, by either:
    - (1) The department may initiate the modification in accordance with section 33-24-06-12; or
    - (2) The owner or operator may request a class 2 modification under section 33-24-06-14.
  - b. A remedial action plan may be modified to incorporate a staging pile or staging pile operating term extension when the owner or operator submits a request pursuant to subsections 1 and 2 of section 33-24-06-33.
  - c. The owner or operator must follow the applicable requirements under subsection 3 of section 33-24-05-61 to modify a closure plan to incorporate a staging pile or staging pile operating term extension.
  - d. To modify an order to incorporate a staging pile or staging pile operating term extension, the owner or operator must follow the terms of the order and the applicable requirements of ~~subdivision f of subsection 4~~ subsection 5 of section 33-24-06-16.
13. ~~Information submitted to the~~ The department ~~regarding~~ shall document the rationale for designating a staging pile or staging pile operating term extension ~~will be placed in the facility file and this~~ shall make such documentation ~~made~~ available to the public.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-555. Disposal of corrective action management unit-eligible wastes in permitted hazardous waste landfills.**

1. The department ~~with regulatory oversight at the location where the cleanup is taking place~~ may approve placement of corrective action management unit-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of sections 33-24-05-250 through 33-24-05-299, if the conditions in subdivisions a through c are met:
  - a. The waste meets the definition of corrective action management unit-eligible waste in subdivisions a and b of subsection 1 of section 33-24-05-552.
  - b. The department ~~with regulatory oversight at the location where the cleanup is taking place~~ identifies principal hazardous constituents in such waste, in accordance with paragraphs 1 and 2 of subdivision d of subsection 5 of section 33-24-05-552, and requires that such principal hazardous constituents are treated to any of the following standards specified for corrective action management unit-eligible wastes:
    - (1) The treatment standards under paragraph 4 of subdivision d of subsection 5 of section 33-24-05-552; or
    - (2) Treatment standards adjusted in accordance with ~~subitems a, c, and d of item~~subparagraphs a, c, d, or bracket 1 of subparagraph e of paragraph 5 of subdivision d of subsection 5 of section 33-24-05-552; or
    - (3) Treatment standards adjusted in accordance with ~~item~~bracket 2 of subparagraph e of paragraph 5 of subdivision d of subsection 5 of section 33-24-05-552, where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste. For minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.
  - c. The landfill receiving the corrective action management unit-eligible waste must have a hazardous waste permit, meet the requirements for new landfills in sections 33-24-05-176 through 33-24-05-190, and be authorized to accept corrective action management unit-eligible wastes. For the purposes of this requirement, "permit" does not include interim status.
2. The person seeking approval shall provide sufficient information to enable the department with regulatory oversight at the location where the cleanup is taking place to approve placement of corrective action management unit-eligible waste in accordance with subsection 1. Information required by subdivisions a through c of subsection 4 of section 33-24-05-552 for corrective action management unit applications must be provided, unless not reasonably available.
3. The department ~~with regulatory oversight at the location where the cleanup is taking place~~ shall provide public notice and a reasonable opportunity for public comment before approving corrective action management unit-eligible waste for placement in an offsite permitted hazardous waste landfill, consistent with the requirements for corrective action management unit approval at subsection 8 of section 33-24-05-552. The approval must be specific to a single remediation.
4. Applicable hazardous waste management requirements in sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-599, 33-24-05-559, and 33-24-05-800 through 33-24-05-819, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for corrective action management unit-eligible waste must be incorporated into the

receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding subsection 1 of section 33-24-06-10, a landfill may not receive hazardous corrective action management unit-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

5. For each remediation, corrective action management unit-eligible waste may not be placed in an offsite landfill authorized to receive corrective action management unit-eligible waste in accordance with subsection 4 until the following additional conditions have been met:
  - a. The landfill owner or operator notifies the department and other regulatory agency responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with paragraph 4 of subdivision a of subsection 3 of section 33-24-07-06, of the owner's or operator's intent to receive corrective action management unit-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.
  - b. Persons on the facility mailing list may provide comments, including objections to the receipt of the corrective action management unit-eligible waste, to the department within fifteen calendar days of notification.
  - c. The department may object to the placement of the corrective action management unit-eligible waste in the landfill within thirty calendar days of notification; the department may extend the review period an additional thirty calendar days because of public concerns or insufficient information.
  - d. Corrective action management unit-eligible wastes may not be placed in the landfill until the department has notified the facility owner or operator that the department does not object to its placement.
  - e. If the department objects to the placement or does not notify the facility owner or operator that the department has chosen not to object, the facility may not receive the waste, notwithstanding subsection 1 of section 33-24-06-10, until the objection has been resolved, or the owner or operator obtains a permit modification in accordance with the procedures of section 33-24-06-14 specifically authorizing receipt of the waste.
  - f. As part of the permit issuance or permit modification process of subsection 4, the department may modify, reduce, or eliminate the notification requirements of this ~~subdivision~~ subsection as they apply to specific categories of corrective action management unit-eligible waste, based on minimal risk.
6. Generators of corrective action management unit-eligible wastes sent offsite to a hazardous waste landfill under this section must comply with the requirements of subdivision d of subsection 1 of section 33-24-05-256; offsite facilities treating corrective action management unit-eligible wastes to comply with this section must comply with the requirements of subdivision d of subsection 2 of section 33-24-05-256, except that the certification must be with respect to the treatment requirements of subdivision b of subsection 1.
7. For the purposes of this section only, the "design of the corrective action management unit" in subparagraph e of paragraph 5 of subdivision d of subsection 5 of section 33-24-05-552 means design of the permitted hazardous waste landfill.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-610. Applicability of used oil standards.

This section identifies those materials that are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689. This section also identifies some materials that are not subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689, and indicates whether these materials may be subject to regulation as hazardous waste under article 33-24.

1. **Used oil.** The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 33-24-05-611, the regulations of sections 33-24-05-600 through 33-24-05-689 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.
2. **Mixtures of used oil and hazardous waste.**
  - a. Listed hazardous waste.
    - (1) Mixtures of used oil and hazardous waste that is listed in sections 33-24-02-15 through 33-24-02-19 are subject to regulation as hazardous waste under chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through ~~33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through~~ 33-24-05-559, and 33-24-05-800 through 33-24-05-929, rather than as used oil under sections 33-24-05-600 through 33-24-05-689.
    - (2) Rebuttable presumption for used oil. Used oil containing greater than or equal to one thousand parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by ~~using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, to show~~showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).
      - (a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
      - (b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (~~GFCs~~) removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.
  - b. Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely ~~exhibits~~exhibit one or more of the hazardous waste characteristics identified in sections 33-24-02-10 through 33-24-02-14 and mixtures of used oil and hazardous waste that is listed in sections 33-24-02-15 through 33-24-02-19 solely because it exhibits one or more of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14 are subject to:
    - (1) Except as provided in paragraph ~~3 of subdivision b of subsection 2,~~ regulation as hazardous waste under chapters 33-24-01 through 33-24-04, chapters 33-24-06

and 33-24-07, and sections 33-24-05-01 ~~through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550~~ through 33-24-05-559 and 33-24-05-800 through 33-24-05-929, rather than as used oil under sections 33-24-05-600 through 33-24-05-689, if the resultant mixture exhibits any characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14; or

- (2) Except as specified in paragraph 3 ~~of subdivision b of subsection 2 of section 33-24-05-610~~, regulation as used oil under sections 33-24-05-600 through 33-24-05-689, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under sections 33-24-02-10 through 33-24-02-14.
  - (3) Regulation as used oil under sections 33-24-05-600 through 33-24-05-689, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, for example, ignitable-only mineral spirits, provided that the resultant mixture does not exhibit the characteristic of ignitability under section 33-24-02-11.
- c. Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under section 33-24-02-05 are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.

### 3. **Materials containing or otherwise contaminated with used oil.**

- a. Except as provided in subdivision b ~~of subsection 3~~, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:
  - (1) Are not used oil and thus not subject to sections 33-24-05-600 through 33-24-05-689, and
  - (2) If applicable are subject to the hazardous waste regulations of chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through ~~33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through~~ 33-24-05-559 and 33-24-05-800 through 33-24-05-929.
- b. Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
- c. Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.

### 4. **Mixtures of used oil with products.**

- a. Except as provided in subdivision b, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
- b. Mixtures of used oil and diesel fuel mixed onsite by the generator of the used oil for use in the generator's own vehicles are not subject to sections 33-24-05-600 through 33-24-05-689 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of sections 33-24-05-620 through 33-24-05-629.

### 5. **Materials derived from used oil.**

- a. Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (for example, re-refined lubricants) are:
    - (1) Not used oil and thus are not subject to sections 33-24-05-600 through 33-24-05-689; and
    - (2) Not solid wastes and are thus not subject to the hazardous waste regulations of chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through ~~33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through~~ 33-24-05-559 and 33-24-05-800 through 33-24-05-929 as provided in paragraph a of subdivision b of subsection 3 of section 33-24-02-03.
  - b. Materials produced from used oil that are burned for energy recovery (for example, used oil fuels) are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
  - c. Except as provided in subdivision d, materials derived from used oil that are disposed of or used in a manner constituting disposal are:
    - (1) Not used oil and thus are not subject to sections 33-24-05-600 through 33-24-05-689; and
    - (2) Are solid wastes and thus are subject to the hazardous waste regulations of chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through ~~33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through~~ 33-24-05-559 and 33-24-05-800 through 33-24-05-929 if the materials are listed or identified as hazardous wastes.
  - d. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to sections 33-24-05-600 through 33-24-05-689.
6. **Wastewater.** Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of sections 33-24-05-600 through 33-24-05-689. For purposes of this subsection, de minimis quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.
7. **Used oil introduced into crude oil pipelines or a petroleum refining facility.**
- a. Used oil mixed with crude oil or natural gas liquids (for example, in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689. The used oil is subject to the requirements of sections 33-24-05-600 through 33-24-05-689 prior to the mixing of used oil with crude oil or natural gas liquids.
  - b. Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion in the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of sections 33-24-05-600 through 33-24-05-689.

- c. Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689 provided that the used oil constitutes less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion in the petroleum refining facility process, the used oil is subject to the requirements of sections 33-24-05-600 through 33-24-05-689.
  - d. Except as provided in subdivision e, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689 only if the used oil meets the specification of section 33-24-05-611. Prior to insertion in the petroleum refining facility process, the used oil is subject to the requirements of sections 33-24-05-600 through 33-24-05-689.
  - e. Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (for example, by pouring collected used oil into the wastewater treatment system).
  - f. Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of sections 33-24-05-600 through 33-24-05-689.
8. **Used oil on vessels.** Used oil produced on vessels from normal shipboard operations is not subject to sections 33-24-05-600 through 33-24-05-689 until it is transported ashore.
  9. **Used oil containing polychlorinated biphenyls.** Used oil containing polychlorinated biphenyls (as defined at 40 CFR 761.3) at any concentration less than fifty parts per million is subject to the requirements of sections 33-24-05-600 through 33-24-05-689 unless, because of dilution, it is regulated under 40 CFR part 761 as a used oil containing polychlorinated biphenyls at fifty parts per million or greater. Polychlorinated biphenyl-containing used oil subject to the requirements of sections 33-24-05-600 through 33-24-05-689 may also be subject to the prohibitions and requirements found at 40 CFR part 761, including section 761.20(d) and (e). Used oil containing polychlorinated biphenyls at concentrations of fifty parts per million or greater is not subject to the requirements of sections 33-24-05-600 through 33-24-05-689, but is subject to regulations under 40 CFR part 761. No person may avoid these provisions by diluting used oil containing polychlorinated biphenyls, unless otherwise specifically provided for in sections 33-24-05-600 through 33-24-05-689 or 40 CFR part 761.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-611. Used oil specifications.**

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under sections 33-24-05-600 through 33-24-05-689 unless it is shown not to exceed any of the allowable levels of the constituents and properties ~~in the specification~~ shown in table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any ~~specification~~[allowable level](#) and the person making that showing complies with sections 33-24-05-672, 33-24-05-673, and subsection 2 of section 33-24-05-674, the used oil is no longer subject to sections 33-24-05-600 through 33-24-05-689.

**Table 1. Used Oil Not Exceeding Any ~~Specification~~ Allowable Level ~~Shown Below~~ Is Not Subject to Sections 33-24-05-600 Through 33-24-05-689 When Burned for Energy Recovery<sup>1</sup>**

Constituent/Property	Allowable Level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash Point	100 °F minimum.
Total Halogens	4,000 ppm maximum. <sup>2</sup>

Note: Applicable standards for the burning of used oil containing polychlorinated biphenyls are imposed by 40 CFR 761.20(e).

FOOTNOTE: <sup>1</sup>The ~~specification~~ allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see subsection 2 of section 33-24-05-610).

FOOTNOTE: <sup>2</sup>Used oil containing greater than or equal to one thousand parts per million total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under subdivision a of subsection 2 of section 33-24-05-610. Such used oil is subject to sections 33-24-05-525 through 33-24-05-549 rather than sections 33-24-05-600 through 33-24-05-689 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

**History:** Effective January 1, 1994; amended effective July 1, 1997; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-612. Prohibitions.**

- 1. Surface impoundment prohibition.** Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under sections 33-24-05-01 through 33-24-05-190, ~~sections~~ 33-24-05-300 through 33-24-05-524, ~~sections~~ 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, or the applicable requirements of subsection 5 of section 33-24-06-16.
- 2. Use as a dust suppressant.** The use of used oil as a dust suppressant is prohibited.
- 3. Burning in particular units.** Off-specification used oil fuel may be burned for energy recovery in only the following devices:
  - a.** Industrial furnaces identified in section 33-24-01-04;
  - b.** Boilers, as defined in section 33-24-01-04, that are identified as follows:
    - (1)** Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;
    - (2)** Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
    - (3)** Used oil-fired space heaters provided that the burner meets the provisions of section 33-24-05-623.
  - c.** Hazardous waste incinerators subject to regulation under sections 33-24-05-144 through 33-24-05-159 ~~and~~or the applicable requirements of subsection 5 of section 33-24-06-16.

**History:** Effective January 1, 1994; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-620. Applicability of standards for used oil generators.**

1. **General.** Except as provided in subdivisions a through d, sections 33-24-05-620 through 33-24-05-629 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
  - a. Household do-it-yourselfer used oil generators. Household do-it-yourselfer used oil generators are not subject to regulation under sections 33-24-05-620 through 33-24-05-629.
  - b. Vessels. Vessels at sea or at port are not subject to sections 33-24-05-620 through 33-24-05-629. For purposes of sections 33-24-05-620 through 33-24-05-629, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the persons removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with sections 33-24-05-620 through 33-24-05-629 once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of sections 33-24-05-620 through 33-24-05-629.
  - c. Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to sections ~~33-24-05-620~~[33-24-05-660](#) through ~~33-24-05-629~~[33-24-05-689](#) once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of sections 33-24-05-620 through 33-24-05-629.
  - d. Farmers. Farmers who generate an average of twenty-five gallons [94.64 liters] per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of sections 33-24-05-600 through 33-24-05-689.
2. **Other applicable provisions.** Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of sections 33-24-05-600 through 33-24-05-689 as indicated in subdivisions a through e:
  - a. Generators who transport used oil, except under the self-transport provisions of subsections 1 and 2 of section 33-24-05-624, must also comply with sections 33-24-05-640 through 33-24-05-649.
  - b. Generators who process used oil must also comply with sections 33-24-05-650 through 33-24-05-659.
    - (1) Except as provided in paragraph 2, generators who process or re-refine used oil must also comply with sections 33-24-05-650 through 33-24-05-659.
    - (2) Generators who perform the following activities are not processors provided that the used oil is generated onsite and is not being sent offsite to a burner of on-specification or off-specification used oil fuel.
      - (a) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

- (b) Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable federal or state regulations governing the management of discharge of wastewaters;
  - (c) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;
  - (d) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to subsection 3 of section 33-24-05-610; or
  - (e) Filtering, cleaning, or otherwise reconditioning used oil before burning it in a space heater pursuant to section 33-24-05-623.
- c. Generators who burn off-specification used oil for energy recovery, except under the onsite space heater provisions of section 33-24-05-623, must also comply with sections 33-24-05-660 through 33-24-05-669.
  - d. Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611 must also comply with sections 33-24-05-670 through 33-24-05-679.
  - e. Generators who dispose of used oil must also comply with sections 33-24-05-680 through 33-24-05-689.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-622. Used oil storage.**

Used oil generators are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-620 through 33-24-05-629. Used oil generators are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-620 through 33-24-05-629.

1. **Storage units.** Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-01 through 33-24-05-190 ~~and sections~~ 33-24-05-300 through 33-24-05-524, ~~sections~~ 33-24-05-550 through 33-24-05-559, [33-24-05-800 through 33-24-05-819](#), or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Condition of units.** Containers and aboveground tanks used to store used oil at generator facilities must be:
  - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
  - b. Not leaking (no visible leaks).
3. **Labels.**
  - a. Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

- b. Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".
4. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08, sections 33-24-08-50 through 33-24-08-59, a generator must perform the following cleanup steps:
    - a. Stop the release;
    - b. Contain the released used oil;
    - c. Clean up and manage properly the released used oil and other materials; and
    - d. If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-642. Notification.**

1. **Identification numbers.** Used oil transporters who have not previously complied with the notification requirements of ~~Resource Conservation and Recovery Act section 3010~~[section 33-24-03-03](#) must comply with these requirements and obtain an identification number.
2. **Mechanics of notification.** A used oil transporter who has not received an identification number may obtain one by notifying the department of their used oil activity by submitting either:
  - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
  - b. A letter requesting an identification number.

The letter should include the following information:

- (1) Transporter company name;
- (2) Owner of the transporter company;
- (3) Mailing address for the transporter;
- (4) Name and telephone number for the transporter point of contact;
- (5) Type of transport activity (for example, transport only, transport and transfer facility, transfer facility only);
- (6) Location of all transfer facilities at which used oil is stored; and
- (7) Name and telephone number for a contact at each transfer facility.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-644. Rebuttable presumption for used oil.

1. To ensure that used oil is not a hazardous waste under the rebuttable presumption of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below one thousand parts per million.
2. The transporter shall make this determination by:
  - a. Testing the used oil; or
  - b. Applying knowledge of the halogen content of the used oil in light of the materials or processes used.
3. If the used oil contains greater than or equal to one thousand parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by ~~using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, to show~~ showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).
  - a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
  - b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (~~CFCs~~) removed from refrigeration units if the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oil contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.
4. Record retention. Records of analyses conducted or information used to comply with subsections 1, 2, and 3 must be maintained by the transporter for at least three years.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-645. Used oil storage at transfer facilities.

Used oil transporters are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-640 through 33-24-05-649. Used oil transporters are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-640 through 33-24-05-649.

1. **Applicability.** This section applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four hours during the normal course of transportation and not longer than thirty-five days. Transfer facilities that store used oil for more than thirty-five days are subject to regulation under sections 33-24-05-650 through 33-24-05-659.

2. **Storage units.** Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under sections ~~33-24-05-89~~33-24-05-01 through ~~33-24-05-102~~33-24-05-190, sections ~~33-24-05-103~~33-24-05-300 through ~~33-24-05-114~~33-24-05-524, ~~except subsection 3 of section 33-24-05-110 and section 33-24-05-113~~33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, or the applicable requirements of subsection 5 of section 33-24-06-16.
3. **Condition of units.** Containers and aboveground tanks used to store used oil at transfer facilities must be:
  - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
  - b. Not leaking (no visible leaks).
4. **Secondary containment for containers.** Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or
    - (3) An equivalent secondary containment system.
  - b. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
5. **Secondary containment for existing aboveground tanks.** Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
    - (3) An equivalent secondary containment system.
  - b. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
6. **Secondary containment for new aboveground tanks.** New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
    - (3) An equivalent secondary containment system.

- b. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

7. **Labels.**

- a. Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil".
- b. Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil".

8. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08 ~~and~~, sections ~~33-24-05-650~~ 33-24-08-50 through ~~33-24-05-659~~ 33-24-08-59, the owner or operator of a transfer facility must perform the following cleanup steps:

- a. Stop the release;
- b. Contain the released used oil;
- c. Clean up and manage properly the released used oil and other materials; and
- d. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-650. Applicability of standards for used oil processors.**

1. The requirements of sections 33-24-05-650 through 33-24-05-659 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining. The requirements of sections 33-24-05-650 through 33-24-05-659 do not apply to:
  - a. Transporters who conduct incidental processing operations that occur during the normal course of transportation as provided in section 33-24-05-641; or
  - b. Burners who conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in subsection 2 of section 33-24-05-661.
2. Other applicable provisions. Used oil processors who conduct the following activities are also subject to the requirements of other applicable provisions of sections 33-24-05-600 through 33-24-05-689 as indicated in subdivisions a through e ~~of subsection 2~~.
  - a. Processors who generate used oil must also comply with sections 33-24-05-620 through 33-24-05-629;
  - b. Processors who transport used oil must also comply with sections 33-24-05-640 through 33-24-05-649;

- c. Except as provided in paragraphs 1 and 2 ~~of subdivision c of subsection 2~~, processors who burn off-specification used oil for energy recovery must also comply with sections 33-24-05-660 through 33-24-05-669. Processors burning used oil for energy recovery under the following conditions are not subject to sections 33-24-05-660 through 33-24-05-669:
  - (1) The used oil is burned in an onsite space heater that meets the requirements of section 33-24-05-623; or
  - (2) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;
- d. Processors who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611 must also comply with sections 33-24-05-670 through 33-24-05-679; and
- e. Processors who dispose of used oil also must comply with the applicable sections 33-24-05-680 through 33-24-05-689.

**History:** Effective January 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-651. Notification.**

- 1. **Identification numbers.** Used oil processors who have not previously complied with the notification requirements of ~~Resource Conservation and Recovery Act section 3010~~[section 33-24-03-03](#) must comply with these requirements and obtain an identification number.
- 2. **Mechanics of notification.** A used oil processor who has not received an identification number may obtain one by notifying the department of their used oil activity by submitting either:
  - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
  - b. A letter requesting an identification number.

The letter should include the following information:

- (1) Processor company name;
- (2) Owner of the processor company;
- (3) Mailing address for the processor;
- (4) Name and telephone number for the processor point of contact;
- (5) Type of used oil activity; and
- (6) Location of the processor facility.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-652. General facility standards.

1. **Preparedness and prevention.** Owners and operators of used oil processing facilities shall comply with the following requirements:
  - a. Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water which could threaten human health or the environment.
  - b. Required equipment. All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs 1 through 4:
    - (1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
    - (2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
    - (3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
    - (4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.
  - c. Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.
  - d. Access to communications or alarm system.
    - (1) When used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in subdivision b.
    - (2) If there is only one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in subdivision b.
  - e. Required aisle space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
  - f. Arrangements with local authorities.
    - (1) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

- (a) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;
  - (b) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;
  - (c) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and
  - (d) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
- (2) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.
2. **Contingency plan and emergency procedures.** Owners and operators of used oil ~~processor~~processing facilities must comply with the following requirements:
- a. Purpose and implementation of contingency plan.
    - (1) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water.
    - (2) The provisions of the plan must be carried out immediately when there is a fire, explosion, or release of used oil which could threaten human health or the environment.
  - b. Content of contingency plan.
    - (1) The contingency plan must describe the actions facility personnel must take to comply with subdivisions a and f in response to fires, explosions, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water at the facility.
    - (2) If the owner or operator has already prepared a spill prevention, control, and countermeasures (SPCC) plan in accordance with 40 CFR part 112 ~~of chapter I, of,~~ or 40 CFR part 1510 of chapter V, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of sections 33-24-05-600 through 33-24-05-689.
    - (3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to subdivision f of subsection 1.
    - (4) The plan must list names, addresses, and telephone numbers (office and home) of all persons qualified to act as emergency coordinator (see subdivision e), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

- (5) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
  - (6) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).
- c. Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:
- (1) Maintained at the facility; and
  - (2) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.
- d. Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, when:
- (1) Applicable regulations are revised;
  - (2) The plan fails in an emergency;
  - (3) The facility changes (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;
  - (4) The list of emergency coordinators changes; or
  - (5) The list of emergency equipment changes.
- e. Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (for example, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Guidance: The emergency coordinator's responsibilities are more fully spelled out in subdivision f. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

- f. Emergency procedures.
- (1) When there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:

- (a) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
  - (b) Notify appropriate state or local agencies with designated response roles if their help is needed.
- (2) When there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and ~~a-real~~areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records ~~efor~~ manifests and, if necessary, by chemical ~~analysts~~analyses.
- (3) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (for example, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoffs from water ~~efor~~ chemical agents used to control fire and heat-induced explosions).
- (4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report these findings as follows:
- (a) If the emergency coordinator's assessment indicated that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and
  - (b) The emergency coordinator must immediately notify either the government official designated as the onscene coordinator for the geographical area (in the applicable regional contingency plan under part 1510 of 40 CFR), or the national response center (using their twenty-four-hour toll-free number 800-424-8802). The report must include:
    - [1] Name and telephone number of reporter;
    - [2] Name and address of facility;
    - [3] Time and type of incident (for example, release, fire);
    - [4] Name and quantity of materials involved, to the extent known;
    - [5] The extent of injuries, if any; and
    - [6] The possible hazards to human health, or the environment, outside the facility.
- (5) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.
- (6) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

- (7) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.
- (8) The emergency coordinator must ensure that, in the affected areas of the facility:
  - (a) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and
  - (b) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
  - (c) The owner or operator must notify the department, and appropriate state and local authorities that the facility is in compliance with subparagraphs a and b before operations are resumed in the affected areas of the facility.
- (9) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, the owner or operator must submit a written report on the incident to the department. The report must include:
  - (a) Name, address, and telephone number of the owner or operator;
  - (b) Name, address, and telephone number of the facility;
  - (c) Date, time, and type of incident (for example, fire, explosion);
  - (d) Name and quantity of materials involved;
  - (e) The extent of injuries, if any;
  - (f) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
  - (g) Estimated quantity and disposition of recovered material that resulted from the incident.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-653. Rebuttable presumption for used oil.**

1. To ensure that used oil managed at a processing facility is not hazardous waste under the rebuttable presumption of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, the owner or operator of a used oil processing facility must determine whether the total halogen content of used oil managed at the facility is above or below one thousand parts per million.
2. The owner or operator must make this determination by:
  - a. Testing the used oil; or
  - b. Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

3. If the used oil contains greater than or equal to one thousand parts per million total halogens, it is presumed to be hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by ~~using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical methods, environmental protection agency publication SW-846, to show~~ showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).
  - a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
  - b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (~~GFCs~~)—removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-654. Used oil management.**

Used oil processors are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-650 through 33-24-05-659. Used oil processors are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-650 through 33-24-05-659.

1. **Management units.** Used oil processors may not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-01 through 33-24-05-190, ~~sections 33-24-05-300 through 33-24-05-550~~ 33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Condition of units.** Containers and aboveground tanks used to store or process used oil at processing facilities must be:
  - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
  - b. Not leaking (no visible leaks).
3. **Secondary containment for containers.** Containers used to store or process used oil at processing facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining walls; or
    - (3) An equivalent secondary containment system.

- b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
4. **Secondary containment for existing aboveground tanks.** Existing aboveground tanks used to store or process used oil at processing facilities must be equipped with a secondary containment system.
- a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
    - (3) An equivalent secondary containment system.
  - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
5. **Secondary containment for new aboveground tanks.** New aboveground tanks used to store or process used oil at processing facilities must be equipped with a secondary containment system.
- a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
    - (3) An equivalent secondary containment system.
  - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
6. **Labels.**
- a. Containers and aboveground tanks used to store or process used oil at processing facilities must be labeled or marked clearly with the words "Used Oil".
  - b. Fill pipes used to transfer used oil into underground storage tanks at processing facilities must be labeled or marked clearly with the words "Used Oil".
7. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08 ~~and~~, sections ~~33-24-05-650~~33-24-08-50 through ~~33-24-05-659~~33-24-08-59, an owner or operator must perform the following cleanup steps:
- a. Stop the release;
  - b. Contain the released used oil;
  - c. Clean up and manage properly the released used oil and other materials; and
  - d. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

## 8. Closure.

- a. Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:
  - (1) At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under ~~this chapter~~[article 33-24](#).
  - (2) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph 1, then the owner or operator must close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to hazardous waste landfills (section 33-24-05-180).
- b. Containers. Owners and operators who store used oil in containers must comply with the following requirements:
  - (1) At closure, containers holding used oils or residues of used oil must be removed from the site; and
  - (2) The owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under chapter 33-24-02.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-662. Notification.**

1. **Identification numbers.** Used oil burners who have not previously complied with the notification requirements of ~~Resource Conservation and Recovery Act section 3010~~[section 33-24-03-03](#) must comply with these requirements and obtain an identification number.
2. **Mechanics of notification.** A used oil burner who has not received an identification number may obtain one by notifying the department of the used oil burner's used oil activity by submitting either:
  - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
  - b. A letter requesting an identification number. The letter should include the following information:
    - (1) Burner company name;
    - (2) Owner of the burner company;
    - (3) Mailing address for the burner;
    - (4) Name and telephone number for the burner point of contact;
    - (5) Type of used oil activity; and

- (6) Location of the burner facility.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-663. Rebuttable presumption for used oil.**

1. To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below one thousand parts per million.
2. The used oil burner must determine if the used oil contains above or below one thousand parts per million total halogens by:
  - a. Testing the used oil;
  - b. Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
  - c. If the used oil has been received from a processor subject to regulation under sections 33-24-05-650 through 33-24-05-659, using information provided by the processor.
3. If the used oil contains greater than or equal to one thousand parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by ~~using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, to show~~[showing](#) that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).
  - a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
  - b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (~~GFCs~~)—removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.
4. Record retention. Records of analyses conducted or information used to comply with subsections 1, 2, and 3 must be maintained by the burner for at least three years.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### 33-24-05-664. Used oil storage.

Used oil burners are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-660 through 33-24-05-669. Used oil burners are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-660 through 33-24-05-669.

1. **Storage units.** Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-01 through 33-24-05-190, ~~sections 33-24-05-300 through 33-24-05-550~~33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Condition of units.** Containers and aboveground tanks used to store oil at burner facilities must be:
  - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
  - b. Not leaking (no visible leaks).
3. **Secondary containment for containers.** Containers used to store used oil at burner facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.
  - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
4. **Secondary containment for existing aboveground tanks.** Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and
    - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
    - (3) An equivalent secondary containment system.
  - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
5. **Secondary containment for new aboveground tanks.** New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.
  - a. The secondary containment system must consist of, at a minimum:
    - (1) Dikes, berms, or retaining walls; and

- (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
  - (3) An equivalent secondary containment system.
- b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
6. **Labels.**
- a. Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil".
  - b. Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil".
7. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08 ~~and~~, sections ~~33-24-05-650~~33-24-08-50 through ~~33-24-05-659~~33-24-08-59, a burner must perform the following cleanup steps:
- a. Stop the release;
  - b. Contain the released used oil;
  - c. Clean up and manage properly the released used oil and other materials; and
  - d. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-666. Notices.**

- 1. **Certification.** Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor ~~or~~, the burner must provide to the generator, transporter, or processor ~~or~~ a one-time written and signed notice certifying that:
  - a. The burner has notified the department stating the location and general description of ~~his~~the burner's used oil management activities; and
  - b. The burner will burn the used oil only in an industrial furnace or boiler identified in subsection 1 of section 33-24-05-661.
- 2. **Certification retention.** The certification described in subsection 1 ~~of this section~~ must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor.

**History:** Effective January 1, 1994; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-670. Applicability of standards for used oil fuel marketers.**

1. Any person who conducts either of the following activities is subject to the requirements of sections 33-24-05-670 through 33-24-05-679:
  - a. Directs a shipment of off-specification used oil from their facility to a used oil burner; or
  - b. First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611.
2. The following persons are not marketers subject to sections 33-24-05-670 through 33-24-05-679:
  - a. Used oil generators and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors who ~~incidentally~~incidentally burn used oil are not marketers subject to sections 33-24-05-670 through 33-24-05-679;
  - b. Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of section 33-24-05-611.
3. Any person subject to the requirements of sections 33-24-05-670 through 33-24-05-679 must also comply with one of the following:
  - a. Sections 33-24-05-620 through 33-24-05-629 - standards for used oil generators;
  - b. Sections 33-24-05-640 through 33-24-05-649 - standards for used oil transporters and transfer facilities;
  - c. Sections 33-24-05-650 through 33-24-05-659 - standards for used oil processors; or
  - d. Sections 33-24-05-660 through 33-24-05-669 - standards for used oil burners who burn off-specification used oil for energy recovery.

**History:** Effective January 1, 1994; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-673. Notification.**

1. Identification numbers. A used oil fuel marketer subject to the requirements of sections 33-24-05-670 through 33-24-05-679 who has not previously complied with the notification requirements of ~~Resource Conservation and Recovery Act section 3010~~section 33-24-03-03 must comply with these requirements and obtain an identification number.
2. A marketer who has not received an identification number may obtain one by notifying the department of their used oil activity by submitting either:
  - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
  - b. A letter requesting an identification number. The letter should include the following information:
    - (1) Marketer company name;

- (2) Owner of the marketer;
- (3) Mailing address for the marketer;
- (4) Name and telephone number for the marketer point of contact; and
- (5) Type of used oil activity (for example, generator directing shipments of off-specification used oil to a burner).

**History:** Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-701. Scope of universal waste rule.**

1. Sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 establish requirements for managing the following:
  - a. Batteries as described in section 33-24-05-702;
  - b. Pesticides as described in section 33-24-05-703;
  - c. Mercury containing ~~devices~~[equipment](#) as described in section 33-24-05-704; and
  - d. Lamps as described in section 33-24-05-705.
2. Sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 provide an alternative set of management standards in lieu of regulation under chapters 33-24-01 through 33-24-04 ~~and~~ [chapter](#) 33-24-06 ~~and~~ sections 33-24-05-01 through ~~33-24-05-689~~[33-24-05-559, and 33-24-05-800 through 33-24-05-1149](#).

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-702. Applicability - Batteries.**

1. **Batteries covered under sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799.**
  - a. The requirements of sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 apply to persons managing batteries as described in section 33-24-01-04, except as those listed in subsection 2.
  - b. Spent lead-acid batteries which are not managed under sections 33-24-05-235 through 33-24-05-249 are subject to management under sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799.
2. **Batteries not covered under sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799.** The requirements of sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 do not apply to persons managing the following batteries:
  - a. Spent lead-acid batteries that are managed under sections 33-24-05-235 through 33-24-05-249.
  - b. Batteries, as described in section 33-24-01-04, that are not yet wastes under chapter 33-24-02, including those that do not meet the criteria for waste generation in subsection 3.

- c. Batteries, as described in section 33-24-01-04, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.

3. **Generation of waste batteries.**

- a. A used battery becomes a waste on the date it is discarded (for example, when sent for reclamation).
- b. An unused battery becomes a waste on the date the handler decides to discard it.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-703. Applicability - Pesticides.**

1. **Pesticides covered under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.** The requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 apply to persons managing pesticides, as described in section 33-24-01-04, meeting the following conditions, except those listed in subsection 2:

- a. Recalled pesticides that are:

- (1) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under federal Insecticide, Fungicide, and Rodenticide Act section 19(b), including, but not limited to, those owned by the registrant responsible for conducting the recall; or
- (2) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with federal Insecticide, Fungicide, and Rodenticide Act, that are part of a voluntary recall by the registrant.

- b. Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

2. **Pesticides not covered under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.** The requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 do not apply to persons managing the following pesticides:

- a. Recalled pesticides described in subdivision a of subsection 1, and unused pesticide products described in subdivision b of subsection 1, that are managed by farmers in compliance with section 33-24-03-40.
- b. Pesticides not meeting the conditions set forth in subsection 1. These pesticides must be managed in compliance with the hazardous waste regulations in chapters 33-24-01 through 33-24-04 ~~and~~ chapter 33-24-06 ~~and~~ sections 33-24-05-01 through ~~33-24-05-699~~33-24-05-559, and 33-24-05-800 through 33-24-05-1149;
- c. Pesticides that are not wastes under chapter 33-24-02, including those that do not meet the criteria for waste generation in subsection 3 or those that are not wastes as described in subsection 4; and
- d. Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in sections 33-24-02-15 through 33-24-02-19 or if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.

3. **When a pesticide becomes a waste.**

- a. A recalled pesticide described in subdivision a of subsection 1 becomes a waste on the first date on which both of the following conditions apply:
    - (1) The generator of the recalled pesticide agrees to participate in the recall; and
    - (2) The person conducting the recall decides to discard the pesticide (for example, burn the pesticide for energy recovery).
  - b. An unused pesticide product described in subdivision b of subsection 1 becomes a waste on the date the generator decides to discard it.
4. **Pesticides that are not wastes.** The following pesticides are not wastes:
- a. Recalled pesticides described in subdivision a of subsection 1 provided that the person conducting the recall:
    - (1) Has not made a decision to discard the pesticide (for example, burn for energy recovery). Until such a decision is made, the pesticide does not meet the definition of "solid waste" under section 33-24-02-02; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799. This pesticide remains subject to the requirements of federal Insecticide, Fungicide, and Rodenticide Act; or
    - (2) Has made a decision to use a management option that, under section 33-24-02-02, does not cause the pesticide to be a solid waste (for example, the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery) or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to hazardous waste requirements including sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of federal Insecticide, Fungicide, and Rodenticide Act.
  - b. Unused pesticide products described in subdivision b of subsection 1, if the generator of the unused pesticide product has not decided to discard them (for example, burn for energy recovery). These pesticides remain subject to the requirements of federal Insecticide, Fungicide, and Rodenticide Act.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-704. Applicability - Mercury containing ~~devices~~equipment.**

1. **Mercury containing ~~devices~~equipment covered under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.** The requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 apply to persons managing mercury containing ~~devices~~equipment, as described in section 33-24-01-04, except those listed in subsection 2.
2. **Mercury containing ~~devices~~equipment not covered under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.** The requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 do not apply to persons managing the following mercury containing ~~devices~~equipment:
  - a. ~~Mercury containing devices that are not yet wastes under chapter 33-24-02. Subsection 3 describes when mercury containing devices become wastes.~~Mercury

containing equipment that is not yet a waste under chapter 33-24-02. Subsection 3 describes when mercury containing equipment becomes a waste:

- b. ~~Mercury containing devices that are not hazardous waste. A mercury containing device is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.~~Mercury containing equipment that is not a hazardous waste. Mercury containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14 or is listed in sections 33-24-02-15 through 33-24-02-19; and
- c. Equipment and devices from which the mercury containing components have been removed.

3. **Generation of waste mercury containing ~~devices~~equipment.**

- a. ~~A used mercury containing device becomes a waste on the date that it is discarded (for example, sent for reclamation).~~Used mercury containing equipment becomes a waste on the date it is discarded.
- b. ~~An unused mercury containing device becomes a waste on the date the handler decides to discard it.~~Unused mercury containing equipment becomes a waste on the date the handler decides to discard it.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-705. Applicability - Lamps.**

1. Lamps covered under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799. The requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 apply to persons managing lamps as described in section 33-24-01-04, except those listed in subsection 2.
2. Lamps not covered under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799. The requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 do not apply to persons managing the following lamps:
  - a. Lamps that are not yet wastes under chapter 33-24-02 as provided in subsection 3.
  - b. Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.
3. Generation of waste lamps.
  - a. A used lamp becomes a waste on the date it is discarded.
  - b. An unused lamp becomes a waste on the date the handler decides to discard it.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-708. Applicability - Household and conditionally exempt small quantity generator waste.**

1. Persons managing the wastes listed below may, at their option, manage them under the requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799:

- a. Household wastes that are exempt under subdivision a of subsection 2 of section 33-24-02-04 and are also of the same type as the universal wastes defined in section 33-24-01-04; or
  - b. Conditionally exempt small quantity generator wastes that are exempt under section 33-24-02-05 and are also of the same type as the universal wastes defined in section 33-24-01-04.
2. Persons who commingle the wastes described in subdivisions a and b of subsection 1 together with universal waste regulated under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 must manage the commingled waste under the requirements of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-709. Definitions.**

Terms that are defined in sections 33-24-01-04 and 33-24-02-01 and chapter 33-24-05 have the same meanings when used in sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.

- 1. "Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.
- 2. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act [7 United States Code 136-136y].
- ~~2.3.~~ "Large quantity handler of universal waste" means a universal waste handler (as defined in section 33-24-01-04) who accumulates five thousand kilograms or more total of universal waste (batteries, pesticides, lamps, or mercury containing ~~devices~~equipment, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which five thousand ~~kilograms or more total of universal waste is accumulated~~kilogram limit is met or exceeded.
- ~~3.4.~~ "Small quantity handler of universal waste" means a universal waste handler (as defined in section 33-24-01-04) who does not accumulate five thousand kilograms or more total of universal waste (batteries, pesticides, lamps, or mercury containing ~~devices~~equipment, calculated collectively) at any time.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-713. Waste management.**

- 1. **Universal waste batteries.** A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - a. A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

- b. A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):
    - (1) Sorting batteries by type;
    - (2) Mixing battery types in one container;
    - (3) Discharging batteries so as to remove the electric charge;
    - (4) Regenerating used batteries;
    - (5) Disassembling batteries or battery packs into individual batteries or cells;
    - (6) Removing batteries from consumer products; or
    - (7) Removing electrolyte from batteries.
  - c. A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed in subdivision b, must determine whether the electrolyte or other solid waste, or both, exhibit one or more of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.
    - (1) If the electrolyte or other solid waste, or both, exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~ sections 33-24-05-01 through ~~33-24-05-699~~33-24-05-559, and 33-24-05-800 through 33-24-05-1149. The handler is considered the generator of the hazardous electrolyte or other hazardous waste, or both, and is subject to the requirements of chapter 33-24-03.
    - (2) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in compliance with applicable federal, state, or local solid waste regulations.
2. **Universal waste pesticides.** A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:
- a. A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
  - b. A container that does not meet the requirements of subdivision a, provided that the unacceptable container is overpacked in a container that does meet the requirements of subdivision a;
  - c. A tank that meets the requirements of sections 33-24-05-103 through ~~33-24-05-114~~33-24-05-117, except subsection 3 of section 33-24-06-110 and sections 33-24-05-113 and 33-24-05-114; or
  - d. A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

3. ~~Universal waste mercury containing devices~~Mercury containing equipment. A small quantity handler of universal waste must manage universal waste mercury containing ~~devices~~equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- a. A small quantity handler of universal waste must ~~contain~~place in a container any universal waste mercury containing ~~device~~equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonable foreseeable conditions ~~in a container~~. The container must be closed, structurally sound, compatible with the contents of the ~~mercury containing~~ device, ~~and~~ must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.
- b. A small quantity handler of universal waste may remove mercury containing ampules or other reservoirs from universal waste mercury containing ~~devices~~equipment provided the handler:
- (1) Removes and manages the ampules or other reservoirs in a manner designed to prevent breakage of the ampules or other reservoirs;
  - (2) Removes the ampules or other reservoirs only over or in a containment device (for example, a tray or pan sufficient to collect and contain any mercury released from an ampule or other reservoir in case of breakage);
  - (3) Ensures that a mercury cleanup system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules or other reservoirs, ~~from the~~that containment device to a container that meets the requirements of section 33-24-03-12;
  - (4) Immediately transfers any mercury resulting from spills or leaks from broken ampules or other reservoirs from the containment device to a container that meets the requirements of section 33-24-03-12;
  - (5) Ensures that the area in which ampules or other reservoirs are removed is well-ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury;
  - (6) Ensures that employees removing ampules or other reservoirs are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
  - (7) Stores removed ampules or other reservoirs in closed, nonleaking containers that are in good condition; and
  - (8) Packs removed ampules or other reservoirs in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.
- c. A small quantity handler of universal waste mercury containing equipment that does not contain an ampule or other reservoirs may remove the open original housing holding the mercury from universal waste mercury containing equipment provided the handler:
- (1) Immediately seals the original housing holding the mercury with an airtight seal to prevent the release of any mercury to the environment; and
  - (2) Follows all requirements for removing ampules or other reservoirs and managing removed ampules or other reservoirs under subdivision b.

d. A small quantity handler of universal waste who removes mercury containing ampules or other reservoirs from mercury containing ~~devices~~equipment or seals mercury from mercury containing equipment in its original housing must:

- (1) Determine whether the following exhibit a characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14:
  - (a) Mercury or cleanup residues resulting from spills or leaks; ~~or~~
  - (b) Other solid waste generated as a result of the removal of mercury containing ampules or other reservoirs or housings (for example, the remaining mercury containing device ~~units~~); or
  - (c) Both.
- (2) If the mercury, residues, or other solid waste, or any combination thereof, exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~ sections 33-24-05-01 through ~~33-24-05-699~~33-24-05-559, and 33-24-05-800 through 33-24-05-1149. The handler is considered the generator of the mercury, residues, or other solid waste, or any combination thereof, and ~~is subject to the requirements of~~must manage it in compliance with chapter 33-24-03.
- (3) If the mercury, residues, or other solid waste, or any combination thereof, is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

4. Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - a. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
  - b. A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-714. Labeling and marking.**

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (for example, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)", or "Waste Battery(ies)", "Used Battery(ies)".

2. A container, (or multiple container package unit), tank, or transport vehicle or vessel in which recalled universal waste pesticides as described in subdivision a of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
  - a. The label that was on or accompanied the product as sold or distributed; and
  - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
3. A container, tank, or transport vehicle or vessel in which unused pesticide products as described in subdivision b of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
  - a. The following:
    - (1) The label that was on the product when purchased, if still legible;
    - (2) If using the labels described in paragraph 1 is not feasible, the appropriate label as required under department of transportation regulation 49 CFR part 172; or
    - (3) If using the labels described in paragraphs 1 and 2 is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by the state; and
  - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
4. ~~Universal waste mercury containing devices (for example, each mercury containing device) or a container in which mercury containing devices are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste -- Mercury Containing Device(s)", or "Waste Mercury Containing Device(s)", or "Used Mercury Containing Device(s)".~~ Universal waste mercury containing equipment (for example, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste - Mercury Containing Equipment", "Waste Mercury Containing Equipment", or "Used Mercury Containing Equipment". A universal waste mercury containing thermostat or container containing only universal waste mercury containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste - Mercury Thermostat(s)", "Waste Mercury Thermostat(s)", or "Used Mercury Thermostat(s)".
5. Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

#### **33-24-05-717. Response to releases.**

1. A small quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.
2. A small quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~ sections 33-24-05-01 through ~~33-24-05-699~~33-24-05-559, and 33-24-05-800 through 33-24-05-1149. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with chapter 33-24-03.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-720. Exports.**

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those ~~foreign~~ [OECD Organization for Economic Cooperation and Development](#) countries specified in ~~40 CFR 262.58(a)(1)~~ [subdivision a of subsection 1 of section 33-24-03-25](#) (in which case the handler is subject to the requirements of ~~40 CFR subpart H~~ [sections 33-24-03-50 through 33-24-03-59](#)) shall:

1. Comply with the requirements applicable to a primary exporter in section 33-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33-24-03-23, and section 33-24-03-24;
2. Export such universal waste only upon consent of the receiving country and in conformance with environmental protection agency acknowledgment of consent as defined in sections 33-24-03-17 through 33-24-03-29; and
3. Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-732. Notification.**

1. A large quantity handler of universal waste must:
  - a. Except as provided in subdivisions b and c, send written notification of universal waste management activities to the department, and receive an identification number before meeting or exceeding the five thousand kilogram storage limit.
  - b. A large quantity handler of universal waste who has already notified the department of the person's hazardous waste management activities and received an identification number is not required to renotify.
  - c. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in subdivision a of subsection 1 of section 33-24-05-703 and who has sent notification to the environmental protection agency as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides.
2. This notification must include:
  - a. The universal waste handler's name and mailing address;
  - b. The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;
  - c. The address or physical location of the universal waste management activities;
  - d. A list of all types of universal waste managed by the handler (for example, batteries, pesticides, mercury containing [device](#)[equipment](#), lamps); and
  - e. A statement indicating that the handler is accumulating more than five thousand kilograms of universal waste at one time ~~and the types of universal waste (for example,~~

~~batteries, pesticides, mercury containing devices, lamps) the handler is accumulating above this quantity.~~

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-733. Waste management.**

1. **Universal waste batteries.** A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - a. A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
  - b. A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):
    - (1) Sorting batteries by type;
    - (2) Mixing battery types in one container;
    - (3) Discharging batteries so as to remove the electric charge;
    - (4) Regenerating used batteries;
    - (5) Disassembling batteries or battery packs into individual batteries or cells;
    - (6) Removing batteries from consumer products; or
    - (7) Removing electrolyte from batteries.
  - c. A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed in subdivision b, must determine whether the electrolyte or other solid waste, or both, exhibit one or more of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.
    - (1) If the electrolyte or other solid waste, or both, exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~ sections 33-24-05-01 through ~~33-24-05-700~~ 33-24-05-559, and 33-24-05-800 through 33-24-05-1149. The handler is considered the generator of the hazardous electrolyte or other hazardous waste and is subject to the requirements of chapter 33-24-03.
    - (2) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in compliance with applicable federal, state, or local solid waste regulations.
2. **Universal waste pesticides.** A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or

component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

- a. A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
  - b. A container that does not meet the requirements of subdivision a, provided that the unacceptable container is overpacked in a container that does meet the requirements of subdivision a;
  - c. A tank that meets the ~~applicable~~ requirements of ~~subsection 5 of section 33-24-06-16 and sections 33-24-05-103 through 33-24-05-114~~33-24-05-117, except subsection 3 of section 33-24-06-110 and sections 33-24-05-113 and 33-24-05-114; or
  - d. A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
3. ~~Universal waste mercury containing devices~~Mercury containing equipment. A large quantity handler of universal waste must manage universal waste mercury containing ~~devices~~equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- a. A large quantity handler of universal waste must ~~contain~~place in a container any universal waste mercury containing ~~device~~equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions ~~in a container~~. The container must be closed, structurally sound, compatible with the contents of the ~~mercury containing~~ device, ~~and~~ must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.
  - b. A large quantity handler of universal waste may remove mercury containing ampules or other reservoirs from universal waste mercury containing ~~devices~~equipment provided the handler:
    - (1) Removes and manages the ampules or other reservoirs in a manner designed to prevent breakage of the ampules or other reservoirs;
    - (2) Removes the ampules or other reservoirs only over or in a containment device (for example, ~~a~~ tray or pan sufficient to collect and contain any mercury released from an ampule or other reservoir in case of breakage);
    - (3) Ensures that a mercury cleanup system is readily available to immediately transfer any mercury resulting from spills or leaks ~~from~~of broken ampules or other reservoirs from ~~the~~that containment device to a container that meets the requirements of section 33-24-03-12;
    - (4) Immediately transfers any mercury resulting from spills or leaks from broken ampules or other reservoirs from the containment device to a container that meets the requirements of section 33-24-03-12;
    - (5) Ensures that the area in which ampules or other reservoirs are removed is well-ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury;

- (6) Ensures that employees removing ampules or other reservoirs are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
  - (7) Stores removed ampules or other reservoirs in closed, nonleaking containers that are in good condition; and
  - (8) Packs removed ampules or other reservoirs in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.
- c. A large quantity handler of universal waste mercury containing equipment that does not contain an ampule or other reservoirs may remove the open original housing holding the mercury from universal waste mercury containing equipment provided the handler:
- (1) Immediately seals the original housing holding the mercury with an airtight seal to prevent the release of any mercury to the environment; and
  - (2) Follows all requirements for removing ampules and managing removed ampules under subdivision b.
- d. A large quantity handler of universal waste who removes mercury containing ampules or other reservoirs from mercury containing ~~devices~~equipment or seals mercury from mercury containing equipment in its original housing must:
- (1) Determine whether the following exhibit a characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14:
    - (a) Mercury or cleanup residues resulting from spills or leaks;
    - (b) Other solid waste generated as a result of the removal of mercury containing ampules or other reservoirs or housings (for example, the remaining mercury containing device ~~units~~); or
    - (c) Both.
  - (2) If the mercury, residues, or other solid waste, or any combination thereof, exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~ sections 33-24-05-01 through ~~33-24-05-699~~33-24-05-559, and 33-24-05-800 through 33-24-05-1149. The handler is considered the generator of the mercury, residues, or other solid waste, or any combination thereof, and ~~is subject to the requirements of~~must manage it in compliance with chapter 33-24-03.
  - (3) If the mercury, residues, or other solid waste, or any combination thereof, is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.
4. **Lamps.** A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- a. A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

- b. A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-734. Labeling and marking.**

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (for example, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)".
2. A container (or multiple container package unit), tank, or transport vehicle or vessel in which recalled universal waste pesticides as described in subdivision a of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
  - a. The label that was on or accompanied the product as sold or distributed; and
  - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
3. A container, tank, or transport vehicle or vessel in which unused pesticide products as described in subdivision b of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
  - a. The following:
    - (1) The label that was on the product when purchased, if still legible;
    - (2) If using the labels described in paragraph 1 is not feasible, the appropriate label as required under department of transportation regulation 49 CFR part 172; or
    - (3) If using the labels described in paragraphs 1 and 2 is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by the state; and
  - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
4. ~~Universal waste mercury containing devices (for example, each mercury containing device) or a container in which mercury containing devices are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste -- Mercury Containing Device(s)", or "Waste Mercury Containing Device(s)", or "Used Mercury Containing Device(s)".~~ Mercury containing equipment (for example, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste - Mercury Containing Equipment", "Waste Mercury Containing Equipment", or "Used Mercury Containing Equipment". A universal waste mercury containing thermostat or container containing only universal waste mercury containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste - Mercury Thermostat(s)", "Waste Mercury Thermostat(s)", or "Used Mercury Thermostat(s)".

5. Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-735. Accumulation time limits.**

1. A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection 2 are met.
2. A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
3. A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
  - a. Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
  - b. Marking or labeling each individual item of universal waste (for example, each battery or mercury containing ~~device~~[equipment](#)) with the date it became a waste or was received;
  - c. Maintaining an inventory system onsite that identifies the date each universal waste became a waste or was received;
  - d. Maintaining an inventory system onsite that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
  - e. Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
  - f. Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-737. Response to releases.**

1. A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.
2. A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~ sections 33-24-05-01 through ~~33-24-05-699~~[33-24-05-559](#), and [33-24-05-800 through](#)

[33-24-05-1149](#). The handler is considered the generator of the material resulting from the release, and ~~must manage it in compliance with~~ [this subject to](#) chapter 33-24-03.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-739. Tracking universal waste shipments.**

1. **Receipt of shipments.** A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:
  - a. The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
  - b. The quantity of each type of universal waste received (for example, batteries, pesticides, mercury containing ~~devices~~[equipment](#), lamps); and
  - c. The date of receipt of the shipment of universal waste.
2. **Shipments offsite.** A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste sent must include the following information:
  - a. The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
  - b. The quantity of each type of universal waste sent (for example, batteries, pesticides, mercury containing ~~devices~~[equipment](#), lamps); and
  - c. The date the shipment of universal waste left the facility.
3. **Record retention.**
  - a. A large quantity handler of universal waste shall retain the records described in subsection 1 for at least three years from the date of receipt of the shipment of universal waste.
  - b. A large quantity handler of universal waste shall retain the records described in subsection 2 for at least three years from the date a shipment of universal waste left the facility.
  - c. The retention period for all records is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the department.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-740. Exports.**

A large quantity handler of universal waste who sends universal waste to a foreign destination other than those ~~OECD~~[Organization for Economic Cooperation and Development](#) countries specified in ~~40 CFR 262.58(a)(1)~~[subdivision a of subsection 1 of section 33-24-03-25](#) (in which case the handler is subject to the requirements of ~~40 CFR, subpart H~~[sections 33-24-03-50 through 33-24-03-59](#)) shall:

1. Comply with the requirements applicable to a primary exporter in section 33-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33-24-03-23, and section 33-24-03-24;
2. Export such universal waste only upon consent of the receiving country and in conformance with environmental protection agency acknowledgment of consent as defined in sections 33-24-03-17 through 33-24-03-29; and
3. Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-753. Storage time limits.**

1. A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.
2. If a universal waste transporter stores universal waste for more than ten days, the universal waste transporter becomes a universal waste handler and must comply with the requirements of sections 33-24-05-710 through ~~33-24-05-749~~[33-24-05-740](#), as applicable, while storing the universal waste.
3. A universal waste transporter must keep records for each shipment of universal waste transported. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste sent must include the following information:
  - a. The name and address of the universal waste generator or handler originating the shipment and the subsequent handler, destination facility, or foreign destination to whom the universal waste was sent;
  - b. The quantity of each type of universal waste sent (for example, batteries, pesticides, mercury containing ~~devices~~[equipment](#)); and
  - c. The date the universal waste transporter accepted the shipment of universal waste for transportation.
4. Record retention. A universal waste transporter shall retain the records described in subsection 3 for at least three years from the date of delivery of the shipment of universal waste to another handler, destination facility, or foreign destination.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-754. Response to releases.**

1. A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.
2. A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, is subject to all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, ~~and~~—sections 33-24-05-01 through

~~33-24-05-699~~33-24-05-559, and 33-24-05-800 through 33-24-05-1149. If the waste is determined to be hazardous waste, the transporter is subject to chapter 33-24-03.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-756. Exports.**

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than those ~~OECD~~Organization for Economic Cooperation and Development countries specified in ~~40 CFR 262.58(a)(1)~~subdivision a of subsection 1 of section 33-24-03-25 (in which case the handler is subject to the requirements of ~~40 CFR, subpart H~~sections 33-24-03-50 through 33-24-03-59) may not accept a shipment if the transporter knows the shipment does not conform to the environmental protection agency acknowledgment of consent. In addition, the transporter must ensure that:

1. A copy of the environmental protection agency acknowledgment of consent accompanies the shipment; and
2. The shipment is delivered to the facility designated by the person initiating the shipment.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-760. Applicability - Destination facilities.**

1. The owner or operator of a destination facility (as defined in section 33-24-01-04) is subject to all applicable requirements of sections 33-24-05-01 through ~~33-24-05-699~~33-24-05-559 and 33-24-05-800 through 33-24-05-929 and chapters 33-24-06 and 33-24-07, and the notification requirement under section ~~3010 of the Resource Conservation and Recovery Act~~33-24-03-03.
2. The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with subdivision b of subsection 3 of section 33-24-02-06.

**History:** Effective July 1, 1997; amended effective December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-762. Tracking universal waste shipments.**

1. The owner or operator of a destination facility shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste ~~sent~~received must include the following information:
  - a. The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;
  - b. The quantity of each type of universal waste received (for example, batteries, pesticides, mercury containing ~~devices~~equipment); and
  - c. The date of receipt of the shipment of universal waste.
2. The owner or operator of a destination facility must retain the records described in subsection 1 for at least three years from the date of receipt of a shipment of universal waste.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-770. Imports.**

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799, immediately after the waste enters the United States, as indicated ~~below~~ [in subsections 1 through 3](#):

1. A universal waste transporter is subject to the universal waste transporter requirements of sections ~~33-24-05-740~~[33-24-05-750](#) through ~~33-24-05-749~~[33-24-05-759](#).
2. A universal waste handler is subject to the universal waste handler requirements of sections 33-24-05-710 through ~~33-24-05-739~~[33-24-05-740](#), as applicable.
3. An owner or operator of a destination facility is subject to the destination facility requirements of sections ~~33-24-05-750~~[33-24-05-760](#) through ~~33-24-05-754~~[33-24-05-762](#).
4. [Persons managing universal waste that is imported from an Organization for Economic Cooperation and Development country as specified in subdivision a of subsection 1 of section 33-24-03-25 are subject to subsections 1 through 3, in addition to the requirements of sections 33-24-03-50 through 33-24-03-59.](#)

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-780. Petitions to include other wastes under sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799.**

1. Any person seeking to add a hazardous waste or a category of hazardous waste to sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 may petition for a regulatory amendment under sections ~~33-24-05-760~~[33-24-05-780](#) through ~~33-24-05-799~~[33-24-05-781](#), 33-24-01-06, and 33-24-01-08.
2. To be successful, the petitioner must demonstrate to the satisfaction of the department that regulation under the universal waste regulations of sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by subsection 2 of section 33-24-01-06. The petition should also address as many of the factors listed in section ~~33-24-05-761~~[33-24-05-781](#) as are appropriate for the waste or waste category addressed in the petition.
3. The department will evaluate petitions using the factors listed in section ~~33-24-05-761~~[33-24-05-781](#). The department will grant or deny a petition using the factors listed in section ~~33-24-05-761~~[33-24-05-781](#). The decision will be based on the weight of evidence showing that regulation under sections ~~33-24-05-701~~[33-24-05-700](#) through 33-24-05-799 is appropriate for the waste or category of waste, will improve management practices for the waste of category of waste, and will improve implementation of the hazardous waste program.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-781. Factors for petitions to include other wastes under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799.**

1. The waste or category of waste, as generated by a wide variety of generators, is listed in sections 33-24-02-15 through 33-24-02-19, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14. (When a characteristic waste is added to the universal waste regulations of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 by using a generic name to identify the waste category (for example, batteries), the definition of universal waste in section 33-24-01-04 will be amended to include only the hazardous waste portion of the waste category (for example, hazardous waste batteries.) Thus, only the portion of the waste stream that does exhibit one or more characteristics (therefore, is hazardous waste) is subject to the universal waste regulations of sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799;
2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);
3. The waste or category of waste is generated by a large number of generators (for example, more than one thousand nationally) and is frequently generated in relatively small quantity by each generator;
4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;
5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (for example, waste management requirements appropriate to be added to sections 33-24-05-713, 33-24-05-733, and 33-24-05-752; or applicable department of transportation requirements) would be protective of human health and the environment during accumulation and transport;
6. Regulation of the waste or category of waste under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 will increase the likelihood that the waste will be diverted from the nonhazardous waste management systems (for example, the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer, or stormwater systems) to recycling, treatment, or disposal in compliance with the hazardous waste management rules;
7. Regulation of the waste or category of waste under sections ~~33-24-05-701~~33-24-05-700 through 33-24-05-799 will improve implementation of the hazardous waste regulatory program; and
8. Such other factors as may be appropriate.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-801. Design and operating standards.**

1. Hazardous waste munitions and explosives storage units must be designed and operated with containment systems, controls, and monitoring, that:

- a. Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated runoff to the soil, ground water, surface water, and atmosphere;
  - b. Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;
  - c. For wastes stored outdoors, provide that the waste and containers will not be in standing precipitation;
  - d. For liquid wastes, provide a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area, or vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (for example, additional containment, such as overpacking, or removal from the waste area); and
  - e. Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.
2. Hazardous waste munitions and explosives stored under sections 33-24-05-800 through 33-24-05-819 may be stored in one of the following:
- a. Earth-covered magazines. Earth-covered magazines must be:
    - (1) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;
    - (2) Designed and constructed:
      - (a) To be of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;
      - (b) To provide working space for personnel and equipment in the unit; and
      - (c) To withstand movement activities that occur in the unit; and
    - (3) Located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.
  - b. Aboveground magazines. Aboveground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.
  - c. Outdoor or open storage areas. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.
3. Hazardous waste munitions and explosives must be stored in accordance with a standard operating procedure specifying procedures to ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of section 33-24-05-05, the preparedness and prevention procedures of sections ~~33-24-05-12~~33-24-05-15 through ~~33-24-05-21~~33-24-05-25, and the contingency plan and emergency procedures requirements of sections ~~33-24-05-22~~33-24-05-26 through 33-24-05-36, then these procedures will be used to fulfill those requirements.

4. Hazardous waste munitions and explosives must be packaged to ensure safety in handling and storage.
5. Hazardous waste munitions and explosives must be inventoried at least annually.
6. Hazardous waste munitions and explosives and their storage units must be inspected and monitored as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-802. Closure and postclosure care.**

1. At closure of a magazine or unit which stored hazardous waste under sections 33-24-05-800 through 33-24-05-819, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless subsection 4 of section 33-24-02-03 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in sections 33-24-05-59 through 33-24-05-88, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.
2. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subsection 1, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, [they owner or operator](#) must close the facility and perform postclosure care in accordance with the closure and postclosure requirements that apply to landfills in section 33-24-05-180.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-821. Definitions.**

In addition to the definitions in section 33-24-01-04, the following definitions apply to sections 33-24-05-820 through 33-24-05-849:

1. "Active range" means a military range that is currently in service and is being regularly used for range activities.
2. "Chemical agents and munitions" are defined as in 50 U.S.C. section 1521(j)(1).
3. ~~"Director" means the director of the division of waste management, state department of health.~~
4. "Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.
- 5.4. "Military" means the department of defense, the armed services, coast guard, national guard, department of energy, or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

~~6.5.~~ "Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

~~7.6.~~ "Unexploded ordnance" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

**History:** Effective December 1, 2003; [amended effective January 1, 2016.](#)

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-822. Definition of solid waste.**

1. A military munition is not a solid waste when:
  - a. Used for its intended purpose, including:
    - (1) Use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions);
    - (2) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or
    - (3) Recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. However, "use for intended purpose" does not include the on-range disposal or burial of unexploded ordnance and contaminants when the burial is not a result of product use.
  - b. An unused munition, or component thereof, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal (as defined in subdivision a of subsection 3 of section 33-24-02-02) or burning for energy recovery (as defined in subdivision b of subsection 3 of section 33-24-02-02).
2. An unused military munition is a solid waste when any of the following occurs:
  - a. The munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in subsection 1), incinerated, or treated prior to disposal;
  - b. The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal;
  - c. The munition is deteriorated or damaged (for example, the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or
  - d. The munition has been declared a solid waste by an authorized military official.
3. A used or fired military munition is a solid waste:

- a. When transported off-range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or
  - b. If recovered, collected, and then disposed of by burial, or landfilling either on or off a range.
4. For purposes of Resource Conservation and Recovery Act section 1004(27) or subsection 18 of North Dakota Century Code section 23-20.3-02, a used or fired military munition is a solid waste, and, therefore, is potentially subject to corrective action authorities under Resource Conservation and Recovery Act sections 3004(u) and (v), and 3008(h) or sections 33-24-05-57 and 33-24-05-58, or imminent and substantial endangerment authorities under
- i section 7003, or North Dakota Century Code section 23-20.3-08, if the munition lands offrange and is not promptly rendered safe or retrieved, or both. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-823. Standards applicable to the transportation of solid waste military munitions.**

- 1. Criteria for hazardous waste regulation of waste nonchemical military munitions in transportation.
  - a. Waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under chapter 33-24-02 are listed or identified as a hazardous waste (and thus are subject to regulation under article 33-24), unless all the following conditions are met:
    - (1) The waste military munitions are not chemical agents or chemical munitions;
    - (2) The waste military munitions must be transported in accordance with the department of defense shipping controls applicable to the transport of military munitions;
    - (3) The waste military munitions must be transported from a military owned or operated installation to a military owned or operated treatment, storage, or disposal facility; and
    - (4) The transporter of the waste must provide oral notice to the department within twenty-four hours from the time the transporter becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this subdivision that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within five days from the time the transporter becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of this subdivision.
  - b. If any waste military munitions shipped under subdivision a are not received by the receiving facility within forty-five days of the day the waste was shipped, the owner or operator of the receiving facility must report this nonreceipt to the department within five days.

- c. The exemption in subdivision a from regulation as hazardous waste shall apply only to the transportation of nonchemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to storage, treatment, or disposal.
  - d. The conditional exemption in subdivision a applies only so long as all of the conditions in subdivision a are met.
2. Reinstatement of exemption. If any waste military munition loses its exemption under subdivision a of subsection 1, an application may be filed with the ~~director~~[department](#) for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of subdivision a of subsection 1. If the department finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the department may reinstate the exemption under subdivision a of subsection 1. If the department does not take action on the reinstatement application within sixty days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the department may terminate a conditional exemption reinstated by default in the preceding sentence if the department finds that reinstatement is inappropriate based on factors such as the transporter's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the exemption under subdivision a of subsection 1, the department may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.
  3. Amendments to department of defense shipping controls. The department of defense shipping controls applicable to the transport of military munitions referenced in paragraph 2 of subdivision a of subsection 1 are government bill of lading (GSA standard form 1109), requisition tracking form (DD form 1348), the signature and tally record (DD form 1907), special instructions for motor vehicle drivers (DD form 836), and the motor vehicle inspection report (DD form 626) in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the department of defense shipping controls shall become effective for purposes of subdivision a of subsection 1 on the date the department of defense publishes notice in the federal register that the shipping controls referenced in paragraph 2 of subdivision a of subsection 1 have been amended.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-824. Standards applicable to emergency responses.**

Explosives and munitions emergencies involving military munitions or explosives are subject to subsection ~~7~~[8](#) of section 33-24-03-01, subsection 5 of section 33-24-04-01, paragraph 1 of subdivision g of subsection 6 of section 33-24-05-01, 40 CFR 265.1(c)(11) as incorporated by reference at subsection 5 of section 33-24-06-16, and paragraph 9 of subdivision b of subsection 2 of section 33-24-06-01, and subsection 1 of section 33-24-06-19.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-825. Standards applicable to the storage of solid waste military munitions.**

1. Criteria for hazardous waste regulation of waste nonchemical military munitions in storage.

- a. Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste under chapter 33-24-02 are listed or identified as a hazardous waste (and thus are subject to regulation under article 33-24), unless all the following conditions are met:
    - (1) The waste military munitions are not chemical agents or chemical munitions.
    - (2) The waste military munitions must be subject to the jurisdiction of the department of defense explosives safety board.
    - (3) The waste military munitions must be stored in accordance with the department of defense explosives safety board storage standards applicable to waste military munitions.
    - (4) Within ninety days of August 12, 1997, or within ninety days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator must notify the department of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in this subdivision is claimed.
    - (5) The owner or operator must provide oral notice to the department within twenty-four hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this subdivision that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within five days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of this subdivision.
    - (6) The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of this subdivision, and must maintain records of the findings of these inventories and inspections for at least three years.
    - (7) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.
  - b. The conditional exemption in subdivision a from regulation as hazardous waste shall apply only to the storage of nonchemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment, or disposal.
  - c. The conditional exemption in subdivision a applies only so long as all of the conditions in subdivision a are met.
2. Notice of termination of waste storage. The owner or operator must notify the department when a storage unit identified in paragraph 4 of subdivision a of subsection 1 will no longer be used to store waste military munitions.
  3. Reinstatement of conditional exemption. If any waste military munition loses its conditional exemption under subdivision a of subsection 1, an application may be filed with the department for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of subdivision a of subsection 1. If the department finds that reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the department may reinstate the conditional exemption under subdivision a of subsection 1. If the department does not take

action on the reinstatement application within sixty days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the department may terminate a conditional exemption reinstated by default in the preceding sentence if the department finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the conditional exemption under subdivision a of subsection 1, the department may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.

4. Waste chemical munitions.
  - a. Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under chapter 33-24-02 are listed or identified as a hazardous waste and shall be subject to the applicable regulatory requirements of article 33-24.
  - b. Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under chapter 33-24-02 are not subject to the storage prohibition in ~~Resource Conservation and Recovery Act section 3004(j), codified in~~ section 33-24-05-290.
5. Amendments to department of defense explosives safety board storage standards. The department of defense explosives safety board storage standards applicable to waste military munitions, referenced in paragraph 3 of subdivision a of subsection 1, are department of defense 6055.9-STD ("DOD ammunition and explosive safety standards"), in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the department of defense explosives safety board storage standards shall become effective for purposes of subdivision a of subsection 1 on the date the department of defense publishes notice in the federal register that the department of defense explosives safety board standards referenced in subdivision a of subsection 1 have been amended.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-850. Definitions applicable to the conditional exemption for low-level mixed waste storage, treatment, transportation, and disposal.**

For sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#), use the following special definitions:

1. "Agreement state" means a state that has entered into an agreement with the nuclear regulatory commission under subsection 274b of the Atomic Energy Act of 1954, as amended [68 Stat. 919], to assume responsibility for regulating within its borders byproduct, source, or special nuclear material in quantities not sufficient to form a critical mass. North Dakota is an agreement state.
2. "Certified delivery" means certified mail with return receipt requested, or equivalent courier service, or other means, that provides the sender with a receipt confirming delivery.
3. "Eligible naturally occurring or accelerator-produced radioactive material, or both (NARM)" is NARM that is eligible for the transportation and disposal conditional exemption. It is a NARM waste that contains hazardous waste, meets the waste acceptance criteria of, and is allowed by applicable state NARM regulations to be disposed of at a low-level radioactive waste

disposal facility licensed in accordance with 10 CFR part 61 or nuclear regulatory commission agreement state equivalent regulations.

4. "Exempted waste" means a waste that meets the eligibility criteria in section 33-24-05-856 and meets all of the conditions in section 33-24-05-857, or meets the eligibility criteria in section 33-24-05-890 and complies with all the conditions in section 33-24-05-895. Such waste is conditionally exempted from the regulatory definition of hazardous waste described in section 33-24-02-03.
5. "Hazardous waste" means any material which is defined to be hazardous waste in accordance with section 33-24-02-03.
6. "Land disposal restriction treatment standards" means treatment standards, under sections 33-24-05-250 through 33-24-05-299, that a hazardous waste must meet before it can be disposed of in a permitted hazardous waste land disposal unit.
7. "License" means a license issued by the nuclear regulatory commission, or nuclear regulatory commission agreement state, to users that manage radionuclides regulated by nuclear regulatory commission, or nuclear regulatory commission agreement states, under authority of the Atomic Energy Act of 1954, as amended.
8. "Low-level mixed waste" is a waste that contains both low-level radioactive waste and hazardous waste.
9. "Low-level radioactive waste" is a radioactive waste which contains source, special nuclear, or byproduct material, and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act. See also nuclear regulatory commission definition of "waste" at 10 CFR 61.2.
10. "Mixed waste" means a waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954, as amended.
11. "Naturally occurring radioactive material, accelerator-produced radioactive material, or both (NARM)" means radioactive materials that:
  - a. Are naturally occurring and are not source, special nuclear, or byproduct materials (as defined by the Atomic Energy Act); or
  - b. Are produced by an accelerator.

NARM is regulated by the states under state law, or by department of energy (as authorized by the Atomic Energy Act) under department of energy orders.

12. "Nuclear regulatory commission" means the United States nuclear regulatory commission.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-857. Conditions to qualify for and maintain a storage and treatment exemption.**

1. For a generator's, treater's, or other handler's low-level mixed waste to qualify for the exemption, the generator, treater, or other handler must notify the department in writing by certified delivery that the generator, treater, or other handler is claiming a conditional exemption for the low-level mixed waste stored at the facility. The dated notification must include the generator's, treater's, or other handler's name, address, identification number, nuclear regulatory commission or nuclear regulatory commission agreement state license

number, the waste code or codes and storage unit or units for which an exemption is being sought, and a statement that the generator, treater, or other handler meets the conditions of sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#). The notification must be signed by an authorized representative who certifies that the information in the notification is true, accurate, and complete. The generator, treater, or other handler must notify the department of the claim either within ninety days of the effective date of this rule, or within ninety days of when a storage unit is first used to store conditionally exempt low-level mixed waste.

2. To qualify for and maintain an exemption for low-level mixed waste, the generator, treater, or other handler must:
  - a. Store low-level mixed waste in tanks or containers in compliance with the requirements of the generator's, treater's, or other handler's license that apply to the proper storage of low-level radioactive waste (not including those license requirements that relate solely to recordkeeping);
  - b. Store low-level mixed waste in tanks or containers in compliance with chemical compatibility requirements of a tank or container in section 33-24-05-96, or section 33-24-05-112;
  - c. Certify that facility personnel who manage stored conditionally exempt low-level mixed waste are trained in a manner that ensures that the conditionally exempt waste is safely managed and includes training in chemical waste management and hazardous materials incidents response that meets the personnel training standards found in subdivision c of subsection 1 of section 33-24-05-07;
  - d. Conduct an inventory of the generator's, treater's, or other handler's stored conditionally exempt low-level mixed waste at least annually and inspect it at least quarterly for compliance with sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#); and
  - e. Maintain an accurate emergency plan and provide copies of the plan to all local authorities who may have to respond to a fire, explosion, or release of hazardous waste or hazardous constituents. The plan must describe emergency response arrangements with local authorities; describe evacuation plans; list the names, addresses, and telephone numbers of all facility personnel qualified to work with local authorities as emergency coordinators; and list emergency equipment.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-865. Loss of conditional exemption.**

1. A generator's, treater's, or other handler's low-level mixed waste will automatically lose the storage and treatment conditional exemption if the generator, treater, or other handler fails to meet any of the conditions specified in section 33-24-05-857. When low-level mixed waste loses the exemption, the generator, treater, or other handler must immediately manage that waste which failed the condition as hazardous waste, and the storage unit storing the low-level mixed waste immediately becomes subject to hazardous waste container or tank storage requirements, as applicable.
  - a. If a generator, treater, or other handler fails to meet any of the conditions specified in section 33-24-05-857 the generator, treater, or other handler must report to the department and the nuclear regulatory commission, or the oversight agency in the nuclear regulatory commission agreement state, in writing by certified delivery within thirty days of learning of the failure. The report must be signed by an authorized

representative certifying that the information provided is true, accurate, and complete. This report must include:

- (1) The specific condition or conditions the generator, treater, or other handler failed to meet;
  - (2) A description of the low-level mixed waste (including the waste name, hazardous waste code or codes and quantity) and storage location at the facility; and
  - (3) The date or dates on which the generator, treater, or other handler failed to meet the condition or conditions.
- b. If the failure to meet any of the conditions may endanger human health or the environment, the generator, treater, or other handler must also immediately notify the department orally within twenty-four hours and follow up with a written notification within five days. Failures that may endanger human health or the environment include discharge of a comprehensive environmental response, compensation and liability act reportable quantity or other leaking or exploding tanks or containers, or detection of radionuclides above background or hazardous constituents in the leachate collection system of a storage area. If the failure may endanger human health or the environment, the generator, treater, or other handler must follow the provisions of the emergency plan.
2. The department may terminate the conditional exemption for the generator's, treater's, or other handler's low-level mixed waste, or require the generator, treater, or other handler to meet additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement or requirements of sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#).

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-880. Storage unit closure.**

Interim status and permitted storage units that have been used to store only low-level mixed waste prior to the effective date of sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#) and, after that date, store only low-level mixed waste which becomes exempt under sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#), are not subject to the closure requirements of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819 or applicable requirements of subsection 5 of section 33-24-06-16. Storage units (or portions of units) that have been used to store both low-level mixed waste and nonmixed hazardous waste prior to the effective date of sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#) or are used to store both after that date remain subject to closure requirements [of sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, 33-24-05-800 through 33-24-05-819, or applicable requirements of subsection 5 of section 33-24-06-16](#) with respect to the nonmixed hazardous waste.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-905. Notification.**

1. The generator, treater, or other handler must provide a one-time notice to the department stating that the generator, treater, or other handler is claiming the transportation and disposal conditional exemption prior to the initial shipment of an exempted waste from the generator's, treater's, or other handler's facility to a low-level radioactive waste disposal facility. The dated

written notice must include the generator, treater, or other handler facility name, address, telephone number, and identification number, and be sent by certified delivery.

2. The generator, treater, or other handler must notify the low-level radioactive waste disposal facility receiving the exempted waste by certified delivery before shipment of each exempted waste. The generator, treater, or other handler can only ship the exempted waste after receipt of the return receipt of the notice to the low-level radioactive waste disposal facility. This notification must include the following:
  - a. A statement that the generator, treater, or other handler has claimed the exemption for the waste.
  - b. A statement that the eligible waste meets applicable land disposal restriction treatment standards.
  - c. The generator, treater, or other handler facility's name, address, and identification number.
  - d. The hazardous waste code or codes prior to the exemption of the waste streams.
  - e. A statement that the exempted waste must be placed in a container according to section 33-24-05-900 prior to disposal in order for the waste to remain exempt under the transportation and disposal conditional exemption of sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929](#).
  - f. The manifest number of the shipment that will contain the exempted waste.
  - g. A certification that all the information provided is true, complete, and accurate. The statement must be signed by an authorized representative.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-910. Recordkeeping for the transportation and disposal conditional exemption.**

In addition to those records required by the generator's, treater's, or other handler's nuclear regulatory commission or nuclear regulatory commission agreement state license, the generator, treater, or other handler must keep records as follows:

1. The generator, treater, or other handler must follow the applicable existing recordkeeping requirements under sections 33-24-05-40 and 33-24-05-256 to demonstrate that the waste has met land disposal restriction treatment standards prior to claiming the exemption.
2. The generator, treater, or other handler must keep a copy of all notifications and return receipts required under sections 33-24-05-915 and 33-24-05-916 for three years after the exempted waste is sent for disposal.
3. The generator, treater, or other handler must keep a copy of all notifications and return receipts required under subsection 1 of section 33-24-05-905 for three years after the last exempted waste is sent for disposal.
4. The generator, treater, or other handler must keep a copy of the notification and return receipt required under subsection 2 of section 33-24-05-905 for three years after the exempted waste is sent for disposal.
5. If the generator, treater, or other handler is not already subject to nuclear regulatory commission or nuclear regulatory commission agreement state equivalent manifest and

transportation regulations for the shipment of the waste, the generator, treater, or other handler must also keep all other documents related to tracking the exempted waste as required under chapter 33-10-04.1 (10 CFR 20.2006), including applicable NARM requirements, in addition to the records specified in subsections 1 through 4 ~~of section 33-24-05-910.~~

6. The retention period referred to in this section is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

**History:** Effective December 1, 2003; [amended effective January 1, 2016.](#)

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-915. Loss of transportation and disposal conditional exemption.**

1. Any waste will automatically lose the transportation and disposal exemption if the generator, treater, or other handler fails to manage it in accordance with all of the conditions specified in section 33-24-05-895.
  - a. When the generator, treater, or other handler fails to meet any of the conditions specified in section 33-24-05-895 for any wastes, the generator, treater, or other handler must report to the department, in writing by certified delivery, within thirty days of learning of the failure. The report must be signed by an authorized representative certifying that the information provided is true, accurate, and complete. This report must include:
    - (1) The specific condition or conditions that the generator, treater, or other handler failed to meet for the waste;
    - (2) A description of the waste (including the waste name, hazardous waste code or codes and quantity) that lost the exemption; and
    - (3) The date or dates on which the generator, treater, or other handler failed to meet the condition or conditions for the waste.
  - b. If the failure to meet any of the conditions may endanger human health or the environment, the generator, treater, or other handler must also immediately notify the department orally within twenty-four hours and follow up with a written notification within five days.
2. The department may terminate the generator's, treater's, or other handler's ability to claim a conditional exemption for the waste, or require the generator, treater, or other handler to meet additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement or requirements of sections 33-24-05-850 through ~~33-24-05-949~~[33-24-05-929.](#)

**History:** Effective December 1, 2003; [amended effective January 1, 2016.](#)

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

### **33-24-05-950. Purpose, scope, and applicability of standardized permits.**

1. The purpose of sections 33-24-05-950 through 33-24-05-1149 is to establish minimum standards which define the acceptable management of hazardous waste under sections 33-24-06-45 through 33-24-06-85.

2. Sections 33-24-05-950 through 33-24-05-1149 applies to owners and operators of facilities who treat or store hazardous waste under sections 33-24-06-45 through 33-24-06-85, except as provided otherwise in sections 33-24-02-01 through 33-24-02-07 or subsection 6 of section 33-24-05-01.

3. Notwithstanding any other provisions of this part, enforcement actions may be brought pursuant to section 23-20.3-08 of the North Dakota Century Code.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-08, 23-20.3-09

**33-24-05-951. Operating status prior to final administrative disposition of the permit application.**

If a facility owner or operator has fully complied with the requirements for interim status, as defined in subsection 2 of section 23-20.3-05 of the North Dakota Century Code and regulations under 40 CFR 270.70 as incorporated by reference at subsection 5 of section 33-24-06-16, the owner or operator must comply with the applicable provisions of 40 CFR part 265 as incorporated by reference in subsection 5 of section 33-24-06-16 instead of the rules in sections 33-24-05-950 through 33-24-05-1149, until final administrative disposition of the standardized permit application is made, except as provided under sections 33-24-05-550 through 33-24-05-559.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-952. [Reserved].**

**33-24-05-953. [Reserved].**

**33-24-05-954. [Reserved].**

**33-24-05-955. [Reserved].**

**33-24-05-956. [Reserved].**

**33-24-05-957. [Reserved].**

**33-24-05-958. [Reserved].**

**33-24-05-959. [Reserved].**

**33-24-05-960. General facility standards.**

1. Sections 33-24-05-960 through 33-24-05-979 applies to owners or operators of facilities that treat or store hazardous waste under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950.
2. To comply with sections 33-24-05-960 through 33-24-05-979, the owner or operator must obtain an identification number, and follow the requirements for waste analysis (section 33-24-05-963), security (section 33-24-05-964), inspections (section 33-24-05-965), training (section 33-24-05-966), special waste handling (section 33-24-05-067), and location standards (section 33-24-05-968).

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-961. Identification number.**

To comply with sections 33-24-05-950 through 33-24-05-1149, the facility owner or operator must apply to the department for an identification number.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-05-962. [Reserved].**

**33-24-05-963. General waste analysis.**

1. Before an owner or operator treats or stores any hazardous wastes, the owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with sections 33-24-05-950 through 33-24-05-1149 and sections 33-24-05-250 through 33-24-05-299.
  - a. The analysis may include data that was developed under chapter 33-24-02, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.
  - b. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated if the process or operation generating the hazardous wastes has changed.
2. The owner or operator must develop and follow a written waste analysis plan that describes the procedures which the owner or operator will follow to comply with subsection 1. The owner or operator must keep this plan at the facility. If the facility receives wastes generated from offsite, and is eligible for a standardized permit, the owner or operator also must have submitted the waste analysis plan with the notice of intent. At a minimum, the plan must specify all of the following:

- a. The hazardous waste parameters that will be analyzed and the rationale for selecting these parameters, for example, how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection 1;
- b. The test methods which will be used to test for these parameters;
- c. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
  - (1) One of the sampling methods described in appendix I of chapter 33-24-02; or
  - (2) An equivalent sampling method.
- d. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date; and
- e. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in section 33-24-05-08, subsection 4 of section 33-24-05-404, subsection 4 of section 33-24-05-433, and section 33-24-05-453.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-964. Security.**

1. The owner or operator must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of the facility.
2. The facility must have:
  - a. A twenty-four hour surveillance system, for example, television monitoring or surveillance by guards or facility personnel, that continuously monitors and controls entry onto the active portion of the facility; or
  - b. An artificial or natural barrier, for example, a fence in good repair or a fence combined with a cliff, that completely surrounds the active portion of the facility; and
  - c. A means to control entry, at all times, through the gates or other entrances to the active portion of the facility, for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility.
3. The owner or operator must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger - Unauthorized Personnel Keep Out". The legend must be in English and in any other language predominant in the area surrounding the facility and must be legible from a distance of at least twenty-five feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### 33-24-05-965. General inspection requirements.

1. The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:
  - a. Release of hazardous waste constituents to the environment; or
  - b. A threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.
2. The owner or operator must develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.
  - a. The owner or operator must keep this schedule at the facility.
  - b. The schedule must identify the equipment and devices that will be inspected and what problems will be looked for, such as malfunctions or deterioration of equipment, for example, inoperative sump pump or leaking fitting.
  - c. The frequency of inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in sections 33-24-05-1084, 33-24-05-1103, 33-24-05-1105, 33-24-05-1133, 33-24-05-403, 33-24-05-422, 33-24-05-423, 33-24-05-428, and 33-24-05-453 through 33-24-05-459, where applicable.
3. The owner or operator must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.
4. The owner or operator must record all inspections in an inspection log or summary. The owner or operator must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### 33-24-05-966. Personnel training.

1. Facility personnel must successfully complete a program of classroom instruction or on the job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of sections 33-24-05-950 through 33-24-05-1149. The owner or operator shall ensure that this program includes all the elements described in the documents that are required under subdivision c of subsection 4.
  - a. This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous

waste management procedures, including contingency plan implementation, relevant to their employment positions.

b. At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

(1) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(2) Key parameters for automatic waste feed cut-off systems;

(3) Communications or alarm systems;

(4) Response to fires or explosions;

(5) Response to ground water contamination incidents; and

(6) Shutdown of operations.

2. Facility personnel must successfully complete the program required in subsection 1 within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of the facility's standardized permit must not work in unsupervised positions until they have completed the training requirements of subsection 1.

3. Facility personnel must take part in an annual review of the initial training required in subsection 1.

4. The owner or operator must maintain the following documents and records at the facility:

a. The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

b. A written job description for each position listed under subdivision a. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position.

c. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subdivision a.

d. Records that document that facility personnel have received and completed the training or job experience required under subsections 1, 2, and 3.

5. Training records on current personnel must be kept until the facility closes. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-967. General requirements for ignitable, reactive, or incompatible wastes.**

1. The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

a. These wastes must be separated and protected from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat producing chemical reactions), and radiant heat;

b. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flames to specially designated locations; and

c. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

2. If the owner or operator treats or stores ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, the owner or operator must take precautions to prevent reactions that:

a. Generate extreme heat or pressure, fire or explosions, or violent reactions;

b. Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

c. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

d. Damage the structural integrity of the device or facility; and

e. Threaten human health or the environment in any similar way.

3. The owner or operator must document compliance with subsection 1 or 2. This documentation may be based on references to published scientific or engineering literature, data from trial tests (for example, bench scale or pilot scale tests), waste analyses (as specified in section 33-24-05-963), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-968. Location standards.**

The department will not issue or approve a permit to any facility or portion of a facility which is or will be constructed in a location with a geology, hydrogeology, hydrology, or topography which the department reasonably believes is incompatible with the type of hazardous waste management activity occurring or proposed to occur. Locations which are specifically within the meaning of this section include but are not limited to floodplains, ground water recharge areas, highly permeable soils, high ground water tables, and areas of high topographic relief.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-969. [Reserved].**

### **33-24-05-970. [Reserved].**

33-24-05-971. [Reserved].

33-24-05-972. [Reserved].

33-24-05-973. [Reserved].

33-24-05-974. [Reserved].

33-24-05-975. [Reserved].

33-24-05-976. [Reserved].

33-24-05-977. [Reserved].

33-24-05-978. [Reserved].

33-24-05-979. [Reserved].

**33-24-05-980. Preparedness and prevention.**

Sections 33-24-05-980 through 33-24-05-989 applies to owners or operators of facilities that treat or store hazardous waste under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-981. General design and operation standards.**

The owner or operator must design, construct, maintain, and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-982. Required equipment.**

The facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

1. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
2. A device, such as a telephone (immediately available at the scene of operations), or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
3. Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
4. Water at adequate volume and pressure to supply water hose streams, foam-producing equipment, automatic sprinklers, or water spray systems.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-983. Testing and maintenance of equipment.**

The owner or operator must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-984. Access to communication equipment or alarm system.**

1. Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under section 33-24-05-982.
2. If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under section 33-24-05-982.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-985. Required aisle space.**

The owner or operator must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any

area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-986. Arrangements with local authorities.**

1. The owner or operator must attempt to make the following arrangements, as appropriate, for the type of waste handled at the facility and the potential need for the services of these organizations:
  - a. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;
  - b. Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority;
  - c. Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and
  - d. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.
2. Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-987. [Reserved].**

**33-24-05-988. [Reserved].**

**33-24-05-989. [Reserved].**

**33-24-05-990. Contingency plan and emergency procedures.**

Sections 33-24-05-990 through 33-24-05-1009 applies to owners or operators of facilities that treat or store hazardous waste under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-991. Purpose and implementation of contingency plan.**

1. The owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.
2. The owner or operator must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-992. Content of contingency plan.**

1. The contingency plan must:
  - a. Describe the actions facility personnel will take to comply with sections 33-24-05-991 and 33-24-05-996 in response to fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.
  - b. Describe all arrangements agreed upon under section 33-24-05-986 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.
  - c. List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see section 33-24-05-995), and the owner or operator must keep the list up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
  - d. Include a current list of all emergency equipment at the facility such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment, where this equipment is required. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
  - e. Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.
2. If the owner or operator has already prepared a spill prevention, control, and countermeasures (SPCC) plan under 40 CFR part 112, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate hazardous waste management provisions that will comply with these requirements.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-993. Copies of contingency plan.**

1. The owner or operator must maintain a copy of the plan with all revisions at the facility; and
2. A copy must be submitted, with all revisions, to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-994. Amendment of contingency plan.**

The owner or operator must review, and immediately amend the contingency plan, if necessary, whenever:

1. The facility permit is revised;
2. The plan fails in an emergency;
3. The facility changes in its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
4. The list of emergency coordinators changes; or
5. The list of emergency equipment changes.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-995. Emergency coordinator.**

At least one employee must be either on the facility premises or on call at all times, for example, available to respond to an emergency by reaching the facility within a short period of time, who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-996. Emergency procedures.**

1. Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the coordinator's designee when the emergency coordinator is on call, must immediately:
  - a. Activate internal facility alarm or communication systems, where applicable, to notify all facility personnel; and
  - b. Notify appropriate state or local agencies with designated response roles if their help is needed.

2. Whenever there is a release, fire, or explosion, the emergency coordinator must:
  - a. Immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.
  - b. Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoff from water or chemical agents used to control fire and heat induced explosions.
3. If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the emergency coordinator must report the coordinator's findings as follows:
  - a. If the coordinator's assessment indicates that evacuation of local areas may be advisable, the coordinator must immediately notify appropriate local authorities. The coordinator must be available to help appropriate officials decide whether local areas should be evacuated.
  - b. The coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area or the national response center, using their twenty-four hour toll-free number 800-424-8802. The report must include:
    - (1) Name and telephone number of the reporter;
    - (2) Name and address of facility;
    - (3) Time and type of incident, for example, a release or a fire;
    - (4) Name and quantity of materials involved, to the extent known;
    - (5) The extent of injuries, if any; and
    - (6) The possible hazards to human health or the environment outside the facility.
4. During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.
5. If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-997. Procedures after an emergency.**

1. Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

2. The emergency coordinator must ensure that, in the affected areas of the facility:

- a. No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.
- b. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-998. Notification and recordkeeping after an emergency.**

- 1. The owner or operator must notify the department and other appropriate state and local authorities, that the facility is in compliance with subsection 2 of section 33-24-05-997 before operations are resumed in the affected areas of the facility.
- 2. The owner or operator must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within fifteen days after the incident, the owner or operator must submit a written report on the incident to the department. The report must include the following:
  - a. The name, address, and telephone number of the owner or operator;
  - b. The name, address, and telephone number of the facility;
  - c. The date, time, and type of incident (for example, fire, explosion);
  - d. The name and quantity of materials involved;
  - e. The extent of injuries, if any;
  - f. An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
  - g. The estimated quantity and disposition of recovered material that resulted from the incident.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-999. [Reserved].**

**33-24-05-1000. [Reserved].**

**33-24-05-1001. [Reserved].**

33-24-05-1002. [Reserved].

33-24-05-1003. [Reserved].

33-24-05-1004. [Reserved].

33-24-05-1005. [Reserved].

33-24-05-1006. [Reserved].

33-24-05-1007. [Reserved].

33-24-05-1008. [Reserved].

33-24-05-1009. [Reserved].

**33-24-05-1010. Recordkeeping, reporting, and notifying.**

Sections 33-24-05-1010 through 33-24-05-1019 applies to owners or operators of facilities that store or nonthermally treat hazardous waste under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950. In addition, the owner or operator must comply with the manifest requirements of chapter 33-24-03 whenever a shipment of hazardous waste is initiated from the facility.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1011. Use of manifest system.**

1. If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or the owner's or operator's agent, must:

a. Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

- b. Note any significant discrepancies in the manifest, as defined in subsection 1 of section 33-24-05-1012, on each copy of the manifest;
  - c. Immediately give the transporter at least one copy of the signed manifest;
  - d. Within thirty days after the delivery, send a copy of the manifest to the generator; and
  - e. Retain at the facility a copy of each manifest for at least three years from the date of delivery.
2. If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator's certification, and signatures), the owner or operator, or the owner's or operator's agent, must:
- a. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received.
  - b. Note any significant discrepancies, as defined in subsection 1 of section 33-24-05-1012, in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the department does not intend that the owner or operator of a facility whose procedures under subsection 2 of section 33-24-05-963 include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Subsection 2 of section 33-24-05-1012, however, requires reporting an unreconciled discrepancy discovered during later analysis.
  - c. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received).
  - d. Within thirty days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty days after delivery, the owner or operator, or the owner's or operator's agent, must send a copy of the shipping paper signed and dated to the generator. Note that subsection 3 of section 33-24-03-07 requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).
  - e. Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.
3. Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of chapter 33-24-03. The department notes that the provisions of section 33-24-03-12 are applicable to the onsite accumulation of hazardous wastes by generators. Therefore, the provisions of section 33-24-03-12 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.
4. Within three working days of the receipt of a shipment subject to sections 33-24-03-50 through 33-24-03-59, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the department, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1012. Manifest discrepancies.**

1. Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:
  - a. For bulk waste, variations greater than ten percent in weight; and
  - b. For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.
2. Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (for example, with telephone conversations). If the discrepancy is not resolved within fifteen days after receiving the waste, the owner or operator must immediately submit to the department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1013. Operating record.**

1. The owner or operator must keep a written operating record at the facility.
2. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
  - a. A description and the quantity of each type of hazardous waste generated, and the methods and dates of its storage or treatment or both at the facility as required by appendix I of chapter 33-24-05;
  - b. The location of each hazardous waste within the facility and the quantity at each location;
  - c. Records and results of waste analyses and waste determinations performed as specified in sections 33-24-05-963, 33-24-05-967, 33-24-05-404, 33-24-05-433, 33-24-05-453, and 33-24-05-256;
  - d. Summary reports and details of all incidents that require the owner or operator to implement the contingency plan as specified in subsection 2 of section 33-24-05-998;
  - e. Records and results of inspections as required by subsection 4 of section 33-24-05-965 (except the owner or operator needs to keep this data for only three years);
  - f. Monitoring, testing or analytical data, and corrective action when required by sections 33-24-05-1020 through 33-24-05-1039 and sections 33-24-05-1101, 33-24-05-1103, 33-24-05-1105, and subsections 3 through 6 of section 33-24-05-404, 33-24-05-405, subsections 4 through 9 of section 33-24-05-433, 33-24-05-434, 33-24-05-458, 33-24-05-459, and 33-24-05-460;
  - g. All closure cost estimates under section 33-24-05-1062;

- h. A certification, at least annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that is generated to the degree determined to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to the permittee that minimizes the present and future threat to human health and the environment;
- i. For an onsite treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the permittee under section 33-24-05-256;
- j. For an onsite storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by the permittee under section 33-24-05-256;
- k. For an offsite treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under section 33-24-05-256; and
- l. For an offsite storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under section 33-24-05-256.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

#### **33-24-05-1014. Availability, retention, and disposition of records.**

- 1. All records, including plans, required under sections 33-24-05-950 through 33-24-05-1149 must be furnished upon request, and made available at all reasonable times for inspection, by a duly designated officer, employee, or representative of the department.
- 2. The retention period for all records required under sections 33-24-05-950 through 33-24-05-1149 is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the department.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-06

#### **33-24-05-1015. Reports.**

The owner or operator must prepare and submit a biennial report and other reports listed in subsection 2.

- 1. Biennial report. The owner or operator must prepare and submit a single copy of a biennial report to the department by March 1 of each even numbered year. The biennial report form and instructions can be obtained from the department's division of waste management. The report must cover facility activities during the previous calendar year and must include:
  - a. The identification number, name, and address of the facility;
  - b. The calendar year covered by the report;
  - c. The method of treatment or storage for each hazardous waste;
  - d. The most recent closure cost estimate under section 33-24-05-1062;

e. A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste;

f. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984; and

g. The certification signed by the owner or operator.

2. Additional reports. In addition to submitting the biennial reports, the owner or operator must also report to the department:

a. Releases, fires, and explosions as specified in subsection 2 of section 33-24-05-998;

b. Facility closures specified in section 33-24-05-1047; and

c. As otherwise required by sections 33-24-05-1080 through 33-24-05-1099, 33-24-05-1100 through 33-24-05-1129, 33-24-05-1130 through 33-24-05-1149, and 33-24-05-400 through 33-24-05-474.

3. For offsite facilities, the identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator.

4. A description and the quantity of each hazardous waste the facility received during the year. For offsite facilities, this information must be listed by identification number of each generator.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1016. Transfer of ownership.**

Before transferring ownership or operation of a facility during its operating life, the permittee must notify the new owner or operator in writing of the requirements of sections 33-24-05-950 through 33-24-05-1149 and sections 33-24-06-45 through 33-24-06-85.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1017. [Reserved].**

### **33-24-05-1018. [Reserved].**

### **33-24-05-1019. [Reserved].**

**33-24-05-1020. Releases from solid waste management units.**

Sections 33-24-05-1020 through 33-24-05-1039 applies to the owner or operator of a facility that treats or stores hazardous waste and is regulated under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950, or unless the facility already has a permit that imposes requirements for corrective action under section 33-24-05-58.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1021. [Reserved].**

**33-24-05-1022. [Reserved].**

**33-24-05-1023. [Reserved].**

**33-24-05-1024. [Reserved].**

**33-24-05-1025. [Reserved].**

**33-24-05-1026. [Reserved].**

**33-24-05-1027. [Reserved].**

**33-24-05-1028. [Reserved].**

**33-24-05-1029. [Reserved].**

**33-24-05-1030. [Reserved].**

**33-24-05-1031. Corrective action for solid waste management units.**

1. The owner or operator must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.
2. The department will specify corrective action in the supplemental portion of the standardized permit in accordance with this section and sections 33-24-05-550 through 33-24-05-559. The department will include in the supplemental portion of the standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.
3. The owner or operator must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where offsite access is denied. Onsite measures to address such releases will be determined on a case-by-case basis. The owner or operator must provide assurances of financial responsibility for such corrective action.
4. The owner or operator does not have to comply with this section if the owner or operator are the owner or operator of a remediation waste site unless the owner's or operator's site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-07

**33-24-05-1032. [Reserved].**

**33-24-05-1033. [Reserved].**

**33-24-05-1034. [Reserved].**

**33-24-05-1035. [Reserved].**

**33-24-05-1036. [Reserved].**

**33-24-05-1037. [Reserved].**

**33-24-05-1038. [Reserved].**

**33-24-05-1039. [Reserved].**

**33-24-05-1040. Applicability of closure requirements.**

Sections 33-24-05-1040 through 33-24-05-1059 applies to the owner or operator of a facility that treats or stores hazardous waste and is regulated under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1041. Closure performance standard.**

The owner or operator shall close the storage and treatment units in a manner that:

1. Minimizes the need for further maintenance;
2. Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
3. Meets the closure requirements of sections 33-24-05-1040 through 33-24-05-1059 and the requirements of sections 33-24-05-1086, 33-24-05-1111, and 33-24-05-1138. If the owner or operator determines that, when applicable, the closure requirements of section 33-24-05-1111 (tanks) or section 33-24-05-1138 (containment buildings) cannot be met, then the owner or operator must close the unit in accordance with the requirements that apply to landfills (section 33-24-05-180). In addition, for the purposes of postclosure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and the owner or operator must apply for a postclosure care permit in accordance with chapter 33-24-06.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1042. Closure plan.**

1. To close the facility, the owner or operator must follow an approved closure plan, and follow notification requirements.
  - a. The closure plan must be submitted with the notice of intent to operate under a standardized permit. Final issuance of the standardized permit constitutes approval of the closure plan, and the plan becomes a condition of the hazardous waste standardized permit.
  - b. The department's approval of the plan must ensure that the approved plan is consistent with sections 33-24-05-1041 through 33-24-05-1045, 33-24-05-1086, 33-24-05-1111, and 33-24-05-1138.

2. Satisfy the requirements for content of a closure plan. The closure plan must identify steps necessary to perform partial or final, or both, closure of the facility. The closure plan must include, at least:

a. A description of how each hazardous waste management unit at the facility subject to sections 33-24-05-1040 through 33-24-05-1059 will be closed in accordance with section 33-24-05-1041.

b. A description of how final closure of the facility will be conducted in accordance with section 33-24-05-1041. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.

c. An estimate of the maximum inventory of hazardous wastes ever onsite during the active life of the facility and a detailed description of the methods to be used during partial or final, or both, closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the types of offsite hazardous waste management units to be used, if applicable.

d. A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard.

e. A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.

f. A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.

g. For facilities that use trust funds to establish financial assurance under section 33-24-05-1063 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

3. The owner or operator may submit a written notification to the department for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in section 33-24-07-51.

a. Events leading to a change in the closure plan, and requiring a modification, may include:

(1) A change in the operating plan or facility design;

(2) A change in the expected year of closure, if applicable; or

(3) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

b. The written notification or request must include a copy of the amended closure plan for review or approval by the department. The department will approve, disapprove, or modify this amended plan in accordance with the procedures in sections 33-24-07-51 and 33-24-06-85.

4. Notification before final closure.

- a. The owner or operator must notify the department in writing at least forty-five days before the date that the owner or operator expects to begin final closure of a treatment or storage tank, container storage area, or containment building.
- b. The date when the owner or operator expects to begin closure must be no later than thirty days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.
- c. If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under North Dakota Century Code section 23-20.3-08, to cease receiving hazardous wastes or to close, then the requirements of this subsection do not apply. However, the owner or operator must close the facility following the deadlines established in section 33-24-05-1045.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1043. Public comment on the closure plan.**

1. The department will provide the owner or operator and the public, when the draft standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by section 33-24-07-48. The department will also, in response to a request or at the department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan, and the permit.
2. The department will give public notice of the hearing thirty days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1044. [Reserved].**

### **33-24-05-1045. Closure - Time allowed for closure.**

1. Within ninety days after the final volume of hazardous waste is sent to a unit, the owner or operator must treat or remove from the unit all hazardous wastes following the approved closure plan.
2. The owner or operator must complete final closure activities in accordance with the approved closure plan within one hundred eighty days after the final volume of hazardous wastes is sent to the unit. The department may approve an extension of one hundred eighty days to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:
  - a. The final closure activities will take longer than one hundred eighty days to complete due to circumstances beyond the owner's or operator's control, excluding ground water contamination;
  - b. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous

waste management unit or facility, including compliance with all applicable permit requirements; and

c. The demonstration must be made at least thirty days prior to the expiration of the initial one hundred eighty-day period.

3. Nothing in this section precludes the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1046. Disposal or decontamination of equipment, structures, and soils.**

The owner or operator must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste following all applicable requirements of chapter 33-24-03.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1047. Certification of closure.**

Within sixty days of the completion of final closure of each unit under sections 33-24-06-45 through 33-24-06-85, the owner or operator must submit to the department, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both the owner or operator and a qualified professional engineer must sign the certification. Documentation supporting the qualified professional engineer's certification must be furnished to the department upon request until the department releases the owner or operator from the financial assurance requirements for closure under subsection 10 of section 33-24-05-1063.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1048. [Reserved].**

### **33-24-05-1049. [Reserved].**

### **33-24-05-1050. [Reserved].**

### **33-24-05-1051. [Reserved].**

33-24-05-1052. [Reserved].

33-24-05-1053. [Reserved].

33-24-05-1054. [Reserved].

33-24-05-1055. [Reserved].

33-24-05-1056. [Reserved].

33-24-05-1057. [Reserved].

33-24-05-1058. [Reserved].

33-24-05-1059. [Reserved].

**33-24-05-1060. Applicability of financial requirements.**

1. The requirements of sections 33-24-05-1060 through 33-24-05-1079 apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in subsection 2 of section 33-24-05-950 or subsection 4.
2. The owner or operator must:
  - a. Prepare a closure cost estimate as required in section 33-24-05-1062;
  - b. Demonstrate financial assurance for closure as required in section 33-24-05-1063; and
  - c. Demonstrate financial assurance for liability as required in section 33-24-05-1067.
3. The owner or operator must notify the department if the owner or operator is named as a debtor in a bankruptcy proceeding under title 11 (bankruptcy), United States Code (see also section 33-24-05-1068).
4. States and the federal government are exempt from the requirements of sections 33-24-05-1060 through 33-24-05-1079.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1061. Definitions of terms.**

1. "Closure plan" means the plan for closure prepared in accordance with the requirements of section 33-24-05-1042.
2. "Current closure cost estimate" means the most recent of the estimates prepared in accordance with subsections 1, 2, and 3 of section 33-24-05-1062.
3. [Reserved]
4. "Parent corporation" means a corporation which directly owns at least fifty percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.
5. [Reserved]
6. The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:
  - a. "Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.
  - b. "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR section 144.62(a), (b), and (c).
  - c. "Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.
  - d. "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.
  - e. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.
7. In the liability insurance requirements, the terms "bodily injury and property damage" shall have the meanings given these terms by applicable North Dakota state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.
  - a. "Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

- b. "Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.
  - c. "Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.
8. "Substantial business relationship" means the extent of a business relationship necessary under applicable North Dakota state law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the department.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1062. Cost estimates for closure.**

1. The owner or operator must have at the facility a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in sections 33-24-05-1041 through 33-24-05-1045 and applicable closure requirements in sections 33-24-05-1086, 33-24-05-1111, and 33-24-05-1138.
  - a. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see subsection 2 of section 33-24-05-1042).
  - b. The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see definition of parent corporation in subsection 4 of section 33-24-05-1061). The owner or operator may use costs for onsite disposal if the owner or operator can demonstrate that onsite disposal capacity will exist at all times over the life of the facility.
  - c. The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or nonhazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.
  - d. The owner or operator may not incorporate a zero cost for hazardous wastes, or nonhazardous wastes that might have economic value.
2. During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instruments used to comply with section 33-24-05-1063. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within thirty days after the close of the firm's fiscal year and before submission of updated information to the department as specified in paragraph 3 of subdivision b of subsection 6 of section 33-24-05-1063. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent implicit price deflator for gross domestic product published by the United States department of commerce in its survey of current business, as specified in subdivisions a and b. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

- a. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
  - b. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.
3. During the active life of the facility, the owner or operator must revise the closure cost estimate no later than thirty days after the department has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in subsection 2.
  4. The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with subsections 1 and 3 and, when this estimate has been adjusted in accordance with subsection 2, the latest adjusted closure cost estimate.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1063. Financial assurance for closure.**

The owner or operator must establish financial assurance for closure of each storage or treatment unit that the owner or operator owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in subsections 1 through 7. The owner or operator can also use a combination of mechanisms for a single facility if the owner or operator meets the requirements in subsection 8, or may use a single mechanism for multiple facilities as in subsection 9. The department will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under subsection 10.

1. Closure Trust Fund. Owners and operators can use the "closure trust fund" that is specified in subdivisions a and b of subsection 1 of section 33-24-05-77, and subdivisions f, g, h, i, k, and l of subsection 1 of section 33-24-05-77. For purposes of this subsection, the following provisions also apply:
  - a. Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over three years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period".
  - b. For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the department before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in subsection 8 for multiple mechanisms. Subsequent payments must be made no later than thirty days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is:  
  
Next payment = (current closure estimate - current value of the trust fund) divided by years remaining in the pay-in period.
  - c. The owner or operator of a facility existing on the effective date of this subsection can establish a trust fund to meet this subsection's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval

of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within sixty days.

d. The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, the owner or operator must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision b or c.

e. The owner or operator must submit a trust agreement with the wording specified in subdivision a of subsection 1 of section 33-24-05-81.

2. Surety bond guaranteeing payment into a closure trust fund. Owners and operators can use the "surety bond guaranteeing payment into a closure trust fund", as specified in subsection 2 of section 33-24-05-77, including the use of the surety bond instrument specified at subsection 2 of section 33-24-05-81, and the standby trust specified at subdivision c of subsection 2 of section 33-24-05-77.

3. Surety bond guaranteeing performance of closure. Owners and operators can use the "surety bond guaranteeing performance of closure", as specified in subsection 3 of section 33-24-05-77, the submission and use of the surety bond instrument specified at subsection 3 of section 33-24-05-81, and the standby trust specified at subdivision c of subsection 3 of section 33-24-05-77.

4. Closure letter of credit. Owners and operators can use the "closure letter of credit" specified in subsection 4 of section 33-24-05-77, the submission and use of the irrevocable letter of credit instrument specified in subsection 4 of section 33-24-05-81, and the standby trust specified in subdivision c of subsection 4 of section 33-24-05-77.

5. Closure insurance. Owners and operators can use "closure insurance", as specified in subsection 5 of section 33-24-05-77, utilizing the certificate of insurance for closure specified at subsection 5 of section 33-24-05-81.

6. Corporate financial test. An owner or operator that satisfies the requirements of this subsection may demonstrate financial assurance up to the amount specified in this subsection:

a. Financial component.

(1) The owner or operator must satisfy one of the following three conditions:

(a) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(b) A ratio of less than one and five-tenths comparing total liabilities to net worth;  
or

(c) A ratio of greater than one-tenth comparing the sum of net income plus depreciation, depletion and amortization, minus ten million dollars, to total liabilities.

(2) The tangible net worth of the owner or operator must be greater than:

(a) The sum of the current environmental obligations (see bracket 1 of subparagraph a of paragraph 1 of subdivision b), including guarantees, covered by a financial test plus ten million dollars, except as provided in subparagraph b.

(b) Ten million dollars in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see bracket 1 of subparagraph a of paragraph 1 of subdivision b) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the department.

(3) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in bracket 1 of subparagraph a of paragraph 1 of subdivision b.

b. Recordkeeping and reporting requirements.

(1) The owner or operator must submit the following items to the department:

(a) A letter signed by the owner's or operator's chief financial officer that:

[1] Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which the environmental protection agency directly operates and obligations where the environmental protection agency has delegated authority to the state or approved the state's program. These obligations include, but are not limited to:

[a] Liability, closure, postclosure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under sections 33-24-05-58, 33-24-05-76, 33-24-05-79, and subsection 5 of section 33-24-06-16;

[b] Cost estimates required for municipal solid waste management facilities under sections 33-20-14-02, 33-20-14-03, 33-20-14-04, and 33-20-14-05;

[c] Current plugging cost estimates required for underground injection control facilities under subdivision d of subsection 1 of section 33-25-01-06;

[d] Cost estimates required for petroleum underground storage tank facilities under section 33-24-08-83;

[e] Cost estimates required for polychlorinated biphenyl storage facilities under 40 CFR section 761.65;

[f] Any financial assurance required under, or as part of an action undertaken under, the comprehensive environmental response, compensation, and liability act; and

[g] Any other environmental obligations that are assured through a financial test.

[2] Provides evidence demonstrating that the firm meets the conditions of either subparagraph a or b or c of paragraph 1 of subdivision a and paragraphs 2 and 3 of subdivision a.

(b) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal

year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the department deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the department does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within thirty days after the notification of disallowance.

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subparagraph b or c of paragraph 1 of subdivision a that are different from data in the audited financial statements referred to in subparagraph b or any other audited financial statement or data filed with the securities and exchange commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(d) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in subparagraph b of paragraph 2 of subdivision a, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least ten million dollars plus the amount of any guarantees provided.

(2) The owner or operator of a new facility must submit the items specified in paragraph 1 to the department at least sixty days before placing waste in the facility.

(3) After the initial submission of items specified in paragraph 1, the owner or operator must send updated information to the department within ninety days following the close of the owner or operator's fiscal year. The department may provide up to an additional forty-five days for an owner or operator who can demonstrate that ninety days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph 1.

(4) The owner or operator is no longer required to submit the items specified in this subdivision or comply with the requirements of this subsection when:

(a) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(b) The department releases the owner or operator from the requirements of this subsection in accordance with subsection 10.

- (5) An owner or operator who no longer meets the requirements of subdivision a cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of subdivision a, must:
- (a) Send notice to the department of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within ninety days following the close of the owner's or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this subsection.
- (b) Provide alternative financial assurance within one hundred twenty days after the end of such fiscal year.
- (6) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision a, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subdivision b. If the department finds that the owner or operator no longer meets the requirements of subdivision a, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

## 7. Corporate Guarantee.

- a. An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subsection 6 and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in subsection 8 of section 33-24-05-81. The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.
- b. For a new facility, the guarantee must be effective and the guarantor must submit the items in subdivision a and the items specified in paragraph 1 of subdivision b of subsection 6 to the department at least sixty days before the owner or operator places waste in the facility.
- c. The terms of the guarantee must provide that:
- (1) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:
- (a) Perform, or pay a third party to perform closure (performance guarantee); or
- (b) Establish a fully funded trust fund as specified in subsection 1 in the name of the owner or operator (payment guarantee).
- (2) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this subpart unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the

one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within ninety days following receipt of the cancellation notice by the owner or operator and the department, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the department. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from the department within the ninety-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the department within one hundred twenty days of the cancellation notice.

d. If a corporate guarantor no longer meets the requirements of subdivision a of subsection 6, the owner or operator must, within ninety days, obtain alternative assurance, and submit the assurance to the department for approval. If the owner or operator fails to provide alternate financial assurance within the ninety-day period, the guarantor must provide that alternate assurance within the next thirty days, and submit it to the department for approval.

e. The guarantor is no longer required to meet the requirements of this subsection when:

(1) The owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The owner or operator is released from the requirements of this subsection in accordance with subsection 10.

8. Use of Multiple Financial Mechanisms. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in subsections 1, 2, 4, 5, 6, and 7, respectively, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for closure of the facility.

9. Use of a financial mechanism for multiple facilities. An owner or operator may use a financial mechanism for multiple facilities, as specified in subsection 8 of section 33-24-05-77.

10. Release of the owner or operator from the requirements of this section. Within sixty days after receiving certifications from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the department has reason to believe that final closure has not been completed in accordance with the approved closure plan. The department shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-05-1064. [Reserved].

33-24-05-1065. [Reserved].

33-24-05-1066. [Reserved].

33-24-05-1067. Liability requirements.

1. Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subdivisions a through g:

a. Trust fund for liability coverage. An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in subsection 10 of section 33-24-05-79.

b. Surety bond for liability coverage. An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in subsection 9 of section 33-24-05-79.

c. Letter of credit for liability coverage. An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in subsection 8 of section 33-24-05-79.

d. Insurance for liability coverage. An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in subdivision a of subsection 1 of section 33-24-05-79.

e. Financial test for liability coverage. An owner or operator may meet the requirements of this section by passing a financial test as specified in subsection 6.

f. Guarantee for liability coverage. An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in subsection 7.

g. Combination of mechanisms. An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by subdivision f of subsection 1 of section 33-24-05-79.

h. An owner or operator shall notify the department in writing within thirty days whenever:

(1) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in subdivisions a through g:

(2) A certification of valid claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under subdivisions a through g; or

(3) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under subdivisions a through g.

2. [Reserved]

3. [Reserved]

4. [Reserved]

5. Period of coverage. Within sixty days after receiving certifications from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan, the department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage from that facility, unless the department has reason to believe that closure has not been in accordance with the approved closure plan.

6. Financial test for liability coverage. An owner or operator that satisfies the requirements of this subsection may demonstrate financial assurance for liability up to the amount specified in this subsection:

a. Financial component.

(1) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus ten million dollars.

(2) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(3) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under subsection 6 of section 33-24-05-1063, through a financial test must meet the requirements of subsection 6 of section 33-24-05-1063.

b. Recordkeeping and reporting requirements.

(1) The owner or operator must submit the following items to the department:

(a) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs 1 and 2 of subdivision a. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit under sections 33-24-05-950 through 33-24-05-1149, the letter should use the wording in subsection 2 of section 33-24-05-1071. If the firm is providing only liability coverage through a financial test for facilities regulated under sections 33-24-05-950 through 33-24-05-1149 and also sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through 33-24-05-559, and 33-24-05-800 through 33-24-05-819 or subsection 5 of section 33-24-06-16, the firm should use the letter in subsection 7 of section 33-24-05-81. If the firm

is providing liability coverage through a financial test for a facility or facilities with a permit under sections 33-24-05-950 through 33-24-05-1149, and the firm assures closure costs or any other environmental obligations through a financial test, the firm must use the letter in subsection 1 of section 33-24-05-1071 for the facilities issued a permit under sections 33-24-05-950 through 33-24-05-1149.

(b) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the department deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the department does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within thirty days after the notification of disallowance.

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraphs 1 and 2 of subdivision a that are different from data in the audited financial statements referred to in subparagraph b or any other audited financial statement or data filed with the securities and exchange commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(2) The owner or operator of a new facility must submit the items specified in paragraph 1 to the department at least sixty days before placing waste in the facility.

(3) After the initial submission of items specified in paragraph 1, the owner or operator must send updated information to the department within ninety days following the close of the owner or operator's fiscal year. The department may provide up to an additional forty-five days for an owner or operator who can demonstrate that ninety days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph 1.

(4) The owner or operator is no longer required to submit the items specified in this subdivision or comply with the requirements of this subsection when:

(a) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(b) The department releases the owner or operator from the requirements of this subsection in accordance with subsection 5.

(5) An owner or operator who no longer meets the requirements of subdivision a cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of subdivision a, must:

(a) Send notice to the department of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within ninety days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this subsection.

(b) Provide alternative financial assurance within one hundred twenty days after the end of such fiscal year.

(6) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision a, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subdivision b. If the department finds that the owner or operator no longer meets the requirements of subdivision a, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

#### 7. Guarantee for liability coverage.

a. Subject to subdivision b, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee". The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subdivisions a and b of subsection 6. The wording of the guarantee must be identical to the wording specified in subdivision b of subsection 8 of section 33-24-05-81. A certified copy of the guarantee must accompany the items sent to the department as specified in subdivision b of subsection 6. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(1) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(2) [Reserved]

b. The following applies:

(1) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the attorneys general or insurance commissioners of the state in which the guarantor is incorporated, and each state in which a facility covered by the guarantee is located, have submitted a written statement to the department that a guarantee executed as described in this

section and subdivision b of subsection 8 of section 33-24-05-81 is a legally valid and enforceable obligation in that state.

(2) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(a) The non-United States corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principal place of business; and

(b) The attorney general or insurance commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the department that a guarantee executed as described in this section and subdivision b of subsection 8 of section 33-24-05-81 is a legally valid and enforceable obligation in that state.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1068. Incapacity of owners or operators, guarantors, or financial institutions.**

1. An owner or operator must notify the department by certified mail of the commencement of a voluntary or involuntary proceeding under title 11 (bankruptcy), United States code, naming the owner or operator as debtor, within ten days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in subsection 7 of section 33-24-05-1063 and subsection 7 of section 33-24-05-1067 must make such a notification if the owner or operator is named as debtor, as required under the terms of the corporate guarantee (subsection 8 of section 33-24-05-81).

2. An owner or operator who fulfills the requirements of section 33-24-05-1063 or section 33-24-05-1067 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within sixty days after such an event.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1069. [Reserved].**

### **33-24-05-1070. [Reserved].**

### **33-24-05-1071. Wording of the instruments.**

1. The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that facility must complete a letter as specified in subsection 6 of section 33-24-05-1063. The letter must be worded as follows.

except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in sections 33-24-05-1060 through 33-24-05-1079. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus ten million dollars, to total liabilities"].

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: "This firm has a rating of its senior unsecured debt of" [insert the bond rating] "from" [insert "Standard and Poor's" or "Moody's"].

[Complete Line 1. Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled Obligations Covered by a Financial Test or Corporate Guarantee.]

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

<u>*1. Total Liabilities</u>	<u>\$</u>
<u>*2. Net Worth</u>	<u>\$</u>
<u>*3. Net Income</u>	<u>\$</u>
<u>*4. Depreciation</u>	<u>\$</u>
<u>*5. Depletion (if applicable)</u>	<u>\$</u>
<u>*6. Amortization</u>	<u>\$</u>
<u>*7. Sum of Lines 3, 4, 5, and 6</u>	<u>\$</u>

[If the above figures are taken directly from the most recent audited financial statements for this firm insert "The above figures are taken directly from the most recent audited financial statements for this firm". If they are not, insert "The following items are not taken directly from the firms most recent audited financial statements" [insert the numbers of the items and attach an explanation of how they were derived].

[Complete the following calculations]

<u>8. Line 1. ÷ Line 2. =</u>	<u>\$</u>		
<u>9. Line 7. ÷ Line 1. =</u>	<u>\$</u>		
<u>Is Line 8. less than 1.5?</u>		<u>Yes</u>	<u>No</u>
<u>Is Line 9. greater than 0.10?</u>		<u>Yes</u>	<u>No</u>

[If the owner or operator did not answer Yes to either of these two questions, the owner or operator cannot use the financial test and need not complete this letter. Instead, the owner or operator must notify the department that the owner or operator intends to establish alternate financial assurance as specified in section 33-24-05-1063. The owner or operator must send this notice by certified mail within ninety days following the close of the owner's or operator's

fiscal year for which the yearend financial data show that the owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within one hundred twenty days after the end of such fiscal year].

Obligations Covered by a Financial Test or Corporate Guarantee

[On the following lines list all obligations that are covered by a financial test or a corporate guarantee extended by the owner's or operator's firm. The owner or operator may add additional lines and leave blank entries that do not apply to the owner's or operator's situation.]

<u>Hazardous Waste Facility Name and ID</u>	<u>State</u>	<u>Closure</u>	<u>Post-Closure</u>	<u>Corrective Action</u>
		\$	\$	\$
		\$	\$	\$

<u>Hazardous Waste Third Party Liability</u>				\$
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<u>Municipal Waste Facilities</u>	<u>State</u>	<u>Closure</u>	<u>Post-Closure</u>	<u>Corrective Action</u>
		\$	\$	\$
		\$	\$	\$

<u>Underground Injection Control</u>	<u>State</u>	<u>Plugging Action</u>
<u>Petroleum Underground Storage Tanks</u>		\$
		\$

<u>PCB Storage Facility Name and ID</u>	<u>State</u>	<u>Closure</u>
		\$

Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act:

<u>Site Name</u>	<u>State</u>	<u>Amount</u>
		\$
<u>Any other environmental obligations that are assured through a financial test:</u>		
<u>Name</u>		<u>Amount</u>
		\$

*10. <u>Total of all amounts</u>	\$		
*11. <u>Line 10. + \$10,000,000 =</u>	\$		
*12. <u>Total Assets</u>	\$		
*13. <u>Intangible Assets</u>	\$		
*14. <u>Tangible Assets (Line 12. - Line 13.)</u>	\$		
*15. <u>Tangible Net Worth (Line 14. - Line 1.)</u>	\$		
*16. <u>Assets in the United States</u>	\$		
<u>Is Line 15. greater than Line 11?</u>		<u>Yes</u>	<u>No</u>
<u>Is Line 16. no less than Line 10?</u>		<u>Yes</u>	<u>No</u>

[The owner or operator must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in section 33-24-05-1071 as such rules were constituted on the date shown immediately below.



[Date]

[After completion, a signed copy of the form must be sent to the department.]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-05-1072. [Reserved].

33-24-05-1073. [Reserved].

33-24-05-1074. [Reserved].

33-24-05-1075. [Reserved].

33-24-05-1076. [Reserved].

33-24-05-1077. [Reserved].

33-24-05-1078. [Reserved].

33-24-05-1079. [Reserved].

**33-24-05-1080. Applicability of requirements for use and management of containers.**

Sections 33-24-05-1080 through 33-24-05-1099 applies to owners or operators of facilities that treat or store hazardous waste in containers under sections 33-24-06-45 through 33-24-06-85, except as provided in subsection 2 of section 33-24-05-950.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1081. Container standards.**

Standards apply to the condition of the containers, to the compatibility of waste with the containers, and to the management of the containers.

1. Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, the owner or operator must either:
  - a. Transfer the hazardous waste from this container to a container that is in good condition;  
or
  - b. Manage the waste in some other way that complies with the requirements of sections 33-24-05-950 through 33-24-05-1149.
2. Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, the owner or operator must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.
3. Management of containers.
  - a. The owner or operator must always keep a container holding hazardous waste closed during storage, except when it is necessary to add or remove waste.
  - b. The owner or operator must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1082. Inspections.**

At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1083. Containment.**

1. Container storage areas must have a containment system that is designed and operated in accordance with subsection 2, except as provided otherwise in subsection 3.
2. The containment system must be designed and operated as follows:
  - a. A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.
  - b. The base must be sloped or the containment system, must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

- c. The containment system must have sufficient capacity to contain ten percent of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.
  - d. Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity, in addition to that required in subdivision c, to contain the liquid.
  - e. Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.
3. Storage areas that store containers holding only wastes with no free liquids need not have a containment system as defined in subsection 2, except as provided by subsection 4, if:
    - a. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or
    - b. The containers are elevated or are otherwise protected from contact with accumulated liquid.
  4. Storage areas that store containers holding F020, F021, F022, F023, F026, and F027 wastes that do not contain free liquids must have a containment system as defined by subsection 2.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

#### **33-24-05-1084. Special requirements for ignitable or reactive wastes.**

Containers holding ignitable or reactive waste must be located at least fifteen meters (fifty feet) from the facility's property line. The owner or operator must also follow the general requirements for ignitable or reactive wastes that are specified in subsection 1 of section 33-24-05-967.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

#### **33-24-05-1085. Special requirements for incompatible wastes.**

1. Incompatible wastes, or incompatible wastes and materials (see appendix III to chapter 33-24-05 for examples), must not be placed in the same container, unless subsection 2 of section 33-24-05-967 is complied with.
2. Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material.
3. A storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1086. Closure.**

At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1087. Air emission standards.**

The owner or operator shall manage all hazardous waste placed in a container in accordance with the requirements of sections 33-24-05-400 through 33-24-05-474. Under a standardized permit, the following control devices are permissible: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1088. [Reserved].**

**33-24-05-1089. [Reserved].**

**33-24-05-1090. [Reserved].**

**33-24-05-1091. [Reserved].**

**33-24-05-1092. [Reserved].**

**33-24-05-1093. [Reserved].**

**33-24-05-1094. [Reserved].**

**33-24-05-1095. [Reserved].**

33-24-05-1096. [Reserved].

33-24-05-1097. [Reserved].

33-24-05-1098. [Reserved].

33-24-05-1099. [Reserved].

**33-24-05-1100. Applicability of tank requirements.**

The requirements of sections 33-24-05-1100 through 33-24-05-1129 applies to owners or operators of facilities that treat or store hazardous waste in above ground or on ground tanks under sections 33-24-06-45 through 33-24-06-85, standardized permit, except as provided in subsection 2 of section 33-24-05-950.

1. Tank systems which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in section 33-24-05-1105. To demonstrate the absence or presence of free liquids in the stored or treated waste, the following test must be used: method 9095B (paint filter liquids test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05.
2. Tank systems, including sumps, as defined in section 33-24-01-04, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements of subsection 1 of section 33-24-05-1105.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1101. Design and construction standards for new tank systems or components.**

Owners or operators must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the wastes to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment, reviewed and certified by a qualified professional engineer, in accordance with subsection 4 of section 33-24-06-03, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

1. Design standards for the construction of tanks or the ancillary equipment, or both.
2. Hazardous characteristics of the wastes to be handled.

3. For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

a. Factors affecting the potential for corrosion, such as:

(1) Soil moisture content.

(2) Soil pH.

(3) Soil sulfides level.

(4) Soil resistivity.

(5) Structure to soil potential.

(6) Existence of stray electric current.

(7) Existing corrosion protection measures (for example, coating, cathodic protection).

b. The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(1) Corrosion resistant materials of construction such as special alloys, fiberglass reinforced plastic;

(2) Corrosion resistant coating (such as epoxy, fiberglass) with cathodic protection (for example, impressed current or sacrificial anodes); and

(3) Electrical isolation devices such as insulating joints, flanges.

4. Design considerations to ensure that:

a. Tank foundations will maintain the load of a full tank.

b. Tank systems will withstand the effects of frost heave.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1102. Handling and inspection procedures during installation of a new tank system.**

1. The owner or operator shall ensure that proper handling procedures are followed to prevent damage to a new tank system during installation. Before placing a new tank system or component in use an independent, qualified installation inspector or a qualified professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

a. Weld breaks.

b. Punctures.

c. Scrapes of protective coatings.

d. Cracks.

e. Corrosion.

f. Other structural damage or inadequate construction or installation.

2. The owner or operator must remedy all discrepancies before the tank system is placed in use.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1103. Testing.**

All new tanks and ancillary equipment must be tested for tightness before being placed into use. If a tank system is found not to be tight, all repairs necessary to remedy the leaks in the system must be performed prior to covering, enclosing, or placing the tank system into use.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1104. Installation requirements.**

1. The owner or operator must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

2. The owner or operator must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under subsection 3 of section 33-24-05-1101, to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

3. The owner or operator must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in sections 33-24-05-1102, 33-24-05-1103, and subsections 1 and 2. The written statement must attest that the tank system was properly designed and installed and that the owner or operator made repairs under sections 33-24-05-1102 and 33-24-05-1103. These written statements must also include the certification statement as required in subsection 4 of section 33-24-06-03.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1105. Secondary containment requirements.**

To prevent the release of hazardous waste or hazardous constituents to the environment, the owner or operator must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

1. Secondary containment systems must be:

a. Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

b. Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

2. To meet the requirements of subsection 1, secondary containment systems must be, at a minimum:

- a. Constructed of or lined with materials that are compatible with the wastes to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).
- b. Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.
- c. Provided with a leak detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within twenty-four hours.
- d. Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within twenty-four hours, or as promptly as possible, to prevent harm to human health and the environment.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1106. Secondary containment devices.**

#### 1. Secondary containment for tanks must include one or more of the following:

- a. A liner (external to the tank).
- b. A double-walled tank.
- c. An equivalent device (documentation of equivalency must be maintained at the facility).

#### 2. External liner systems must be:

- a. Designed or operated to contain one hundred percent of the capacity of the largest tank within its boundary.
- b. Designed or operated to prevent run on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run on or infiltration. The additional capacity must be sufficient to contain precipitation from a twenty-five year, twenty-four hour rainfall event.
- c. Free of cracks or gaps.
- d. Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tanks (capable of preventing lateral as well as vertical migration of the waste).

#### 3. Double-walled tanks must be:

- a. Designed as an integral structure (an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.
- b. Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

- c. Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four hours.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1107. Requirements for ancillary equipment.**

An owner or operator must provide ancillary equipment with secondary containment (for example, trench, jacketing, doublewalled piping) that meets the requirements of subsections 1 and 2 of section 33-24-05-1105, except for:

1. Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;
2. Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;
3. Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and
4. Pressurized above ground piping systems with automatic shutoff devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shutoff devices) that are visually inspected for leaks on a daily basis.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1108. General operating requirements.**

1. Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.
2. The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:
  - a. Spill prevention controls (for example, check valves, dry disconnect couplings).
  - b. Overfill prevention controls (for example, level sensing devices, high-level alarms, automatic feed cutoff, or bypass to a standby tank).
  - c. Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.
3. The owner or operator must comply with the requirements of section 33-24-05-1110 if a leak or spill occurs in the tank system.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1109. Inspections.**

1. The owner or operator shall develop and follow a schedule and procedure for inspecting overfill controls.

2. The owner or operator shall inspect at least once each operating day:
  - a. Aboveground portions of the tank system to detect corrosion or releases of waste.
  - b. Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.
  - c. The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).
3. The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:
  - a. Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.
  - b. Inspect or test, or both, all sources of impressed current, as appropriate, at least every other month.
4. The owner or operator shall document, in the operating record of the facility, an inspection of those items in subsections 1 through 3.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1110. Response to leaks or spills.**

A tank system or secondary containment system from which there has been a leak or spill, or if either system is unfit for use, the owner or operator must remove the system from service immediately, and must satisfy the following requirements:

1. Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.
2. Remove the waste from the tank system or secondary containment system.
  - a. If the release was from the tank system, the owner or operator must, within twenty-four hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.
  - b. If the material released was to a secondary containment system, all released materials must be removed within twenty-four hours or as quickly as possible to prevent harm to human health and the environment.
3. Immediately conduct a visual inspection of the release and, based upon that inspection:
  - a. Prevent further migration of the leak or spill to soils or surface water.
  - b. Remove, and properly dispose of, any visible contamination of the soil or surface water.
4. Report any release to the environment, except as provided in subdivision a, to the department within twenty-four hours of its detection. The release should also be reported pursuant to 40 CFR part 302.

a. A leak or spill of hazardous waste is exempted from this subsection if it is:

(1) Less than or equal to a quantity of one pound; and

(2) Immediately contained and cleaned up.

b. Within thirty days of detection of a release to the environment, a report containing the following information must be submitted to the department:

(1) Likely route of migration of the release.

(2) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(3) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty days, these data must be submitted to the department as soon as they become available.

(4) Proximity to downgradient drinking water, surface water, and populated areas.

(5) Description of response actions taken or planned.

5. Either close the system or make necessary repairs.

a. Unless the owner or operator satisfies the requirements of subdivisions b and c, the tank system must be closed according to section 33-24-05-1111.

b. If the cause of the release was a spill that has not damaged the integrity of the system, the owner or operator may return the system to service as soon as the released waste is removed and any necessary repairs are made.

c. If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired before returning the tank system to service.

6. If the owner or operator has made extensive repairs to a tank system in accordance with subsection 5 (for example, installation of an internal liner, repair of a ruptured primary containment or secondary containment vessel), the tank system may not be returned to service unless the owner or operator has obtained a certification by a qualified professional engineer in accordance with subsection 4 of section 33-24-06-03.

a. The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

b. This certification must be submitted to the department within seven days after returning the tank system to use.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1111. Closure.**

At closure of a tank system, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless subsection 4 of section 33-24-02-03 applies. The closure plan, closure activities, cost estimates for closure, and

financial responsibility for tank systems must meet all of the requirements specified in sections 33-24-05-1040 through 33-24-05-1079.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1112. Special requirements for ignitable or reactive wastes.**

1. Ignitable or reactive wastes may not be placed in tank systems, unless:
  - a. The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:
    - (1) Subsection 2 of section 33-24-05-967 is complied with; and
    - (2) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under section 33-24-02-11 or 33-24-02-13; or
  - b. The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or
  - c. The tank system is used solely for emergencies.
2. The owner or operator of the facility where ignitable or reactive waste is stored or treated in a tank, must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in tables 2-1 through 2-6 of the national fire protection association's "flammable and combustible liquids code," (1977 or 1981), incorporated by reference, see section 33-24-01-05.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1113. Special requirements for incompatible wastes.**

1. Incompatible wastes, or incompatible wastes and materials, may not be placed in the same tank system, unless subsection 2 of section 33-24-05-967 is complied with.
2. Hazardous waste may not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless subsection 2 of section 33-24-05-967 is complied with.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1114. Air emission standards.**

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the requirements of sections 33-24-05-400 through 33-24-05-474. Under a standardized permit, the following control devices are permissible: thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

| 33-24-05-1115. [Reserved].

| 33-24-05-1116. [Reserved].

| 33-24-05-1117. [Reserved].

| 33-24-05-1118. [Reserved].

| 33-24-05-1119. [Reserved].

| 33-24-05-1120. [Reserved].

| 33-24-05-1121. [Reserved].

| 33-24-05-1122. [Reserved].

| 33-24-05-1123. [Reserved].

| 33-24-05-1124. [Reserved].

| 33-24-05-1125. [Reserved].

| 33-24-05-1126. [Reserved].

33-24-05-1127. [Reserved].

33-24-05-1128. [Reserved].

33-24-05-1129. [Reserved].

**33-24-05-1130. Applicability of containment building requirements.**

The requirements of sections 33-24-05-1130 through 33-24-05-1149 applies to owners or operators of facilities that treat or store hazardous waste in containment buildings under sections 33-24-06-45 through 33-24-06-85, standardized permit, except as provided in subsection 2 of section 33-24-05-950. Storage or treatment, or both, in a containment building is not land disposal as defined in section 33-24-05-251 if the unit meets the requirements of sections 33-24-05-1131, 33-24-05-1132, and 33-24-05-1133.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1131. Design and operating standards for containment buildings.**

All containment buildings must comply with the design and operating standards in this section. The department will consider standards established by professional organizations generally recognized by the industry such as the American concrete institute and the American society of testing materials in judging the structural integrity requirements of this section.

1. The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (for example, precipitation, wind, run on), and to assure containment of managed wastes.
2. The floor and containment walls of the unit, including the secondary containment system, if required under section 33-24-05-1133, must be designed and constructed of manmade materials of sufficient strength and thickness to:
  - a. Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.
  - b. Prevent failure due to:
    - (1) Pressure gradients, settlement, compression, or uplift.
    - (2) Physical contact with the hazardous wastes to which they are exposed.
    - (3) Climatic conditions.
    - (4) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.
    - (5) Collapse or other failure.

3. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.
4. Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.
5. A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.
6. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light weight doors and windows that meet these criteria:
  - a. They provide an effective barrier against fugitive dust emissions under subsection 4 of section 33-24-05-1132.
  - b. The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.
7. The owner or operator must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.
8. The owner or operator must obtain certification by a qualified professional engineer that the containment building design meets the requirements of sections 33-24-05-1132, 33-24-05-1133, and subsections 1 through 6.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1132. Requirements to prevent releases.**

Owners or operators must use controls and practices to ensure containment of the hazardous waste within the unit, and must, at a minimum:

1. Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier.
2. Maintain the level of the stored or treated, or both, hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.
3. Take measures to prevent tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed.
4. Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22 - visual determination of fugitive emissions from material sources and smoke emissions from flares). In addition, all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices. This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1133. Design and operating standards for liquids.**

If the containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, the owner or operator must include:

1. A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).
2. A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.
  - a. The primary barrier must be sloped to drain liquids to the associated collection system; and
  - b. Liquids and waste must be removed to minimize hydraulic head on the containment system at the earliest practicable time.
3. A secondary containment system, including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time.
  - a. The requirements of the leak detection component of the secondary containment system may be met by installing a system that is, at a minimum:
    - (1) Constructed with a bottom slope of one percent or more; and
    - (2) Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  centimeters per second or more and a thickness of twelve inches (thirty and one-half centimeters) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  meters squared per second or more.
  - b. If treatment will be conducted in the building, the area in which the treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.
  - c. The secondary containment system must be constructed using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlying materials and by any equipment used in the containment building.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1134. Waiver from secondary containment requirements.**

Notwithstanding any other provision of sections 33-24-05-1130 through 33-24-05-1149, the department may waive requirements for secondary containment for a permitted containment building where:

1. The owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements; and
2. Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1135. Containment building containing areas both with and without secondary containment.**

Containment buildings that contain areas both with and without secondary containment, the owner or operator must:

1. Design and operate each area in accordance with the requirements in sections 33-24-05-1131 through 33-24-05-1133.
2. Take measures to prevent the release of liquids or wet materials into areas without secondary containment.
3. Maintain in the facility's operating record a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-05-1136. Detection of releases.**

Throughout the active life of the containment building, if a condition that could lead to or has caused a release of hazardous waste is detected, the owner or operator must repair the condition promptly, in accordance with the following procedures:

1. Upon detection of a condition that has lead to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), the owner or operator must:
  - a. Enter a record of the discovery in the facility operating record;
  - b. Immediately remove the portion of the containment building affected by the condition from service;
  - c. Determine what steps must be taken to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and
  - d. Within seven days after the discovery of the condition, notify the department of the condition, and within fourteen working days, provide a written notice to the department with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.
2. The department will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

3. Upon completing all repairs and cleanup, the owner or operator must notify the department in writing and provide a verification, signed by a qualified professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with subdivision d of subsection 1.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1137. Containment buildings used for secondary containment.**

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

1. A containment building can serve as an external liner system for a tank, provided it meets the requirements of subsection 1 of section 33-24-05-1106.
2. The containment building must also meet the requirements of subsection 1 and subdivisions a and b of subsection 2 of section 33-24-05-1105 to be considered an acceptable secondary containment system for a tank.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1138. Closure.**

At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless subsection 4 of section 33-24-02-03 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in sections 33-24-05-1040 through 33-24-05-1059 and 33-24-05-1060 through 33-24-05-1079.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-05-1139. [Reserved].**

### **33-24-05-1140. [Reserved].**

### **33-24-05-1141. [Reserved].**

### **33-24-05-1142. [Reserved].**

| 33-24-05-1143. [Reserved].

| 33-24-05-1144. [Reserved].

| 33-24-05-1145. [Reserved].

| 33-24-05-1146. [Reserved].

| 33-24-05-1147. [Reserved].

| 33-24-05-1148. [Reserved].

| 33-24-05-1149. [Reserved].

| 33-24-05-1150. [Reserved].

| 33-24-05-1151. [Reserved].

| 33-24-05-1152. [Reserved].

| 33-24-05-1153. [Reserved].

| 33-24-05-1154. [Reserved].

| 33-24-05-1155. [Reserved].

| 33-24-05-1156. [Reserved].

| 33-24-05-1157. [Reserved].

| 33-24-05-1158. [Reserved].

| 33-24-05-1159. [Reserved].

| 33-24-05-1160. [Reserved].

| 33-24-05-1161. [Reserved].

| 33-24-05-1162. [Reserved].

| 33-24-05-1163. [Reserved].

| 33-24-05-1164. [Reserved].

| 33-24-05-1165. [Reserved].

| 33-24-05-1166. [Reserved].

33-24-05-1167. [Reserved].

33-24-05-1168. [Reserved].

33-24-05-1169. [Reserved].

## APPENDIX I

### Recordkeeping Instructions

The recordkeeping instructions of section 33-24-05-40 specify that an owner or operator must keep a written operating record at the facility. This appendix provides additional instructions for keeping portions of the operating record. See subsection 2 of section 33-24-05-40 for additional recordkeeping requirements.

The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility in the following manner:

Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

1. A description by its common name and the hazardous waste numbers from chapter 33-24-02 which apply to the waste. The waste description must also include the wastes' physical form, for example, liquid, sludge, soil or contained gas. If the waste is not listed in chapter 33-24-02 the description must also include the process that produced it (for example, solid filter cake from the production of \_\_\_\_\_, hazardous waste number W051).

Each hazardous waste listed in and each hazardous waste characteristic defined in chapter 33-24-02 has a four-digit hazardous waste number assigned to it. This number must be used for recordkeeping and reporting purposes. Where more than one hazardous waste number applies, the waste description must include all applicable numbers.

2. The estimated or manifest-reported weight or volume and density, where applicable, in one of the units of measure specified in table 1.
3. The methods (by handling codes as specified in table 2) and the dates of treatment, storage, or disposal.

#### Appendix I - Table 1.

Unit of Measure	Code <sup>1</sup>
Gallons	G
Gallons per hour	E
Gallons per day	U
Liters	L
Liters per hour	H
Liters per day	V
Short tons per hour	D
Metric tons per hour	W
Short tons per day	N
Metric tons per day	S

Pounds per hour  
 Kilograms per hour  
 Cubic yards  
 Cubic meters  
 Acres  
 Acre-feet  
 Hectares  
 Hectare-meter  
 Btus per hour  
[Pounds](#)  
[Short Tons](#)  
[Kilograms](#)  
[Tons](#)

J  
 R  
 Y  
 C  
 B  
 A  
 Q  
 F  
 I  
[P](#)  
[T](#)  
[K](#)  
[M](#)

FOOTNOTE: <sup>1</sup>Single digit symbols are used here for data processing purposes.

### APPENDIX I (continued)

**Table 2. Handling Codes for Treatment, Storage, and Disposal Methods.** Enter the handling code listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

#### 1.Storage

S01	Container (barrel, drum, etc.)
S02	Tank
S03	Waste pile
S04	Surface impoundment
S05	Drip pad
S06	Containment building (storage)
S99	Other storage (specify)

#### 2.Thermal Treatment

T06	Liquid injection incinerator
T07	Rotary kiln incinerator
T08	Fluidized bed incinerator
T09	Multiple hearth incinerator
T10	Infrared furnace incinerator
T11	Molten salt destructor
T12	Pyrolysis
T13	Wet air oxidation
T14	Calcination
T15	Microwave discharge
T18	Other (specify)

#### 3. Chemical Treatment

T19	Absorption mound
T20	Absorption field
T21	Chemical fixation
T22	Chemical oxidation
T23	Chemical precipitation
T24	Chemical reduction
T25	Chlorination
T26	Chlorinolysis
T27	Cyanide destruction
T28	Degradation
T29	Detoxification
T30	Ion exchange
T31	Neutralization

## APPENDIX I (continued)

**Table 2. Handling Codes for Treatment, Storage, and Disposal Methods.** Enter the handling code listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

- T32 Ozonation
- T33 Photolysis
- T34 Other (specify)

### 4. Physical Treatment by Separation of Components

- T35 Centrifugation
- T36 Clarification
- T37 Coagulation
- T38 Decanting
- T39 Encapsulation
- T40 Filtration
- T41 Flocculation
- T42 Flotation
- T43 Foaming
- T44 Sedimentation
- T45 Thickening
- T46 Ultrafiltration
- T47 Other (specify)

### 5. Physical Treatment by Removal of Specific Components

- T48 Absorption-molecular sieve
- T49 Activated carbon
- T50 Blending
- T51 Catalysis
- T52 Crystallization
- T53 Dialysis
- T54 Distillation
- T55 Electrodialysis
- T56 Electrolysis
- T57 Evaporation
- T58 High gradient magnetic separation
- T59 Leaching
- T60 Liquid ion exchange
- T61 Liquid-liquid extraction
- T62 Reverse osmosis
- T63 Solvent recovery
- T64 Stripping
- T65 Sand filter
- T66 Other (specify)

### 6. Biological Treatment

- T67 Activated sludge
- T68 Aerobic lagoon
- T69 Aerobic tank
- T70 Anaerobic tank
- T71 Composting
- T72 Septic tank
- T73 Spray irrigation
- T74 Thickening filter
- T75 ~~Tricking~~Trickling filter
- T76 Waste stabilization pond
- T77 Other (specify)
- T78 [Reserved]

## APPENDIX I (continued)

**Table 2. Handling Codes for Treatment, Storage, and Disposal Methods.** Enter the handling code listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

T79	[Reserved]
<b>7.Boilers and Industrial Furnaces</b>	
T80	Boiler
T81	Cement kiln
T82	Lime kiln
T83	Aggregate kiln
T84	Phosphate kiln
T85	Coke oven
T86	Blast furnace
T87	Smelting, melting, or refining furnace
T88	Titanium dioxide chloride process oxidation reactor
T89	Methane reforming furnace
T90	Pulping liquor recovery furnace
T91	Combustion device used in the recovery of sulfur values from spent sulfuric acid
T92	Halogen acid furnaces
T93	Other industrial furnaces listed in section 33-24-01-04 (specify)
<b>8.Other treatment</b>	
T94	Containment building (treatment)
<b>9.Disposal</b>	
D79	Underground injection
D80	Landfill
D81	Land treatment
D82	Ocean disposal
D83	Surface impoundment (to be closed as a landfill)
D99	Other disposal (specify)
<b>10.Miscellaneous Units</b>	
X01	Open burning/open detonation
X02	Mechanical processing
X03	Thermal unit
X04	Geologic repository
X99	Other miscellaneous unit (specify)

## APPENDIX II

### Cochran's Approximation to the Behrens-Fisher Student's T-Test

Using all the available background data ( $n_b$  readings) calculate the background mean ( $X_b$ ) and background variance ( $S_B^2$ ). For the single monitoring well under investigation ( $n_m$  reading), calculate the monitoring mean ( $X_m$ ) and monitoring variance ( $S_m^2$ ). For any set of data ( $X_1, X_2, \dots, X_n$ ) the mean is calculated by:

$$\bar{X} = \frac{X_1 + X_2 \dots + X_n}{n}$$

And the variance is calculated by:

$$S^2 = \frac{(X_1 - \bar{X})^2 + (X_2 - \bar{X})^2 \dots + (X_n - \bar{X})^2}{n-1}$$

Where "n" denotes the number of observations in the set of data.

The T-Test uses these data summary measures to calculate a T-statistic (T\*) and a comparison T-statistic (T<sub>c</sub>). The T\* is compared to the T<sub>c</sub> value and a conclusion reached as to whether there has been a statistically significant change in any indicator parameter.

The T-statistic for all parameters, except pH and similar monitoring parameters, is:

$$T^* = \frac{X_m - \bar{X}_B}{\sqrt{\frac{S_m^2}{n_m} + \frac{S_B^2}{n_B}}}$$

If the value of this T-statistic is negative, then there is no significant difference between the monitoring data and the background data. It should be noted that significantly small negative values may be indicative of a failure of the assumption made for test validity or errors have been made in collecting the background data.

The T-statistic (T<sub>c</sub>) against which T\* will be compared necessitates finding T<sub>b</sub> and T<sub>m</sub> from standard (one-tailed) tables where:

T<sub>B</sub> = T-tables (n<sub>b</sub> - 1) degrees of freedom at the 0.05 level of significance.

T<sub>m</sub> = T-tables with (n<sub>m</sub> - 1) degrees of freedom at the 0.05 level of significance.

Finally, the special weightings W<sub>B</sub> and W<sub>m</sub> are defined as:

**APPENDIX II (continued)**  
**Cochran's Approximation to the Behrens-Fisher Student's T-Test**

$$W_B = \frac{S_B^2}{n_B} \text{ and } W_m = \frac{S_m^2}{n_m}$$

And so the comparison T-statistic is:

$$T_c = \frac{W_B T_B + W_m T_m}{W_B + W_m}$$

The T-statistic ( $T^*$ ) is now compared with the comparison T-statistic ( $T_c$ ) using the following decision rule:

If  $T^*$  is equal to or larger than  $T_c$ , then conclude that there most likely has been a significant increase in this specific parameter. If  $T^*$  is less than  $T_c$ , then conclude that most likely there has not been a change in this specific parameter.

The T-statistic for testing pH and similar monitoring parameters is constructed in the same manner as previously described, except the negative sign (if any) is discarded and the caveat concerning the negative value is ignored. The standard (two-tailed) tables are used in the construction  $T_c$  for pH and similar monitoring parameters.

If  $T^*$  is equal to or larger than  $T_c$ , then conclude that there most likely has been a significant increase (if the initial  $T^*$  had been negative, this would imply a significant decrease).

If  $T^*$  is less than  $T_c$  then conclude that there most likely has been no change.

A further discussion of the test may be found in STATISTICAL METHODS (6th Edition, Section 4.14) by G. W. Snedecor and W. G. Cochran, or PRINCIPLES AND PROCEDURES OF STATISTICS (1st Edition, Section 5.8) by R. G. D. Steel and J. H. Torrie.

**APPENDIX II (continued)**  
**Cochran's Approximation to the Behrens-Fisher Student's T-Test**

The T-statistic ( $T^s$ ) is now compared with the comparison T-statistic ( $T_e$ ) using the following decision rule:

If  $T^s$  is equal to or larger than  $T_e$ , then conclude that there most likely has been a significant increase in this specific parameter. If  $T^s$  is less than  $T_e$ , then conclude that most likely there has not been a change in this specific parameter.

The T-statistic for testing pH and similar monitoring parameters is constructed in the same manner as previously described, except the negative sign (if any) is discarded and the caveat concerning the negative value is ignored. The standard (two-tailed) tables are used in the construction  $T_e$  for pH and similar monitoring parameters.

If  $T^s$  is equal to or larger than  $T_e$ , then conclude that there most likely has been a significant increase (if the initial  $T^s$  had been negative, this would imply a significant decrease).

If  $T^s$  is less than  $T_e$  then conclude that there most likely has been no change.

A further discussion of the test may be found in STATISTICAL METHODS (6th Edition, Section 4.14) by G. W. Snedecor and W. G. Cochran, or PRINCIPLES AND PROCEDURES OF STATISTICS (1st Edition, Section 5.8) by R. G. D. Steel and J. H. Torrie.

**APPENDIX II (continued)**

**Cochran's Approximation to the Behrens-Fisher Student's T-Test**

<b>Standard T-Tables</b>		
<b>0.05 Level of Significance</b>		
<u>Degrees of Freedom</u>	<u>T-Values (1-tailed)</u>	<u>T-Values (2-tailed)</u>
1	6.314	12.706
2	2.920	4.303
3	2.353	3.182
4	2.132	2.776
5	2.015	2.571
6	1.943	2.447
7	1.895	2.365
8	1.860	2.306
9	1.833	2.262
10	1.812	2.228
11	1.796	2.201
12	1.782	2.179
13	1.771	2.160
14	1.761	2.145
15	1.753	2.131
16	1.746	2.120
17	1.740	2.110
18	1.734	2.101
19	1.729	2.093
20	1.725	2.086
21	1.721	2.080
22	1.717	2.074
23	1.714	2.069
24	1.711	2.064

25	1.708	2.060
30	1.697	2.042
40	1.684	2.021

Taken from 40 CFR, Part 264, Appendix IV, 47FR34329, July 26, 1982.

**APPENDIX IV**  
**Notification of Hazardous Waste Activity Form (page 1 of 2)**

OMB# 2050-0024; Expires 12/31/2014

<p><b>SEND COMPLETED FORM TO:</b> The Appropriate State or Regional Office.</p>	<p>United States Environmental Protection Agency  <b>RCRA SUBTITLE C SITE IDENTIFICATION FORM</b></p>	
<p><b>1. Reason for Submittal</b></p> <p>MARK ALL BOX(ES) THAT APPLY</p>	<p><b>Reason for Submittal:</b></p> <p><input type="checkbox"/> To provide an Initial Notification (first time submitting site identification information / to obtain an EPA ID number for this location)</p> <p><input type="checkbox"/> To provide a Subsequent Notification (to update site identification information for this location)</p> <p><input type="checkbox"/> As a component of a First RCRA Hazardous Waste Part A Permit Application</p> <p><input type="checkbox"/> As a component of a Revised RCRA Hazardous Waste Part A Permit Application (Amendment # _____)</p> <p><input type="checkbox"/> As a component of the Hazardous Waste Report (If marked, see sub-bullet below)</p> <p><input type="checkbox"/> Site was a TSD facility and/or generator of <math>\geq 1,000</math> kg of hazardous waste, <math>&gt;1</math> kg of acute hazardous waste, or <math>&gt;100</math> kg of acute hazardous waste spill cleanup in one or more months of the report year (or State equivalent LQG regulations)</p>	
<p><b>2. Site EPA ID Number</b></p>	<p>EPA ID Number <input type="text"/> <input type="text"/></p>	
<p><b>3. Site Name</b></p>	<p>Name: _____</p>	
<p><b>4. Site Location Information</b></p>	<p>Street Address: _____</p> <p>City, Town, or Village: _____ County: _____</p> <p>State: _____ Country: _____ Zip Code: _____</p>	
<p><b>5. Site Land Type</b></p>	<p><input type="checkbox"/> Private <input type="checkbox"/> County <input type="checkbox"/> District <input type="checkbox"/> Federal <input type="checkbox"/> Tribal <input type="checkbox"/> Municipal <input type="checkbox"/> State <input type="checkbox"/> Other</p>	
<p><b>6. NAICS Code(s) for the Site (at least 5-digit codes)</b></p>	<p>A. <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> C. <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p> <p>B. <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D. <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>	
<p><b>7. Site Mailing Address</b></p>	<p>Street or P.O. Box: _____</p> <p>City, Town, or Village: _____</p> <p>State: _____ Country: _____ Zip Code: _____</p>	
<p><b>8. Site Contact Person</b></p>	<p>First Name: _____ MI: _____ Last: _____</p> <p>Title: _____</p> <p>Street or P.O. Box: _____</p> <p>City, Town or Village: _____</p> <p>State: _____ Country: _____ Zip Code: _____</p> <p>Email: _____</p> <p>Phone: _____ Ext: _____ Fax: _____</p>	
<p><b>9. Legal Owner and Operator of the Site</b></p>	<p><b>A. Name of Site's Legal Owner:</b> _____ Date Became Owner: _____</p> <p>Owner Type: <input type="checkbox"/> Private <input type="checkbox"/> County <input type="checkbox"/> District <input type="checkbox"/> Federal <input type="checkbox"/> Tribal <input type="checkbox"/> Municipal <input type="checkbox"/> State <input type="checkbox"/> Other</p> <p>Street or P.O. Box: _____</p> <p>City, Town, or Village: _____ Phone: _____</p> <p>State: _____ Country: _____ Zip Code: _____</p> <p><b>B. Name of Site's Operator:</b> _____ Date Became Operator: _____</p> <p>Operator Type: <input type="checkbox"/> Private <input type="checkbox"/> County <input type="checkbox"/> District <input type="checkbox"/> Federal <input type="checkbox"/> Tribal <input type="checkbox"/> Municipal <input type="checkbox"/> State <input type="checkbox"/> Other</p>	

**APPENDIX IV**

**Notification of Hazardous Waste Activity Form (page 2 of 2) Note: Revised Form**

EPA ID Number

OMB#: 2050-0024; Expires 12/31/2014

**10. Type of Regulated Waste Activity (at your site)**  
 Mark "Yes" or "No" for all current activities (as of the date submitting the form); complete any additional boxes as instructed.

**A. Hazardous Waste Activities; Complete all parts 1-10.**

- |   |   |
|---|---|
| <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>1. Generator of Hazardous Waste</b><br/>                 If "Yes", mark only one of the following – a, b, or c.</p> <p><input type="checkbox"/> a. LQG: Generates, in any calendar month, 1,000 kg/mo (2,200 lbs./mo.) or more of hazardous waste; or Generates, in any calendar month, or accumulates at any time, more than 1 kg/mo (2.2 lbs./mo) of acute hazardous waste; or Generates, in any calendar month, or accumulates at any time, more than 100 kg/mo (220 lbs./mo) of acute hazardous spill cleanup material.</p> <p><input type="checkbox"/> b. SQG: 100 to 1,000 kg/mo (220 – 2,200 lbs./mo) of non-acute hazardous waste.</p> <p><input type="checkbox"/> c. CESQG: Less than 100 kg/mo (220 lbs./mo) of non-acute hazardous waste.</p> <p>If "Yes" above, indicate other generator activities in 2-4.</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>2. Short-Term Generator</b> (generate from a short-term or one-time event and not from on-going processes). If "Yes", provide an explanation in the Comments section.</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>3. United States Importer of Hazardous Waste</b></p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>4. Mixed Waste (hazardous and radioactive) Generator</b></p> | <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>5. Transporter of Hazardous Waste</b><br/>                 If "Yes", mark all that apply.</p> <p><input type="checkbox"/> a. Transporter</p> <p><input type="checkbox"/> b. Transfer Facility (at your site)</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>6. Treater, Storer, or Disposer of Hazardous Waste</b> Note: A hazardous waste Part B permit is required for these activities.</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>7. Recycler of Hazardous Waste</b></p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>8. Exempt Boiler and/or Industrial Furnace</b><br/>                 If "Yes", mark all that apply.</p> <p><input type="checkbox"/> a. Small Quantity On-site Burner Exemption</p> <p><input type="checkbox"/> b. Smelting, Melting, and Refining Furnace Exemption</p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>9. Underground Injection Control</b></p> <p>Y <input type="checkbox"/> N <input type="checkbox"/> <b>10. Receives Hazardous Waste from Off-site</b></p> |
|---|---|

**B. Universal Waste Activities; Complete all parts 1-2.**

- Y  N  **1. Large Quantity Handler of Universal Waste** (you accumulate 5,000 kg or more) [refer to your State regulations to determine what is regulated]. Indicate types of universal waste managed at your site. If "Yes", mark all that apply.
- |                                 |                          |
|---------------------------------|--------------------------|
| a. Batteries                    | <input type="checkbox"/> |
| b. Pesticides                   | <input type="checkbox"/> |
| c. Mercury containing equipment | <input type="checkbox"/> |
| d. Lamps                        | <input type="checkbox"/> |
| e. Other (specify) _____        | <input type="checkbox"/> |
| f. Other (specify) _____        | <input type="checkbox"/> |
| g. Other (specify) _____        | <input type="checkbox"/> |
- Y  N  **2. Destination Facility for Universal Waste**  
 Note: A hazardous waste permit may be required for this activity.

**C. Used Oil Activities; Complete all parts 1-4.**

- Y  N  **1. Used Oil Transporter**  
 If "Yes", mark all that apply.
- a. Transporter
- b. Transfer Facility (at your site)
- Y  N  **2. Used Oil Processor and/or Re-refiner**  
 If "Yes", mark all that apply.
- a. Processor
- b. Re-refiner
- Y  N  **3. Off-Specification Used Oil Burner**
- Y  N  **4. Used Oil Fuel Marketer**  
 If "Yes", mark all that apply.
- a. Marketer Who Directs Shipment of Off-Specification Used Oil to Off-Specification Used Oil Burner
- b. Marketer Who First Claims the Used Oil Meets the Specifications

**D. Eligible Academic Entities with Laboratories—Notification for opting into or withdrawing from managing laboratory hazardous wastes pursuant to 40 CFR Part 262 Subpart K**

✦ You can **ONLY** Opt into Subpart K if:

- you are at least one of the following: a college or university; a teaching hospital that is owned by or has a formal affiliation agreement with a college or university; or a non-profit research institute that is owned by or has a formal affiliation agreement with a college or university; AND
- you have checked with your State to determine if 40 CFR Part 262 Subpart K is effective in your state

Y  N  1. Opting into or currently operating under 40 CFR Part 262 Subpart K for the management of hazardous wastes in laboratories  
**See the item-by-item instructions for definitions of types of eligible academic entities. Mark all that apply:**

- a. College or University
- b. Teaching Hospital that is owned by or has a formal written affiliation agreement with a college or university
- c. Non-profit Institute that is owned by or has a formal written affiliation agreement with a college or university

Y  N  2. Withdrawing from 40 CFR Part 262 Subpart K for the management of hazardous wastes in laboratories

**11. Description of Hazardous Waste**

**A. Waste Codes for Federally Regulated Hazardous Wastes.** Please list the waste codes of the Federal hazardous wastes handled at your site. List them in the order they are presented in the regulations (e.g., D001, D003, F007, U112). Use an additional page if more spaces are needed.


**B. Waste Codes for State-Regulated (i.e., non-Federal) Hazardous Wastes.** Please list the waste codes of the State-Regulated hazardous wastes handled at your site. List them in the order they are presented in the regulations. Use an additional page if more spaces are needed.




**ADDENDUM TO THE SITE IDENTIFICATION FORM:  
NOTIFICATION OF HAZARDOUS SECONDARY MATERIAL ACTIVITY**



**ONLY fill out this form if:**

- ❖ You are located in a State that allows you to manage excluded hazardous secondary material (HSM) under 40 CFR 261.2(a)(2)(ii), 261.4(a)(23), (24), or (25) (or state equivalent). See <http://www.epa.gov/epawaste/hazard/dsw/statespf.htm> for a list of eligible states; **AND**
- ❖ You are or will be managing excluded HSM in compliance with 40 CFR 261.2(a)(2)(ii), 261.4(a)(23), (24), or (25) (or state equivalent) or you have stopped managing excluded HSM in compliance with the exclusion(s) and do not expect to manage any amount of excluded HSM under the exclusion(s) for at least one year. Do not include any information regarding your hazardous waste activities in this section.

**1. Indicate reason for notification. Include dates where requested.**

- Facility will begin managing excluded HSM as of \_\_\_\_\_ (mm/dd/yyyy).
- Facility is still managing excluded HSM/re-notifying as required by March 1 of each even-numbered year.
- Facility has stopped managing excluded HSM as of \_\_\_\_\_ (mm/dd/yyyy) and is notifying as required.

**2. Description of excluded HSM activity.** Please list the appropriate codes and quantities in **short tons** to describe your excluded HSM activity ONLY (do not include any information regarding your hazardous wastes). Use additional pages if more space is needed.

a. Facility code (answer using codes listed in the Code List section of the instructions)	b. Waste code(s) for HSM	c. Estimated short tons of excluded HSM to be managed annually	d. Actual short tons of excluded HSM that was managed during the most recent odd-numbered year	e. Land-based unit code (answer using codes listed in the Code List section of the instructions)

**3. Facility has financial assurance pursuant to 40 CFR 261.4(a)(24)(vi).** (Financial assurance is required for reclaimers and intermediate facilities managing excluded HSM under 40 CFR 261.4(a)(24) and (25))

Y  N  Does this facility have financial assurance pursuant to 40 CFR 261.4(a)(24)(vi)?

## APPENDIX V

### Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (~~Method 1310~~) (Method 1310B)

Note: The extraction procedure (EP), method ~~1310~~1310B, is published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05.

## APPENDIX X

### Recommended Technologies to Achieve Deactivation of Characteristics in Section 33-24-05-282

The treatment standard for many characteristic wastes is stated in the 33-24-05-280 Table of Treatment Standards as "Deactivation and meet UTS." The environmental protection agency has determined that many technologies, when used alone or in combination, can achieve the deactivation portion of the treatment standard. Characteristic wastes that are not managed in a facility regulated by the Clean Water Act or in a Clean Water Act-equivalent facility, and that also contain underlying hazardous constituents (see subsection 910 of section 33-24-05-251) must be treated not only by a "deactivating" technology to remove the characteristic, but also to achieve the universal treatment standards for underlying hazardous constituents. The following appendix presents a partial list of technologies, utilizing the five letter technology codes established in Table 1 of section 33-24-05-282, that may be useful in meeting the treatment standard. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, or the use or any combination thereof, of other pretreatment technologies, provided deactivation is achieved and underlying hazardous constituents are treated to achieve the universal treatment standards.

Waste Code/Subcategory	Nonwastewaters	Wastewaters
D001 Ignitable Liquids based on 33-24-02-11.1.a.-Low TOC Nonwastewater Subcategory (containing 1% to <10% TOC).	RORGS..... INCIN..... WETOX..... CHOXD..... BIODG.....	n.a.
D001 Ignitable Liquids based on 33-24-02-11.1.a.-Ignitable Wastewater Subcategory(containing <1% TOC).	n.a.....	RORGS INCIN WETOX CHOXD BIODG
D001 Compressed Gases based on 33-24-02-11.1.c.....	RCGAS..... INCIN..... FSUBS..... ADGAS fb. INCIN..... ADGAS fb. (CHOXD; or CHRED).	n.a.
D001 Ignitable Reactives based on 33-24-02-11.1.b.....	WTRRX..... CHOXD..... CHRED..... STABL..... INCIN.....	n.a.
D001 Ignitable Oxidizers based on 33-24-02-11.1.d.....	CHRED..... INCIN.....	CHRED INCIN
D002 Acid Subcategory based on 33-24-02-12.1.a. with pH less than or equal to 2	RCORR..... NEUTR..... INCIN.....	NEUTR INCIN
D002 Alkaline Subcategory based on 33-24-02-12.1.a. with pH greater than or equal to 12.5	NEUTR..... INCIN.....	NEUTR INCIN
D002 Other Corrosives based on 33-24-02-12.1.b.....	CHOXD..... CHRED..... INCIN..... STABL.....	CHOXD CHRED INCIN
D003 Water Reactives based on 33-24-02-13.1.b., c.,and d.....	INCIN..... WTRRX	n.a.

Waste Code/Subcategory	Nonwastewaters	Wastewaters
	CHOXD..... CHRED.....	
D003 Reactive Sulfides based on 33-24-02-13.1.e.....	CHOXD..... CHRED..... INCIN..... STABL.....	CHOXD CHRED BIODG INCIN
D003 Explosives based on 33-24-02-13.1.f., g., and h.....	INCIN..... CHOXD..... CHRED.....	INCIN CHOXD CHRED BIODG CARBN
D003 Other Reactives based on 33-24-02-13.1.a.....	INCIN..... CHOXD..... CHRED.....	INCIN CHOXD CHRED BIODG CARBN
K044 Wastewater treatment sludges from the manufacturing and processing of explosives.	CHOXD..... CHRED..... INCIN.....	CHOXD CHRED BIODG CARBN INCIN
K045 Spent carbon from the treatment of wastewaters containing explosives.	CHOXD..... CHRED..... INCIN.....	CHOXD CHRED BIODG CARBN INCIN
K047 Pink/red water from TNT operations.....	CHOXD..... CHRED..... INCIN.....	CHOXD CHRED BIODG CARBN INCIN

Note: "n.a." stands for "not applicable;" "fb." stands for "followed by."

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

Waste Code	Waste Category	Effective Date
D001 <sup>c</sup>	All (except high total organic carbon ignitable liquids)	August 9, 1993
D001	High total organic carbon ignitable liquids	August 8, 1990
D002 <sup>c</sup>	All	August 9, 1993
D003	Newly identified surface-disposed elemental phosphorus processing wastes	May 26, 2000
D004	Newly identified D004 and mineral processing wastes	August 24, 1998
D004	Mixed radioactive/newly identified D004 or mineral processing wastes	May 26, 2000
D005	Newly identified D005 and mineral processing wastes	August 24, 1998
D005	Mixed radioactive/newly identified D005 or mineral processing wastes	May 26, 2000
D006	Newly identified D006 and mineral processing wastes	August 24, 1998
D006	Mixed radioactive/newly identified D006 or mineral processing wastes	May 26, 2000
D007	Newly identified D007 and mineral processing wastes	August 24, 1998
D007	Mixed radioactive/newly identified D007 or mineral processing wastes	May 26, 2000

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**

**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
D008	Newly identified D008 and mineral processing wastes	August 24, 1998
D008	Mixed radioactive/newly identified D008 or mineral processing wastes	May 26, 2000
D009	Newly identified D009 and mineral processing wastes	August 24, 1998
D009	Mixed radioactive/newly identified D009 or mineral processing wastes	May 26, 2000
D010	Newly identified D010 and mineral processing wastes	August 24, 1998
D010	Mixed radioactive/newly identified D010 or mineral processing wastes	May 26, 2000
D011	Newly identified D011 and mineral processing wastes	August 24, 1998
D011	Mixed radioactive/newly identified D011 or mineral processing wastes	May 26, 2000
D012 (that exhibit the toxicity characteristic based on the TCLP) <sup>d</sup>	All	December 14, 1994
D013 (that exhibit the toxicity characteristic based on the TCLP) <sup>d</sup>	All	December 14, 1994
D014 (that exhibit the toxicity characteristic based on the TCLP) <sup>d</sup>	All	December 14, 1994
D015 (that exhibit the toxicity characteristic based on the TCLP) <sup>d</sup>	All	December 14, 1994
D016 (that exhibit the toxicity characteristic based on the TCLP) <sup>d</sup>	All	December 14, 1994
D017 (that exhibit the toxicity characteristic based on the TCLP) <sup>d</sup>	All	December 14, 1994
D018	Mixed with radioactive wastes	September 19, 1996
D018	All others	December 19, 1994
D019	Mixed with radioactive wastes	September 19, 1996
D019	All others	December 19, 1994
D020	Mixed with radioactive wastes	September 19, 1996
D020	All others	December 19, 1994
D021	Mixed with radioactive wastes	September 19, 1996
D021	All others	December 19, 1994
D022	Mixed with radioactive wastes	September 19, 1996
D022	All others	December 19, 1994
D023	Mixed with radioactive wastes	September 19, 1996
D023	All others	December 19, 1994
D024	Mixed with radioactive wastes	September 19, 1996
D024	All others	December 19, 1994
D025	Mixed with radioactive wastes	September 19, 1996
D025	All others	December 19, 1994
D026	Mixed with radioactive wastes	September 19, 1996
D026	All others	December 19, 1994
D027	Mixed with radioactive wastes	September 19, 1996
D027	All others	December 19, 1994
D028	Mixed with radioactive wastes	September 19, 1996
D028	All others	December 19, 1994
D029	Mixed with radioactive wastes	September 19, 1996
D029	All others	December 19, 1994
D030	Mixed with radioactive wastes	September 19, 1996
D030	All others	December 19, 1994
D031	Mixed with radioactive wastes	September 19, 1996

**APPENDIX XI**

**Land Disposal Restrictions Effective Dates of Surface Disposed  
Prohibited Hazardous Wastes**

**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)  
Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
D031	All others	December 19, 1994
D032	Mixed with radioactive wastes	September 19, 1996
D032	All others	December 19, 1996
D033	Mixed with radioactive wastes	September 19, 1996
D033	All others	December 19, 1994
D034	Mixed with radioactive wastes	September 19, 1996
D034	All others	December 19, 1994
D035	Mixed with radioactive wastes	September 19, 1996
D035	All others	December 19, 1994
D036	Mixed with radioactive wastes	September 19, 1996
D036	All others	December 19, 1994
D037	Mixed with radioactive wastes	September 19, 1996
D037	All others	December 19, 1994
D038	Mixed with radioactive wastes	September 19, 1996
D038	All others	December 19, 1994
D039	Mixed with radioactive wastes	September 19, 1996
D039	All others	December 19, 1994
D040	Mixed with radioactive wastes	September 19, 1996
D040	All others	December 19, 1994
D041	Mixed with radioactive wastes	September 19, 1996
D041	All others	December 19, 1994
D042	Mixed with radioactive wastes	September 19, 1996
D042	All others	December 19, 1994
D043	Mixed with radioactive wastes	September 19, 1996
D043	All others	December 19, 1994
F001	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	November 8, 1988
F001	All others	November 8, 1986
F002 (1,1,2-trichloroethane)	Wastewater and nonwastewater	August 8, 1990
F002	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	November 8, 1988
F002	All others	November 8, 1986
F003	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	November 8, 1988
F003	All others	November 8, 1986
F004	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	November 8, 1988
F004	All others	November 8, 1986
F005 (benzene, 2-ethoxy ethanol, 2-nitropropane)	Wastewater and nonwastewater	August 8, 1990
F005	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids	November 8, 1988
F005	All others	November 8, 1986
F006	Wastewater	August 8, 1990
F006	Nonwastewater	August 8, 1988

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
F006 (cyanides)	Nonwastewater	July 8, 1989
F007	All	July 8, 1989
F008	All	July 8, 1989
F009	All	July 8, 1989
F010	All	June 8, 1989
F011 (cyanides)	Nonwastewater	December 8, 1989
F011	All others	July 8, 1989
F012 (cyanides)	Nonwastewater	December 8, 1989
F012	All others	July 8, 1989
F019	All	August 8, 1990
F020	All	November 8, 1988
F021	All	November 8, 1988
F025	All	August 8, 1990
F026	All	November 8, 1988
F027	All	November 8, 1988
F028	All	November 8, 1988
F032	Mixed with radioactive wastes	May 12, 1999
F032	All others	August 12, 1997
F034	Mixed with radioactive wastes	May 12, 1999
F034	All others	August 12, 1997
F035	Mixed with radioactive wastes	May 12, 1999
F035	All others	August 12, 1997
F037	Not generated from surface impoundment cleanouts or closures	June 30, 1993
F037	Generated from surface impoundment cleanouts or closures	June 30, 1994
F037	Mixed with radioactive wastes	June 30, 1994
F038	Not generated from surface impoundment cleanouts or closures	June 30, 1993
F038	Generated from surface impoundment cleanouts or closures	June 30, 1994
F038	Mixed with radioactive wastes	June 30, 1994
F039	Wastewater	August 8, 1990
F039	Nonwastewater	May 8, 1992
K001 (organics) <sup>b</sup>	All	August 8, 1988
K001	All others	August 8, 1988
K002	All	August 8, 1990
K003	All	August 8, 1990
K004	Wastewater	August 8, 1990
K004	Nonwastewater	August 8, 1988
K005	Wastewater	August 8, 1990
K005	Nonwastewater	June 8, 1989
K006	All	August 8, 1990
K007	Wastewater	August 8, 1990
K007	Nonwastewater	June 8, 1989
K008	Wastewater	August 8, 1990
K008	Nonwastewater	August 8, 1988
K009	All	June 8, 1989
K010	All	June 8, 1989
K011	Wastewater	August 8, 1990
K011	Nonwastewater	June 8, 1989
K013	Wastewater	August 8, 1990
K013	Nonwastewater	June 8, 1989
K014	Wastewater	August 8, 1990
K014	Nonwastewater	June 8, 1989

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
K015	Wastewater	August 8, 1988
K015	Nonwastewater	August 8, 1990
K016	All	August 8, 1988
K017	All	August 8, 1990
K018	All	August 8, 1988
K019	All	August 8, 1988
K020	All	August 8, 1988
K021	Wastewater	August 8, 1990
K021	Nonwastewater	August 8, 1988
K022	Wastewater	August 8, 1990
K022	Nonwastewater	August 8, 1988
K023	All	June 8, 1989
K024	All	August 8, 1988
K025	Wastewater	August 8, 1990
K025	Nonwastewater	August 8, 1988
K026	All	August 8, 1990
K027	All	June 8, 1989
K028 (metals)	Nonwastewater	August 8, 1990
K028	All others	June 8, 1989
K029	Wastewater	August 8, 1990
K029	Nonwastewater	June 8, 1989
K030	All	August 8, 1988
K031	Wastewater	August 8, 1990
K031	Nonwastewater	May 8, 1992
K032	All	August 8, 1990
K033	All	August 8, 1990
K034	All	August 8, 1990
K035	All	August 8, 1990
K036	Wastewater	June 8, 1989
K036	Nonwastewater	August 8, 1988
K037 <sup>b</sup>	Wastewater	August 8, 1988
K037	Nonwastewater	August 8, 1988
K038	All	June 8, 1989
K039	All	June 8, 1989
K040	All	June 8, 1989
K041	All	August 8, 1990
K042	All	August 8, 1990
K043	all	June 8, 1989
K044	All	August 8, 1988
K045	All	August 8, 1988
K046 (nonreactive)	Nonwastewater	August 8, 1988
K046	All others	August 8, 1990
K047	All	August 8, 1988
K048	Wastewater	August 8, 1990
K048	Nonwastewater	November 8, 1990
K049	Wastewater	August 8, 1990
K049	Nonwastewater	November 8, 1990
K050	Wastewater	August 8, 1990
K050	Nonwastewater	November 8, 1990
K051	Wastewater	August 8, 1990
K051	Nonwastewater	November 8, 1990
K052	Wastewater	August 8, 1990
K052	Nonwastewater	November 8, 1990
K060	Wastewater	August 8, 1990
K060	Nonwastewater	August 8, 1988

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**

**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

Waste Code	Waste Category	Effective Date
K061	Wastewater	August 8, 1990
K061	Nonwastewater	June 30, 1992
K062	All	August 8, 1988
K069 (non-calcium sulfate)	Nonwastewater	August 8, 1988
K069	All others	August 8, 1990
K071	All	August 8, 1990
K073	All	August 8, 1990
K083	All	August 8, 1990
K084	Wastewater	August 8, 1990
K084	Nonwastewater	May 8, 1992
K085	All	August 8, 1990
K086 (organics) <sup>b</sup>	All	August 8, 1988
K086	All others	August 8, 1988
K087	All	August 8, 1988
K088	All others	October 8, 1997
K088	All others	January 8, 1997
K093	All	June 8, 1989
K094	All	June 8, 1989
K095	Wastewater	August 8, 1990
K095	Nonwastewater	June 8, 1989
K096	Wastewater	August 8, 1990
K096	Nonwastewater	June 8, 1989
K097	All	August 8, 1990
K098	All	August 8, 1990
K099	All	August 8, 1988
K100	Wastewater	August 8, 1990
K100	Nonwastewater	August 8, 1988
K101 (organics)	Wastewater	August 8, 1988
K101 (metals)	Wastewater	August 8, 1990
K101 (organics)	Nonwastewater	August 8, 1988
K101 (metals)	Nonwastewater	May 8, 1992
K102 (organics)	Wastewater	August 8, 1988
K102 (metals)	Wastewater	August 8, 1990
K102 (organics)	Nonwastewater	August 8, 1988
K102 (metals)	Nonwastewater	May 8, 1992
K103	All	August 8, 1988
K104	All	August 8, 1988
K105	All	August 8, 1990
K106	Wastewater	August 8, 1990
K106	Nonwastewater	May 8, 1992
K107	Mixed with radioactive wastes	June 30, 1994
K107	All others	November 9, 1992
K108	Mixed with radioactive wastes	June 30, 1994
K108	All others	November 9, 1992
K109	Mixed with radioactive wastes	June 30, 1994
K109	All others	November 9, 1992
K110	Mixed with radioactive wastes	June 30, 1994
K110	All others	November 9, 1992
K111	Mixed with radioactive wastes	June 30, 1994
K111	All others	November 9, 1992
K112	Mixed with radioactive wastes	June 30, 1994
K112	All others	November 9, 1992
K113	All	June 8, 1989
K114	All	June 8, 1989
K115	All	June 8, 1989

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**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
K116	All	June 8 , 1989
K117	Mixed with radioactive wastes	June 30, 1994
K117	All others	November 9, 1992
K118	Mixed with radioactive wastes	June 30, 1994
K118	All others	November 9, 1992
K123	Mixed with radioactive wastes	June 30, 1994
K123	All others	November 9, 1992
K124	Mixed with radioactive wastes	June 30, 1994
K124	All others	November 9, 1992
K125	Mixed with radioactive wastes	June 30, 1994
K125	All others	November 9, 1992
K126	Mixed with radioactive wastes	June 30, 1994
K126	All others	November 9, 1992
K131	Mixed with radioactive wastes	June 30, 1994
K131	All others	November 9, 1992
K132	Mixed with radioactive wastes	June 30, 1994
K132	All others	November 9, 1992
K136	Mixed with radioactive wastes	June 30, 1994
K136	All others	November 9, 1992
K141	Mixed with radioactive wastes	September 19, 1996
K141	All others	December 19, 1994
K142	Mixed with radioactive wastes	September 19, 1996
K142	All others	December 19, 1994
K143	Mixed with radioactive wastes	September 19, 1996
K143	All others	December 19, 1994
K144	Mixed with radioactive wastes	September 19, 1996
K144	All others	December 19, 1994
K145	Mixed with radioactive wastes	September 19, 1996
K145	All others	December 19, 1994
K147	Mixed with radioactive wastes	September 19, 1996
K147	All others	December 19, 1994
K148	Mixed with radioactive wastes	September 19, 1996
K148	All others	December 19, 1994
K149	Mixed with radioactive wastes	September 19, 1996
K149	All others	December 19, 1994
K150	Mixed with radioactive wastes	September 19, 1996
K150	All others	December 19, 1994
K151	Mixed with radioactive wastes	September 19, 1996
K151	All others	December 19, 1994
K156	Mixed with radioactive wastes	April 8, 1998
K156	All others	July 8, 1996
K157	Mixed with radioactive wastes	April 8, 1998
K157	All others	July 8, 1996
K158	Mixed with radioactive wastes	April 8, 1998
K158	All others	July 8, 1996
K159	Mixed with radioactive wastes	April 8, 1998
K159	All others	July 8, 1996
K160	Mixed with radioactive wastes	April 8, 1998
K160	All others	July 8, 1996
K161	Mixed with radioactive wastes	April 8, 1998
K161	All others	July 8, 1996
P001	All	August 8, 1990
P002	All	August 8, 1990
P003	All	August 8, 1990
P004	All	August 8, 1990

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
P005	All	August 8, 1990
P006	All	August 8, 1990
P007	All	August 8, 1990
P008	All	August 8, 1990
P009	All	August 8, 1990
P010	Wastewater	August 8, 1990
P010	Nonwastewater	May 8, 1992
P011	Wastewater	August 8, 1990
P011	Nonwastewater	May 8, 1992
P012	Wastewater	August 8, 1990
P012	Nonwastewater	May 8, 1992
P013 (barium)	Nonwastewater	August 8, 1990
P013	All others	June 8, 1989
P014	All	August 8, 1990
P015	All	August 8, 1990
P016	All	August 8, 1990
P017	All	August 8, 1990
P018	All	August 8, 1990
P020	All	August 8, 1990
P021	All	June 8, 1989
P022	All	August 8, 1990
P023	All	August 8, 1990
P024	All	August 8, 1990
P026	All	August 8, 1990
P027	All	August 8, 1990
P028	All	August 8, 1990
P029	All	June 8, 1989
P030	All	June 8, 1989
P031	All	August 8, 1990
P033	All	August 8, 1990
P034	All	August 8, 1990
P036	Wastewater	August 8, 1990
P036	Nonwastewater	May 8, 1992
P037	All	August 8, 1990
P038	Wastewater	August 8, 1990
P038	Nonwastewater	May 8, 1992
P039	All	June 8, 1989
P040	All	June 8, 1989
P041	All	June 8, 1989
P042	All	August 8, 1990
P043	All	June 8, 1989
P044	All	June 8, 1989
P045	All	August 8, 1990
P046	All	August 8, 1990
P047	All	August 8, 1990
P048	All	August 8, 1990
P049	All	August 8, 1990
P050	All	August 8, 1990
P051	All	August 8, 1990
P054	All	August 8, 1990
P056	All	August 8, 1990
P057	All	August 8, 1990
P058	All	August 8, 1990
P059	All	August 8, 1990
P060	All	August 8, 1990

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**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
P062	All	June 8, 1989
P063	All	June 8, 1989
P064	All	August 8, 1990
P065	Wastewater	August 8, 1990
P065	Nonwastewater	May 8, 1992
P066	All	August 8, 1990
P067	All	August 8, 1990
P068	All	August 8, 1990
P069	All	August 8, 1990
P070	All	August 8, 1990
P071	All	June 8, 1989
P072	All	August 8, 1990
P073	All	August 8, 1990
P074	All	June 8, 1989
P075	All	August 8, 1990
P076	All	August 8, 1990
P077	All	August 8, 1990
P078	All	August 8, 1990
P081	All	August 8, 1990
P082	All	August 8, 1990
P084	All	August 8, 1990
P085	All	June 8, 1989
P087	All	May 8, 1992
P088	All	August 8, 1990
P089	All	June 8, 1989
P092	Wastewater	August 8, 1990
P092	Nonwastewater	May 8, 1992
P093	All	August 8, 1990
P094	All	June 8, 1989
P095	All	August 8, 1990
P096	All	August 8, 1990
P097	All	June 8, 1989
P098	All	June 8, 1989
P099 (silver)	Wastewater	August 8, 1990
P099	All others	June 8, 1989
P101	All	August 8, 1990
P102	All	August 8, 1990
P103	All	August 8, 1990
P104 (silver)	Wastewater	August 8, 1990
P104	All others	June 8, 1989
P105	All	August 8, 1990
P106	All	June 8, 1989
P108	All	August 8, 1990
P109	All	June 8, 1989
P110	All	August 8, 1990
P111	All	June 8, 1989
P112	All	August 8, 1990
P113	All	August 8, 1990
P114	All	August 8, 1990
P115	All	August 8, 1990
P116	All	August 8, 1990
P118	All	August 8, 1990
P119	All	August 8, 1990
P120	All	August 8, 1990
P121	All	June 8, 1989

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**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
P122	All	August 8, 1990
P123	All	August 8, 1990
P127	Mixed with radioactive wastes	April 8, 1998
P127	All others	July 8, 1996
P128	Mixed with radioactive wastes	April 8, 1998
P128	All others	July 8, 1996
P185	Mixed with radioactive wastes	April 8, 1998
P185	All others	July 8, 1996
P188	Mixed with radioactive wastes	April 8, 1998
P188	All others	July 8, 1996
P189	Mixed with radioactive wastes	April 8, 1998
P189	All others	July 8, 1996
P190	Mixed with radioactive wastes	April 8, 1998
P190	All others	July 8, 1996
P191	Mixed with radioactive wastes	April 8, 1998
P191	All others	July 8, 1996
P192	Mixed with radioactive wastes	April 8, 1998
P192	All others	July 8, 1996
P194	Mixed with radioactive wastes	April 8, 1998
P194	All others	July 8, 1996
P196	Mixed with radioactive wastes	April 8, 1998
P196	All others	July 8, 1996
P197	Mixed with radioactive wastes	April 8, 1998
P197	All others	July 8, 1996
P198	Mixed with radioactive wastes	April 8, 1998
P198	All others	July 8, 1996
P199	Mixed with radioactive wastes	April 8, 1998
P199	All others	July 8, 1996
P201	Mixed with radioactive wastes	April 8, 1998
P201	All others	July 8, 1996
P202	Mixed with radioactive wastes	April 8, 1998
P202	All others	July 8, 1996
P203	Mixed with radioactive wastes	April 8, 1998
P203	All others	July 8, 1996
P204	Mixed with radioactive wastes	April 8, 1998
P204	All others	July 8, 1996
P205	Mixed with radioactive wastes	April 8, 1998
P205	All others	July 8, 1996
U001	All	August 8, 1990
U002	All	August 8, 1990
U003	All	August 8, 1990
U004	All	August 8, 1990
U005	All	August 8, 1990
U006	All	August 8, 1990
U007	All	August 8, 1990
U008	All	August 8, 1990
U009	All	August 8, 1990
U010	All	August 8, 1990
U011	All	August 8, 1990
U012	All	August 8, 1990
U014	All	August 8, 1990
U015	All	August 8, 1990
U016	All	August 8, 1990
U017	All	August 8, 1990
U018	All	August 8, 1990

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**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
U019	All	August 8, 1990
U020	All	August 8, 1990
U021	All	August 8, 1990
U022	All	August 8, 1990
U023	All	August 8, 1990
U024	All	August 8, 1990
U025	All	August 8, 1990
U026	All	August 8, 1990
U027	All	August 8, 1990
U028	All	June 8, 1989
U029	All	August 8, 1990
U030	All	August 8, 1990
U031	All	August 8, 1990
U032	All	August 8, 1990
U033	All	August 8, 1990
U034	All	August 8, 1990
U035	All	August 8, 1990
U036	All	August 8, 1990
U037	All	August 8, 1990
U038	All	August 8, 1990
U039	All	August 8, 1990
U041	All	August 8, 1990
U042	All	August 8, 1990
U043	All	August 8, 1990
U044	All	August 8, 1990
U045	All	August 8, 1990
U046	All	August 8, 1990
U047	All	August 8, 1990
U048	All	August 8, 1990
U049	All	August 8, 1990
U050	All	August 8, 1990
U051	All	August 8, 1990
U052	All	August 8, 1990
U053	All	August 8, 1990
U055	All	August 8, 1990
U056	All	August 8, 1990
U057	All	August 8, 1990
U058	All	June 8, 1989
U059	All	August 8, 1990
U060	All	August 8, 1990
U061	All	August 8, 1990
U062	All	August 8, 1990
U063	All	August 8, 1990
U064	All	August 8, 1990
U066	All	August 8, 1990
U067	All	August 8, 1990
U068	All	August 8, 1990
U069	All	June 30, 1992
U070	All	August 8, 1990
U071	All	August 8, 1990
U072	All	August 8, 1990
U073	All	August 8, 1990
U074	All	August 8, 1990
U075	All	August 8, 1990
U076	All	August 8, 1990

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**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
U077	All	August 8, 1990
U078	All	August 8, 1990
U079	All	August 8, 1990
U080	All	August 8, 1990
U081	All	August 8, 1990
U082	All	August 8, 1990
U083	All	August 8, 1990
U084	All	August 8, 1990
U085	All	August 8, 1990
U086	All	August 8, 1990
U087	All	June 8, 1989
U088	All	June 8, 1989
U089	All	August 8, 1990
U090	All	August 8, 1990
U091	All	August 8, 1990
U092	All	August 8, 1990
U093	All	August 8, 1990
U094	All	August 8, 1990
U095	All	August 8, 1990
U096	All	August 8, 1990
U097	All	August 8, 1990
U098	All	August 8, 1990
U099	All	August 8, 1990
U101	All	August 8, 1990
U102	All	June 8, 1989
U103	All	August 8, 1990
U105	All	August 8, 1990
U106	All	August 8, 1990
U107	All	June 8, 1989
U108	All	August 8, 1990
U109	All	August 8, 1990
U110	All	August 8, 1990
U111	All	August 8, 1990
U112	All	August 8, 1990
U113	All	August 8, 1990
U114	All	August 8, 1990
U115	All	August 8, 1990
U116	All	August 8, 1990
U117	All	August 8, 1990
U118	All	August 8, 1990
U119	All	August 8, 1990
U120	All	August 8, 1990
U121	All	August 8, 1990
U122	All	August 8, 1990
U123	All	August 8, 1990
U124	All	August 8, 1990
U125	All	August 8, 1990
U126	All	August 8, 1990
U127	All	August 8, 1990
U128	All	August 8, 1990
U129	All	August 8, 1990
U130	All	August 8, 1990
U131	All	August 8, 1990
U132	All	August 8, 1990
U133	All	August 8, 1990

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**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
U134	All	August 8, 1990
U135	All	August 8, 1990
U136	Wastewater	August 8, 1990
U136	Nonwastewater	May 8, 1992
U137	All	August 8, 1990
U138	All	August 8, 1990
U140	All	August 8, 1990
U141	All	August 8, 1990
U142	All	August 8, 1990
U143	All	August 8, 1990
U144	All	August 8, 1990
U145	All	August 8, 1990
U146	All	August 8, 1990
U147	All	August 8, 1990
U148	All	August 8, 1990
U149	All	August 8, 1990
U150	All	August 8, 1990
U151	Wastewater	August 8, 1990
U151	Nonwastewater	May 8, 1992
U152	All	August 8, 1990
U153	All	August 8, 1990
U154	All	August 8, 1990
U155	All	August 8, 1990
U156	All	August 8, 1990
U157	All	August 8, 1990
U158	All	August 8, 1990
U159	All	August 8, 1990
U160	All	August 8, 1990
U161	All	August 8, 1990
U162	All	August 8, 1990
U163	All	August 8, 1990
U164	All	August 8, 1990
U165	All	August 8, 1990
U166	All	August 8, 1990
U167	All	August 8, 1990
U168	All	August 8, 1990
U169	All	August 8, 1990
U170	All	August 8, 1990
U171	All	August 8, 1990
U172	All	August 8, 1990
U173	All	August 8, 1990
U174	All	August 8, 1990
U176	All	August 8, 1990
U177	All	August 8, 1990
U178	All	August 8, 1990
U179	All	August 8, 1990
U180	All	August 8, 1990
U181	All	August 8, 1990
U182	All	August 8, 1990
U183	All	August 8, 1990
U184	All	August 8, 1990
U185	All	August 8, 1990
U186	All	August 8, 1990
U187	All	August 8, 1990
U188	All	August 8, 1990

**APPENDIX XI**  
**Land Disposal Restrictions Effective Dates of Surface Disposed**  
**Prohibited Hazardous Wastes**  
**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)**  
**Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

Waste Code	Waste Category	Effective Date
U189	All	August 8, 1990
U190	All	June 8, 1989
U191	All	August 8, 1990
U192	All	August 8, 1990
U193	All	August 8, 1990
U194	All	June 8, 1989
U196	All	August 8, 1990
U197	All	August 8, 1990
U200	All	August 8, 1990
U201	All	August 8, 1990
<del>U202</del>	<del>All</del>	<del>August 8, 1990</del>
U203	All	August 8, 1990
U204	All	August 8, 1990
U205	All	August 8, 1990
U206	All	August 8, 1990
U207	All	August 8, 1990
U208	All	August 8, 1990
U209	All	August 8, 1990
U210	All	August 8, 1990
U211	All	August 8, 1990
U213	All	August 8, 1990
U214	All	August 8, 1990
U215	All	August 8, 1990
U216	All	August 8, 1990
U217	All	August 8, 1990
U218	All	August 8, 1990
U219	All	August 8, 1990
U220	All	August 8, 1990
U221	All	June 8, 1989
U222	All	August 8, 1990
U223	All	June 8, 1989
U225	All	August 8, 1990
U226	All	August 8, 1990
U227	All	August 8, 1990
U228	All	August 8, 1990
U234	All	August 8, 1990
U235	All	June 8, 1989
U236	All	August 8, 1990
U237	All	August 8, 1990
U238	All	August 8, 1990
U239	All	August 8, 1990
U240	All	August 8, 1990
U243	All	August 8, 1990
U244	All	August 8, 1990
U246	All	August 8, 1990
U247	All	August 8, 1990
U248	All	August 8, 1990
U249	All	August 8, 1990
U271	Mixed with radioactive wastes	April 8, 1998
U271	All others	July 8, 1996
U277	Mixed with radioactive wastes	April 8, 1998
U277	All others	July 8, 1996
U278	Mixed with radioactive wastes	April 8, 1998
U278	All others	July 8, 1996
U279	Mixed with radioactive wastes	April 8, 1998

**APPENDIX XI**

**Land Disposal Restrictions Effective Dates of Surface Disposed  
Prohibited Hazardous Wastes**

**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)  
Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

<b>Waste Code</b>	<b>Waste Category</b>	<b>Effective Date</b>
U279	All others	July 8, 1996
U280	Mixed with radioactive wastes	April 8, 1998
U280	All others	July 8, 1996
U328	Mixed with radioactive wastes	June 30, 1994
U328	All others	November 9, 1992
U353	Mixed with radioactive wastes	June 30, 1994
U353	All others	November 9, 1992
U359	Mixed with radioactive wastes	June 30, 1994
U359	All others	November 9, 1992
U364	Mixed with radioactive wastes	April 8, 1998
U364	All others	July 8, 1996
U365	Mixed with radioactive wastes	April 8, 1998
U365	All others	July 8, 1996
U366	Mixed with radioactive wastes	April 8, 1998
U366	All others	July 8, 1996
U367	Mixed with radioactive wastes	April 8, 1998
U367	All others	July 8, 1996
U372	Mixed with radioactive wastes	April 8, 1998
U372	All others	July 8, 1996
U373	Mixed with radioactive wastes	April 8, 1998
U373	All others	July 8, 1996
U375	Mixed with radioactive wastes	April 8, 1998
U375	All others	July 8, 1996
U376	Mixed with radioactive wastes	April 8, 1998
U376	All others	July 8, 1996
U377	Mixed with radioactive wastes	April 8, 1998
U377	All others	July 8, 1996
U378	Mixed with radioactive wastes	April 8, 1998
U378	All others	July 8, 1996
U379	Mixed with radioactive wastes	April 8, 1998
U379	All others	July 8, 1996
U381	Mixed with radioactive wastes	April 8, 1998
U381	All others	July 8, 1996
U382	Mixed with radioactive wastes	April 8, 1998
U382	All others	July 8, 1996
U383	Mixed with radioactive wastes	April 8, 1998
U383	All others	July 8, 1996
U384	Mixed with radioactive wastes	April 8, 1998
U384	All others	July 8, 1996
U385	Mixed with radioactive wastes	April 8, 1998
U385	All others	July 8, 1996
U386	Mixed with radioactive wastes	April 8, 1998
U386	All others	July 8, 1996
U387	Mixed with radioactive wastes	April 8, 1998
U387	All others	July 8, 1996
U389	Mixed with radioactive wastes	April 8, 1998
U389	All others	July 8, 1996
U390	Mixed with radioactive wastes	April 8, 1998
U390	All others	July 8, 1996
U391	Mixed with radioactive wastes	April 8, 1998
U391	All others	July 8, 1996
U392	Mixed with radioactive wastes	April 8, 1998
U392	All others	July 8, 1996
U393	Mixed with radioactive wastes	April 8, 1998
U393	All others	July 8, 1996

## APPENDIX XI

### Land Disposal Restrictions Effective Dates of Surface Disposed Prohibited Hazardous Wastes

**Table 1. Effective Dates of Surface Disposed Wastes (Non-Soil and Debris)  
Regulated in the Land Disposal Restrictions<sup>a</sup> - Comprehensive List**

Waste Code	Waste Category	Effective Date
U394	Mixed with radioactive wastes	April 8, 1998
U394	All others	July 8, 1996
U395	Mixed with radioactive wastes	April 8, 1998
U395	All others	July 8, 1996
U396	Mixed with radioactive wastes	April 8, 1998
U396	All others	July 8, 1996
U400	Mixed with radioactive wastes	April 8, 1998
U400	All others	July 8, 1996
U401	Mixed with radioactive wastes	April 8, 1998
U401	All others	July 8, 1996
U402	Mixed with radioactive wastes	April 8, 1998
U402	All others	July 8, 1996
U403	Mixed with radioactive wastes	April 8, 1998
U403	All others	July 8, 1996
U404	Mixed with radioactive wastes	April 8, 1998
U404	All others	July 8, 1996
U407	Mixed with radioactive wastes	April 8, 1998
U407	All others	July 8, 1996
U409	Mixed with radioactive wastes	April 8, 1998
U409	All others	July 8, 1996
U410	Mixed with radioactive wastes	April 8, 1998
U410	All others	July 8, 1996
U411	Mixed with radioactive wastes	April 8, 1998
U411	All others	July 8, 1996

<sup>a</sup>This table does not include mixed radioactive wastes (from the First, Second, and Third Third rules) which received national capacity variance until May 8, 1992. This table also does not include contaminated soil and debris wastes.

<sup>b</sup>The standard was revised in the Third Third Final Rule (55 FR 22520, June 1, 1990).

<sup>c</sup>The standard was revised in the Third Third Emergency Rule (58 FR 29860, May 24, 1993); the original effective date was August 8, 1990.

<sup>d</sup>The standard was revised in the Phase II Final Rule (59 FR 47982, September 19, 1994); the original effective date was August 8, 1990.

<sup>e</sup>The standards for selected reactive wastes was revised in the Phase III Final Rule (61 FR 15566, April 8, 1996); the original effective date was August 8, 1990.

## APPENDIX XI

**Table 2. Summary of Effective Dates of Land Disposal Restrictions for Contaminated Soil and Debris Restricted Hazardous Waste in Contaminated Soil and Debris**

	Effective Date
1.Solvent-(F001 through F005) and dioxin-(F020 through F023 and F026 through F028) containing soil and debris from CERCLA response or RCRA corrective actions.	November 8, 1990
2.Soil and debris not from CERCLA response or RCRA corrective actions contaminated with less than 1% total solvents (F001 through F005) or dioxins (F020 through F023 and F026 through F028).	November 8, 1988
3.All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration.	August 8, 1990
4.All soil and debris contaminated with Second Third wastes for which treatment standards are based on incineration.	June 8, 1991
5.All soil and debris contaminated with Third Third wastes or, First or Second Third "soft hammer" wastes which had treatment standards promulgated in the Third Third rule, for which treatment standards are based on incineration, vitrification, or mercury retorting, acid leaching followed by chemical precipitation, or thermal recovery of metals; as well as all inorganic solids debris contaminated with D004 through D011 wastes, and all soil and debris contaminated with mixed Resource Conservation and Recovery Act/radioactive wastes.	May 8, 1992
6.Soil and debris contaminated with D012 through D043, K141 through K145, and K147 through K151 wastes.	December 19, 1994
7.Debris (only) contaminated with F037, F038, K107 through K112, K117, K118, K123 through K126, K131, K132, K136, U328, U353, U359.	December 19, 1994
8.Soil and debris contaminated with K156 through K161, P127, P128, P188 through P192, P194, P196 through P199, P201 through P205, U271, U277 through U280, U364 through U367, U372, U373, U375 through U379, U381 through U387, U389 through U396, U400 through U404, U407, and U409 through U411 wastes.	July 8, 1996
9.Soil and debris contaminated with K088 wastes.	October 8, 1997
10.Soil and debris contaminated with radioactive wastes mixed with K088, K156 through K161, P127, P128, P188 through P192, P194, P196 through P199, P201 through P205, U271, U277 through U280, U364 through U367, U372, U373, U375 through U379, U381 through U387, U389 through U396, U400 through U404, U407, and U409 through U411 wastes.	April 8, 1998
11.Soil and debris contaminated with F032, F034, and F035.	May 12, 1997
12.Soil and debris contaminated with newly identified D004 through D011 toxicity characteristic wastes and mineral processing wastes.	August 24, 1998
13.Soil and debris contaminated with mixed radioactive newly identified D004 through D011 characteristic wastes and mineral processing wastes.	May 26, 2000

Note: Appendix XI is provided for the convenience of the reader.

### APPENDIX XII. Ground Water Monitoring List<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
Acenaphthene.....	83-32-9	Acenaphthylene, 1,2-dihydro.....	8100 8270	200 10
Acenaphthylene.....	208-96-8	Acenaphthylene.....	8100 8270	200 10
Acetone.....	67-64-1	2-Propanone	8240	100
Acetophenone.....	98-86-2	Ethanone, 1-phenyl-	8270	10
Acetonitrile; Methyl- cyanide.....	75-05-8	Acetonitrile.....	8015	100
2-Acetylaminofluorene;- 2-AAF.....	53-96-3	Acetamide, N-9H-fluoren-2-yl.....	8270	10
Acrolein.....	107-02-8	2-Propenal.....	8030 8240	5 5
Acrylonitrile.....	107-13-1	2-Propenenitrile.....	8030 8240	5 5
Aldrin.....	309-00-2	1,4:5,8-Dimethanonaphthalene,1,2,3,4,	8080	0.05

APPENDIX XII. Ground Water Monitoring List<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
		10,10-hexachloro-, 1,1,4,4a,5,8,8a-hexahydro-(1a,4a,5ab,5a,8a,8ab).....	8270	10
Allyl chloride.....	107-05-1	1-Propene, 3-chloro.....	8010	5
			8240	100
4-Aminobiphenyl.....	92-67-1	[1,1'-Biphenyl]-4-amine.....	8270	10
Aniline.....	62-53-3	Benzenamine.....	8270	10
Anthracene	120-12-7	Anthracene	8100	200
			8270	10
Antimony	(Total)	Antimony.....	6010	300
			7040	2,000
			7041	30
Aramite	140-57-8	Sulfurous acid, 2-chloroethyl-2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester.....	8270	10
Arsenic	(Total)	Arsenic.....	6010	500
			7060	10
			7061	20
Barium.....	(Total)	Barium.....	6010	20
			7080	1,000
Benzene.....	71-43-2	Benzene.....	8020	2
			8240	5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene.....	8100	200
			8270	10
Benzo[b]fluoranthene.....	205-99-2	Benz[e]acephenanthrylene.....	8100	200
			8270	10
Benzo[k]fluoranthene.....	207-08-9	Benzo[k]fluoranthene.....	8100	200
			8270	10
Benzo[ghi]perylene.....	191-24-2	Benzo[ghi]perylene.....	8100	200
			8270	10
Benzo[a]pyrene.....	50-32-8	Benzo[a]pyrene.....	8100	200
			8270	10
Benzyl alcohol	100-51-6	Benzenemethanol.....	8270	20
Beryllium.....	(Total)	Beryllium.....	6010	3
			7090	50
			7091	2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1a,2a,3b,4a,5b,6b).....	8080	0.05
			8250	10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1a,2b,3a,4b,5a,6b).....	8080	0.05
			8250	40
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1a,2a,3a,4b,5a,6b).....	8080	0.1
			8250	30
gamma-BHC; Lindane.....	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1a,2a,3b,4a,5a,6b).....	8080	0.05
			8250	10
Bis(2-chloroethoxy) methane.....	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro.....	8270	10
Bis(2-chloroethyl)ether....	111-44-4	Ethane, 1,1'-oxybis[2-chloro.....	8270	10
Bis(2-chloro-1-methylethyl)- ether; 2,2'-Dichlorodiisopropyl- ether	108-60-1	Propane, 2,2'-oxybis[1-chloro.....	8010	100
			8270	10
Bis(2-ethylhexyl)phthalate...	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester.....	8060	20
			8270	10
Bromodichloromethane.....	75-27-4	Methane, bromodichloro.....	8010	1
			8240	5
Bromoform;- Tribromomethane.....	75-25-2	Methane, tribromo.....	8010	2
			8240	5

APPENDIX XII. Ground Water Monitoring List<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
4-Bromophenyl phenyl ether.....	101-55-3	Benzene, 1-bromo-4-phenoxy.....	8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate.....	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester.....	8060	5
Cadmium.....	(Total)	Cadmium.....	8270	10
			6010	40
			7130	50
Carbon disulfide.....	75-15-0	Carbon disulfide.....	7131	1
Carbon tetrachloride.....	56-23-5	Methane, tetrachloro.....	8240	5
Chlordane.....	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro.....	8010	1
			8240	5
			8080	0.1
p-Chloroaniline.....	106-47-8	Benzenamine, 4-chloro.....	8250	10
			8270	20
			8010	2
Chlorobenzene.....	108-90-7	Benzene, chloro.....	8020	2
Chlorobenzilate.....	510-15-6	Benzenoacetic acid, 4-chloro-a-(4-chlorophenyl)-a-hydroxy, ethyl ester.....	8240	5
			8270	10
			8040	5
p-Chloro-m-cresol.....	59-50-7	Phenol, 4-chloro-3-methyl.....	8270	20
Chloroethane; Ethyl chloride.....	75-00-3	Ethane, chloro.....	8010	5
			8240	10
Chloroform.....	67-66-3	Methane, trichloro.....	8010	0.5
			8240	5
2-Chloronaphthalene.....	91-58-7	Naphthalene, 2-chloro.....	8120	10
			8270	10
2-Chlorophenol.....	95-57-8	Phenol, 2-chloro.....	8040	5
			8270	10
			8270	10
4-Chlorophenyl phenyl ether...	7005-72-3	Benzene, 1-chloro-4-phenoxy.....	8270	10
Chloroprene.....	126-99-8	1,3-Butadiene, 2-chloro.....	8010	50
			8240	5
Chromium.....	(Total)	Chromium.....	6010	70
			7910	500
			7191	10
Chrysene.....	218-01-9	Chrysene.....	8100	200
			8270	10
Cobalt.....	(Total)	Cobalt.....	6010	70
			7200	500
			7201	10
Copper.....	(Total)	Copper.....	6010	60
			7210	200
m-Cresol.....	108-39-4	Phenol, 3-methyl.....	8270	10
o-Cresol.....	95-48-7	Phenol, 2-methyl.....	8270	10
p-Cresol.....	106-44-5	Phenol, 4-methyl.....	8270	10
Cyanide.....	57-12-5	Cyanide.....	9010	40
2,4-D; 2,4-Dichloro phenoxyacetic acid....	94-75-7	Acetic acid, (2,4-dichlorophenoxy).....	8150	10
4,4'-DDD.....	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro.....	8080	0.1
			8270	10
4,4'-DDE.....	72-55-9	Benzene 1,1'-(dichloroethylidene) bis[4-chloro.....	8080	0.05
			8270	10
4,4'-DDT.....	50-29-3	Benzene 1,1'-(2,2,2-trichloroethylidene) bis[4-chloro.....	8080	0.1
			8270	10
Diallate.....	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-S-(2,3-dichloro-2-propenyl) ester	8270	10
			8270	10
Dibenz[a,h]anthracene.....	53-70-3	Dibenz[a,h]anthracene.....	8100	200
			8270	10

APPENDIX XII. Ground Water Monitoring List<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
Dibenzofuran.....	132-64-9	Dibenzofuran.....	8270	10
Dibromochloromethane; Chlorodi-bromomethane.....	124-48-1	Methane, dibromochloro.....	8010	1
1,2-Dibromo-3-chloro propane; DBCP.....	96-12-8	Propane, 1,2-dibromo-3-chloro.....	8240 81010	5 100
1,2-Dibromoethane; Ethylene dibromide.....	106-93-4	Ethane, 1,2-dibromo.....	8240 8270 8010	5 10 10
Di-n-butyl phthalate.....	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester.....	8240 8060	5 5
o-Dichlorobenzene.....	95-50-1	Benzene, 1,2-dichloro.....	8270 8010 8020 8120 8270	10 2 5 10 10
m-Dichlorobenzene.....	541-73-1	Benzene, 1,3-dichloro.....	8010 8020 8120 8270	5 5 10 10
p-Dichlorobenzene.....	106-46-7	Benzene, 1,4-dichloro-	8010 8020 8120 8270	2 5 15 10
3,3'-Dichlorobenzidine.....	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro.....	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E).....	8240	5
Dichlorodifluoromethane....	75-71-8	Methane, dichlorodifluoro.....	8010 8240	10 5
1,1-Dichloroethane.....	75-34-3	Ethane, 1,1-dichloro.....	8010 8240	1 5
1,2-Dichloroethane; Ethylene dichloride.....	107-06-2	Ethane, 1,2-dichloro.....	8010	0.5
1,1-Dichloroethylene; Vinylidene chloride.....	75-35-4	Ethene, 1,1-dichloro.....	8240 8010	5 1
trans-1,2-Dichloroethylene	156-60-5	Ethene, 1,2-dichloro-, (E).....	8240 8010	5 1
2,4-Dichlorophenol.....	120-83-2	Phenol, 2,4-dichloro.....	8240 8040	5 5
2,6-Dichlorophenol.....	87-65-0	Phenol, 2,6-dichloro.....	8270	10
1,2-Dichloropropane.....	78-87-5	Propane, 1,2-dichloro.....	8010 8240	0.5 5
cis-1,3-Dichloropropene....	10061-01-5	1-Propene, 1,3-dichloro-, (Z).....	8010	20
trans-1,3-Dichloro propene.....	10061-02-6	1-Propene, 1,3-dichloro-, (E).....	8240 8010	5 5
Dieldrin.....	60-57-1	2,7:3,6-Dimethanonaphth[2,3]oxirene-, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octahydro-, (1aa,2b,2aa,3b,6b,6aa,7b,7aa).....	8240 8080	5 0.05
Diethyl phthalate.....	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester.....	8270 8060	10 5
O,O-Diethyl O-2-pyrazinyl- phosphorothioate; Thionazin.....	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl- ester.....	8270	10
Dimethoate.....	60-51-5	Phosphorodithioic acid, O,O-dimethyl- S-[2-(methylamino)-2-oxoethyl]-ester.....	8270	10
p-(Dimethylamino) azobenzene.....	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo).....	8270	10
7,12-Dimethylbenz[a]	57-97-6	Benz[a]anthracene, 7,12-dimethyl.....	8270	10

APPENDIX XII. Ground Water Monitoring List<sup>1</sup>

Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
anthracene.....				
3,3'-Dimethylbenzidine.....	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl .....	8270	10
alpha, alpha-Dimethylphenethylamine.....	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl .....	8270	10
2,4-Dimethylphenol.....	105-67-9	Phenol, 2,4-dimethyl .....	8040 8270	5 10
Dimethyl phthalate.....	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl-ester.....	8060 8270	5 10
m-Dinitrobenzene.....	99-65-0	Benzene, 1,3-dinitro .....	8270	10
4,6-Dinitro-o-cresol.....	534-52-1	Phenol, 2-methyl-4,6-dinitro .....	8040 8270	150 50
2,4-Dinitrophenol.....	51-28-5	Phenol, 2,4-dinitro .....	8040 8270	150 50
2,4-Dinitrotoluene.....	121-14-2	Benzene, 1-methyl-2,4-dinitro .....	8090 8270	0.2 10
2,6-Dinitrotoluene.....	606-20-2	Benzene, 2-methyl-1,3-dinitro.....	8090 8270	0.1 10
Dinoseb; DNBP;- 2-sec-Butyl-4,6-dinitrophenol.....	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro .....	8150 8270	1 10
Di-n-octyl phthalate.....	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester.....	8060 8270	30 10
1,4-Dioxane.....	123-91-1	1,4-Dioxane.....	8015	150
Diphenylamine.....	122-39-4	Benzenamine, N-phenyl.....	8270	10
Disulfoton.....	298-04-4	Phosphorodithioic acid, O,O-diethyl-S-[2-(ethylthio)-S-[2-ethyl]ester.....	8140 8270	2 10
Endosulfan I.....	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin-, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide-, (3a,5ab,6a,9a,9ab).....	8080 8250	0.1 10
Endosulfan II.....	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin-, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide-, (3a,5aa,6b,9b,9aa).....	8080	0.05
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin-, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene-, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aa,2b,2ab,3a,6a,6ab,7b,7aa).....	8080 8250	0.1 10
Endrin aldehyde.....	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde-, 2,2a,3,3,4,7-hexachlorodecahydro-, (1a,2b,2ab,4b,4ab,5b,6ab,6bb,7R*).....	8080 8270	0.2 10
Ethylbenzene.....	100-41-4	Benzene, ethyl.....	8020 8240	2 5
Ethyl methacrylate.....	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester.....	8015 8240 8270	10 5 10
Ethyl methanesulfonate-Famphur.....	62-50-0 52-85-7	Methanesulfonic acid, ethyl ester..... Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-dimethyl ester.....	8270 8270	10 10
Fluoranthene.....	206-44-0	Fluoranthene.....	8100 8270	200 10
Fluorene	86-73-7	9H-Fluorene	8100	200

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Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
Heptachlor.....	76-44-8	4,7-Methano-1H-indene,- 1,4,5,6,7,8,8-heptachloro-3a,4,7, 7a-tetrahydro.....	8270	10
			8080	0.05
Heptachlor epoxide.....	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene,- 2,3,4,5,6,7,7-tachloro-1a,1b,5,5a,6, 6a, hexahydro-, (1aa,1bb,2a,5ab,6b,6aa)	8270	10
			8080	1
Hexachlorobenzene.....	118-74-1	Benzene, hexachloro.....	8270	10
			8120	0.5
Hexachlorobutadiene.....	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro.....	8270	10
			8120	5
Hexachlorocyclo pentadiene.....	77-47-4	1,3-Cyclopentadiene,- 1,2,3,4,5,5-hexachloro.....	8270	10
			8120	5
Hexachloroethane	67-72-1	Ethane, hexachloro.....	8270	10
			8120	0.5
Hexachlorophene	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro.....	8270	10
			8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro.....	8270	10
2-Hexanone	591-76-6	2-Hexanone.....	8240	50
Indeno(1,2,3-cd)pyrene.....	193-39-5	Indeno[1,2,3-cd]pyrene.....	8100	200
			8270	10
Isobutyl alcohol.....	78-83-1	1-Propanol, 2-methyl.....	8015	50
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,- 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a- hexahydro-(1a,4a,4ab,5b,8b,8ab).....	8270	10
Isophorone.....	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl.....	8090	60
			8270	10
Isosafrole.....	120-58-1	1,3-Benzodioxole, 5-(1-propenyl).....	8270	10
Kepone.....	143-50-0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b, 6-decachlorooctahydro.....	8270	10
			8270	10
Lead.....	(Total)	Lead.....	6010	40
			7420	1,000
			7421	10
Mercury.....	(Total)	Mercury.....	7470	2
Methacrylonitrile.....	128-98-7	2-Propenenitrile, 2-methyl.....	8015	5
			8240	5
Methapyrilene.....	91-80-5	1,2-Ethanediamine,- N,N-dimethyl-N'-2-pyridinyl-N'- (2-thien-ylmethyl).....	8270	10
			8270	10
Methoxychlor	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)- bis[4-methoxy.....	8080	2
			8270	10
Methyl bromide;- Bromomethane.....	74-83-9	Methane, bromo.....	8010	20
			8240	10
Methyl chloride;- Chloromethane.....	74-87-3	Methane, chloro.....	8010	1
			8240	10
3-Methylcholanthrene.....	56-49-5	Benz[ <i>jj</i> ]aceanthrylene,- 1,2-dihydro-3-methyl.....	8270	10
			8270	10
Methylene bromide;- Dibromomethane.....	74-95-3	Methane, dibromo.....	8010	15
			8240	5
Methylene chloride;- Dichloromethane.....	75-09-2	Methane, dichloro.....	8010	5
			8240	5
Methyl ethyl ketone;- MEK.....	78-93-3	2-Butanone.....	8015	10
			8240	100
Methyl iodide;- Iodomethane.....	74-88-4	Methane, iodo.....	8010	40
			8240	5

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Methyl methacrylate.....	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester.....	8015 8240	2 5
Methyl methanesulfonate.....	66-27-3	Methanesulfonic acid, methyl ester.....	8270	10
2-Methylnaphthalene.....	91-57-6	Naphthalene, 2-methyl.....	8270	10
Methyl parathion; Parathion-methyl.....	298-00-0	Phosphorothioic acid, O,O-dimethyl-O-(4-nitrophenyl) ester.....	8140 8270	0.5 10
4-Methyl-2-pentanone; Methyl-isobutyl ketone.....	108-10-1	2-Pentanone, 4-methyl.....	8015 8240	5 50
Naphthalene.....	91-20-3	Naphthalene.....	8100 8270	200 10
1,4-Naphthoquinone.....	130-15-4	1,4-Naphthalenedione.....	8270	10
1-Naphthylamine.....	134-32-7	1-Naphthalenamine.....	8270	10
2-Naphthylamine.....	91-59-8	2-Naphthalenamine.....	8270	10
Nickel.....	(Total)	Nickel.....	6010 7520	50 400
o-Nitroaniline.....	88-74-4	Benzenamine, 2-nitro.....	8270	50
m-Nitroaniline.....	99-09-2	Benzenamine, 3-nitro.....	8270	50
p-Nitroaniline.....	100-01-6	Benzenamine, 4-nitro.....	8270	50
Nitrobenzene.....	98-95-3	Benzene, nitro.....	8090 8270	40 10
o-Nitrophenol.....	88-75-5	Phenol, 2-nitro.....	8040 8270	5 10
p-Nitrophenol.....	100-02-7	Phenol, 4-nitro.....	8040 8270	10 50
4-Nitroquinoline 1-oxide.....	56-57-5	Quinoline, 4-nitro, 1-oxide.....	8270	10
N-Nitrosodi-n-butylamine...	924-16-3	1-Butanamine, N-butyl-N-nitroso.....	8270	10
N-Nitrosodiethylamine.....	55-18-5	Ethanamine, N-ethyl-N-nitroso.....	8270	10
N-Nitrosodimethylamine.....	62-75-9	Methanamine, N-methyl-N-nitroso.....	8270	10
N-Nitrosodiphenylamine.....	86-30-6	Benzenamine, N-nitroso-N-phenyl.....	8270	10
N-Nitrosodipropylamine;-di-n-propylnitrosamine....	621-64-7	1-Propanamine, N-nitroso-N-propyl.....	8270	10
N-Nitrosomethyl ethylamine..	10595-95-6	Ethanamine, N-methyl-N-nitroso.....	8270	10
N-Nitrosomorpholine.....	59-89-2	Morpholine, 4-nitroso.....	8270	10
N-Nitrosopiperidine.....	100-75-4	Piperidine, 1-nitroso.....	8270	10
N-Nitrosopyrrolidine.....	930-55-2	Pyrrolidine, 1-nitroso.....	8270	10
5-Nitro-o-toluidine.....	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion.....	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester.....	8270	10
Polychlorinated biphenyls;-PCBs.....	See Note-7	1,1'-Biphenyl, chloro derivatives.....	8080	50
Polychlorinated dibenzo-p-dioxins;-PCDDs.....	See Note-8	Dibenzo[b,e][1,4]dioxin, chloro derivatives.....	8250 8280	100 0.01
Polychlorinated dibenzofurans;PCDFs.....	See Note-9	Dibenzofuran, chloro derivatives.....	8280	0.01
Pentachlorobenzene.....	608-93-5	Benzene, pentachloro.....	8270	10
Pentachloroethane.....	76-01-7	Ethane, pentachloro.....	8240 8270	5 10
Pentachloronitrobenzene....	82-68-8	Benzene, pentachloronitro.....	8270	10
Pentachlorophenol.....	87-86-5	Phenol, pentachloro.....	8040 8270	5 50
Phenacetin.....	62-44-2	Acetamide, N-(4-ethoxyphenyl).....	8270	10
Phenanthrene.....	85-01-8	Phenanthrene.....	8100 8270	200 10
Phenol.....	108-95-2	Phenol.....	8040 8270	1 10
p-Phenylenediamine.....	106-50-3	1,4-Benzenediamine.....	8270	10
Phorate.....	298-02-2	Phosphorodithioic acid, O,O-diethyl-S-[(ethylthio)methyl] ester	8140 8270	2 10

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Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
2-Picoline.....	109-06-8	Pyridine, 2-methyl.....	8240 8270	5 10
Pronamide.....	23950-58-5	Benzamide,- 3,5-dichloro-N-(1,1-dimethyl-2-propynyl).....	8270	10
Propionitrile; Ethyl- cyanide.....	107-12-0	Propanenitrile.....	8015	60
Pyrene.....	129-00-0	Pyrene.....	8240 8100 8270	5 200 10
Pyridine.....	110-86-1	Pyridine.....	8240 8270	5 10
Safrole.....	94-59-7	1,3-Benzodioxole, 5-(2-propenyl).....	8270	10
Selenium.....	(Total)	Selenium.....	6010 7740 7741	750 20 20
Silver.....	(Total)	Silver.....	6010 7760	70 100
Silvex; 2,4,5-TP.....	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy).....	8150	2
Styrene.....	100-42-5	Benzene, ethenyl.....	8020 8240	1 5
Sulfide.....	18496-25-8	Sulfide.....	9030	10,000
2,4,5-T; 2,4,5-Trichlorophenoxy- acetic acid.....	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy).....	8150	2
2,3,7,8-TCDD; 2,3,7,8-Tetrachloro- dibenzo-p-dioxin.....	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro.....	8280	0.005
1,2,4,5-Tetrachloro benzene.....	95-94-3	Benzene, 1,2,4,5-tetrachloro.....	8270	10
1,1,1,2-Tetrachloro ethane.....	630-20-6	Ethane, 1,1,1,2-tetrachloro.....	8010	5
1,1,2,2-Tetrachloro ethane..	79-34-5	Ethane, 1,1,2,2-tetrachloro.....	8240 8010	5 0.5
Tetrachloroethylene; Perchloro-ethylene; Tetrachloroethene.....	127-18-4	Ethene, tetrachloro.....	8240 8010	5 0.5
2,3,4,6-Tetrachloro phenol.....	58-90-2	Phenol, 2,3,4,6-tetrachloro.....	8240 8270	5 10
Tetraethyl dithiopyrophosphate; sulfotep	3689-24-5	Thiodiphosphoric acid ((HO) <sub>2</sub> P(S) <sub>2</sub> O), tetraethyl- ester.....	8270	10
Thallium.....	(Total)	Thallium.....	6010 7840 7841	400 1,000 10
Tin.....	(Total)	Tin.....	7870	8,000
Toluene.....	108-88-3	Benzene, methyl.....	8020 8240	2 5
o-Toluidine.....	95-53-4	Benzenamine, 2-methyl.....	8270	10
Toxaphene.....	8001-35-2	Toxaphene.....	8080 8250	2 10
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-Trichloro.....	8270	10
1,1,1-Trichloroethane; Methylchloroform.....	71-55-6	Ethane, 1,1,1-trichloro.....	8240	5
1,1,2-Trichloroethane.....	79-00-5	Ethane, 1,1,2-trichloro.....	8010 8240	0.2 5
Trichloroethylene; Trichloroethene.....	79-01-6	Ethene, trichloro.....	8010	1
Trichlorofluoromethane.....	75-69-4	Methane, trichlorofluoro.....	8240 8010	5 10
2,4,5-Trichlorophenol.....	95-95-4	Phenol, 2,4,5-trichloro.....	8240	5
2,4,6-Trichlorophenol.....	88-06-2	Phenol, 2,4,6-trichloro.....	8270 8040	10 5

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Common Name <sup>2</sup>	CAS RN <sup>3</sup>	Chemical Abstracts Service Index Name <sup>4</sup>	Suggested Methods <sup>5</sup>	PQL (µg/l) <sup>6</sup>
1,2,3-Trichloropropane.....	96-18-4	Propane, 1,2,3-trichloro.....	8270 8010 8240	10 10 5
O,O,O-Triethylphosphorothioate.....	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester.....	8270	10
sym-Trinitrobenzene.....	99-35-4	Benzene, 1,3,5-trinitro.....	8270	10
Vanadium.....	(Total)	Vanadium.....	6010 7910 7911	80 2,000 40
Vinyl acetate.....	108-05-4	Acetic acid, ethenyl ester.....	8240	5
Vinyl chloride.....	75-01-4	Ethene, chloro.....	8010 8240	2 10
Xylene (total).....	1330-20-7	Benzene, dimethyl.....	8020 8240	5 5
Zinc.....	(Total)	Zinc.....	6010 7950	20 50

<sup>1</sup>The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also Footnotes 5 and 6.

<sup>2</sup>Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

<sup>3</sup>Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

<sup>4</sup>CAS index names are those used in the 9th Cumulative Index.

<sup>5</sup>Suggested methods refer to analytical procedure numbers used in environmental protection agency publication SW-846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", third edition. Analytical details can be found in SW-846 and in documentation on file at the environmental protection agency. The packed column gas chromatography methods 8010, 8020, 8030, 8040, 8060, 8080, 8090, 8110, 8120, 8140, 8150, 8240, and 8250 were promulgated methods through update IIB of SW-846 and, as of update III, the environmental protection agency has replaced these methods with "capillary column GC methods", as the suggested methods.

<sup>6</sup>Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

<sup>7</sup>Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 1104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

<sup>8</sup>This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. The PQL shown is an average value for PCDD congeners.

<sup>9</sup>This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. The PQL shown is an average value for PCDF congeners.

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Common Name <sup>1</sup>	CAS RN <sup>2</sup>	Chemical Abstracts Service Index Name <sup>3</sup>
Acenaphthene.....	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene.....	208-96-8	Acenaphthylene
Acetone.....	67-64-1	2-Propanone
Acetophenone.....	98-86-2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide.....	75-05-8	Acetonitrile
2-Acetylaminofluorene; 2-AAF.....	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein.....	107-02-8	2-Propenal
Acrylonitrile.....	107-13-1	2-Propenenitrile
Aldrin.....	309-00-2	1,4:5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-,1,1,4,4a,5,8,8a-hexahydro- (1α,4 α,4αβ,5α,8α,8αβ)-
Allyl chloride.....	107-05-1	1-Propene, 3-chloro-
4-Aminobiphenyl.....	92-67-1	[1,1'-Biphenyl]-4-amine
Aniline.....	62-53-3	Benzenamine

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Common Name <sup>1</sup>	CAS RN <sup>2</sup>	Chemical Abstracts Service Index Name <sup>3</sup>
Anthracene.....	120-12-7	Anthracene
Antimony.....	(Total)	Antimony
Aramite.....	140-57-8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester
Arsenic.....	(Total)	Arsenic
Barium.....	(Total)	Barium
Benzene.....	71-43-2	Benzene
Benzo[a]anthracene; Benanthracene.....	56-55-3	Benzo[a]anthracene
Benzo[b]fluoranthene.....	205-99-2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene.....	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene.....	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene.....	50-32-8	Benzo[a]pyrene
Benzyl alcohol.....	100-51-6	Benzenemethanol
Beryllium.....	(Total)	Beryllium
alpha-BHC.....	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 $\alpha$ ,2 $\alpha$ ,3 $\beta$ ,4 $\alpha$ ,5 $\beta$ ,6 $\beta$ )-
beta-BHC.....	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 $\alpha$ ,2 $\beta$ ,3 $\alpha$ ,4 $\beta$ ,5 $\alpha$ ,6 $\beta$ )-
delta-BHC.....	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 $\alpha$ ,2 $\alpha$ ,3 $\alpha$ ,4 $\beta$ ,5 $\alpha$ ,6 $\beta$ )-
gamma-BHC; Lindane.....	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 $\alpha$ ,2 $\alpha$ ,3 $\beta$ ,4 $\alpha$ ,5 $\alpha$ ,6 $\beta$ )-
Bis(2-chloroethoxy)methane.....	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
Bis(2-chloroethyl)ether.....	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2'-Dichlorodiisopropyl ether.....	108-60-1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl)phthalate.....	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromodichloromethane.....	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane.....	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether.....	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate.....	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium.....	(Total)	Cadmium
Carbon disulfide.....	75-15-0	Carbon disulfide
Carbon tetrachloride.....	56-23-5	Methane, tetrachloro-
Chlordane.....	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
p-Chloroaniline.....	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene.....	108-90-7	Benzene, chloro-
Chlorobenzilate.....	510-15-6	Benzenoacetic acid, 4-chloro- $\alpha$ -(4-chlorophenyl)- $\alpha$ -hydroxy, ethyl ester
p-Chloro-m-cresol.....	59-50-7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride.....	75-00-3	Ethane, chloro-
Chloroform.....	67-66-3	Methane, trichloro-
2-Chloronaphthalene.....	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol.....	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether.....	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene.....	126-99-8	1,3-Butadiene, 2-chloro-
Chromium.....	(Total)	Chromium
Chrysene.....	218-01-9	Chrysene
Cobalt.....	(Total)	Cobalt
Copper.....	(Total)	Copper
m-Cresol.....	108-39-4	Phenol, 3-methyl-
o-Cresol.....	95-48-7	Phenol, 2-methyl-
p-Cresol.....	106-44-5	Phenol, 4-methyl-
Cyanide.....	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid.....	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD.....	72-54-8	Benzene 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
4,4'-DDE.....	72-55-9	Benzene 1,1'-(dichloroethylidene)bis[4-chloro-
4,4'-DDT.....	50-29-3	Benzene 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
Diallate.....	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester
Dibenz[a,h]anthracene.....	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran.....	132-64-9	Dibenzofuran

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Common Name <sup>1</sup>	CAS RN <sup>2</sup>	Chemical Abstracts Service Index Name <sup>3</sup>
Dibromochloromethane; Chlorodibromomethane.....	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP.....	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide.....	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate.....	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene.....	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene.....	541-73-1	Benzene, 1,3-dichloro-
p-Dichlorobenzene.....	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine.....	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene.....	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane.....	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane.....	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride.....	107-06-2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride.....	75-35-4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene.....	156-60-5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol.....	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol.....	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane.....	78-87-5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene.....	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene.....	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin.....	60-57-1	2,7:3,6-Dimethanonaphth[2,3-]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1a $\alpha$ ,2 $\beta$ ,2a $\alpha$ ,3 $\beta$ ,6 $\beta$ ,6a $\alpha$ ,7 $\beta$ ,7a $\alpha$ )-
Diethyl phthalate.....	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin.....	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate.....	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene.....	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene.....	57-97-6	Benzo[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine.....	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, alpha-Dimethylphenethylamine.....	122-09-8	Benzeneethanamine, $\alpha,\alpha$ -dimethyl-
2,4-Dimethylphenol.....	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate.....	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene.....	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol.....	534-52-1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol.....	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene.....	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene.....	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol.....	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate.....	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane.....	123-91-1	1,4-Dioxane
Diphenylamine.....	122-39-4	Benzenamine, N-phenyl-
Disulfoton.....	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
Endosulfan I.....	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3 $\alpha$ ,5a $\beta$ ,6 $\alpha$ ,9 $\alpha$ ,9a $\beta$ )-
Endosulfan II.....	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3 $\alpha$ ,5a $\alpha$ ,6 $\beta$ ,9 $\beta$ ,9a $\alpha$ )-
Endosulfan sulfate.....	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin.....	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1a $\alpha$ ,2 $\beta$ ,2a $\beta$ ,3 $\alpha$ ,6 $\alpha$ ,6a $\beta$ ,7 $\beta$ ,7a $\alpha$ )-
Endrin aldehyde.....	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1 $\alpha$ ,2 $\beta$ ,2a $\beta$ ,4 $\beta$ ,4a $\beta$ ,5 $\beta$ ,6a $\beta$ ,6b $\beta$ ,7R*)-
Ethylbenzene.....	100-41-4	Benzene, ethyl-
Ethyl methacrylate.....	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate.....	62-50-0	Methanesulfonic acid, ethyl ester
Famphur.....	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl]-O,O-

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Common Name <sup>1</sup>	CAS RN <sup>2</sup>	Chemical Abstracts Service Index Name <sup>3</sup>
Fluoranthene.....	206-44-0	dimethyl ester Fluoranthene
Fluorene.....	86-73-7	9H-Fluorene
Heptachlor.....	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide.....	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-tachloro-1a,1b,5,5a,6,6a,-hexahydro-(1a $\alpha$ ,1b $\beta$ ,2 $\alpha$ ,5 $\alpha$ ,5a $\beta$ ,6 $\beta$ ,6a $\alpha$ )
Hexachlorobenzene.....	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene.....	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene.....	77-47-4	1,3 Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane.....	67-72-1	Ethane, hexachloro-
Hexachlorophene.....	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
Hexachloropropene.....	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone.....	591-76-6	2-Hexanone
Indeno(1,2,3-cd)pyrene.....	193-39-5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol.....	78-83-1	1-Propanol, 2-methyl-
Isodrin.....	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1 $\alpha$ ,4 $\alpha$ ,4a $\beta$ ,5 $\beta$ ,8 $\beta$ ,8a $\beta$ )
Isophorone.....	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole.....	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone.....	143-50-0	1,3,4-Metheno-2H-cyclobuta-[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead.....	(Total)	Lead
Mercury.....	(Total)	Mercury
Methacrylonitrile.....	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene.....	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
Methoxychlor.....	72-43-5	Benzene, 1,1'-(2,2,2,2-trichloroethylidene)bis[4-methoxy-
Methyl bromide; Bromomethane.....	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane.....	74-87-3	Methane, chloro-
3-Methylcholanthrene.....	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Methyl ethyl ketone, MEK.....	78-93-3	2-Butanone
Methyl iodide; Iodomethane.....	74-88-4	Methane, iodo-
Methyl methacrylate.....	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate.....	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene.....	91-57-6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl..	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl)ester
4-Methyl-2-pentanone; Methyl isobutyl ketone.....	108-10-1	2-Pentanone, 4-methyl-
Naphthalene.....	91-20-3	Naphthalene
1,4-Naphthoquinone.....	130-15-4	1,4-Naphthalenedione
1-Naphthylamine.....	134-32-7	1-Naphthalenamine
2-Naphthylamine.....	91-59-8	2-Naphthalenamine
Nickel.....	(Total)	Nickel
o-Nitroaniline.....	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline.....	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline.....	100-01-6	Benzenamine, 4-nitro-
Nitrobenzene.....	98-95-3	Benzene, nitro-
o-Nitrophenol.....	88-75-5	Phenol, 2-nitro-
p-Nitrophenol.....	100-02-7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide.....	56-57-5	Quinoline, 4-nitro, 1-oxide
N-Nitrosodi-n-butylamine.....	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine.....	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine.....	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine.....	86-30-6	Benzenamine, N-nitroso-N-phenyl
N-Nitrosodipropylamine; Di-n-propylnitrosamine.....	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine.....	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine.....	59-89-2	Morpholine, 4-nitroso-
N-Nitrosopiperidine.....	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine.....	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine.....	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion.....	56-38-2	Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl)ester

## APPENDIX XII. Ground Water Monitoring List

Common Name <sup>1</sup>	CAS RN <sup>2</sup>	Chemical Abstracts Service Index Name <sup>3</sup>
Polychlorinated biphenyls; PCBs.....	See Note 4	1,1'-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p-dioxins; PCDDs.....	See Note 5	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs.....	See Note 6	Dibenzofuran, chloro derivatives
Pentachlorobenzene.....	608-93-5	Benzene, pentachloro-
Pentachloroethane.....	76-01-7	Ethane, pentachloro-
Pentachloronitrobenzene.....	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol.....	87-86-5	Phenol, pentachloro-
Phenacetin.....	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene.....	85-01-8	Phenanthrene
Phenol.....	108-95-2	Phenol
p-Phenylenediamine.....	106-50-3	1,4-Benzenediamine
Phorate.....	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl]ester
2-Picoline.....	109-06-8	Pyridine, 2-methyl-
Pronamide.....	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide.....	107-12-0	Propanenitrile
Pyrene.....	129-00-0	Pyrene
Pyridine.....	110-86-1	Pyridine
Safrole.....	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium.....	(Total)	Selenium
Silver.....	(Total)	Silver
Silvex; 2,4,5-TP.....	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene.....	100-42-5	Benzene, ethenyl-
Sulfide.....	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxy-acetic acid.....	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachloro-dibenzo-p-dioxin.....	1746-01-6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene.....	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane.....	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane.....	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene.....	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol.....	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl diithiopyrophosphate; Sulfotepp.....	3689-24-5	Thiodiphosphoric acid ((HO) <sub>2</sub> P(S) <sub>2</sub> O), tetraethyl ester
Thallium.....	(Total)	Thallium
Tin.....	(Total)	Tin
Toluene.....	108-88-3	Benzene, methyl-
o-Toluidine.....	95-53-4	Benzenamine, 2-methyl-
Toxaphene.....	8001-35-2	Toxaphene
1,2,4-Trichlorobenzene.....	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform.....	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane.....	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene... Trichlorofluoromethane.....	79-01-6 75-69-4	Ethene, trichloro- Methane, trichlorofluoro-
2,4,5-Trichlorophenol.....	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol.....	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane.....	96-18-4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate.....	126-68-1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene.....	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium.....	(Total)	Vanadium
Vinyl acetate.....	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride.....	75-01-4	Ethene, chloro-
Xylene (total).....	1330-20-7	Benzene, dimethyl-
Zinc.....	(Total)	Zinc

<sup>1</sup>Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

<sup>2</sup>Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

<sup>3</sup>CAS index names are those used in the 9<sup>th</sup> Cumulative Index.

<sup>4</sup>Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of

## **APPENDIX XII. Ground Water Monitoring List**

<b>Common Name<sup>1</sup></b>	<b>CAS RN<sup>2</sup></b>	<b>Chemical Abstracts Service Index Name<sup>3</sup></b>
<u>Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5).</u>		

<sup>5</sup>This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

<sup>6</sup>This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

## APPENDIX XXIII

### Organic Compounds for Which Residues Must Be Analyzed

#### Volatiles:

Benzene  
Toluene  
Carbon tetrachloride  
Chloroform  
Methylene chloride  
Trichloroethylene  
Tetrachloroethylene  
1,1,1-Trichloroethane  
Chlorobenzene  
cis-1,4-Dichloro-2-butene  
Bromochloromethane  
Bromodichloromethane  
Bromoform  
Bromomethane  
Methylene bromide  
Methyl ethyl ketone

#### Semivolatiles:

Bis(2-ethylhexyl)phthalate  
Naphthalene  
Phenol  
Diethyl phthalate  
Butyl benzyl phthalate  
2,4-Dimethylphenol  
o-Dichlorobenzene  
m-Dichlorobenzene  
p-Dichlorobenzene  
Hexachlorobenzene  
2,4,6-Trichlorophenol  
Fluoranthene  
o-Nitrophenol  
1,2,4-Trichlorobenzene  
o-Chlorophenol  
Pentachlorophenol  
Pyrene  
Dimethyl phthalate  
Mononitrobenzene  
2,6-Toluene diisocyanate  
Polychlorinated dibenzo-p-dioxins<sup>1</sup>  
Polychlorinated dibenzo-furans<sup>1</sup>

<sup>1</sup>Analyses for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans are required only for residues collected from areas downstream of the combustion chamber (for example, ductwork, boiler tubes, heat exchange surfaces, and air pollution control devices).

Note to the table: Analysis is not required for those compounds that do not have an established F039 nonwastewater concentration limit.

## APPENDIX XXIV

### Methods Manual for Compliance With the Boiler and Industrial Furnace Regulations

The Methods Manual for Compliance With the Boiler and Industrial Furnace Regulations\* is incorporated by reference in its entirety from Appendix IX to 40 Code of Federal Regulations, Part 266, [effective April 17, 2015](#).

~~\*Note: Methods Manual for Compliance With Boiler and Industrial Furnace Regulations, U.S. EPA, December 1990, is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600, document number PB91-120-006.~~

## APPENDIX XXVI

### Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters

- A. Exempt Lead-Bearing Materials When Generated or Originally Produced by Lead-Associated Industries<sup>1</sup>
1. Acid dump/fill solids
  2. Sump mud
  3. Materials from laboratory analyses
  4. Acid filters
  5. Baghouse bags
  6. Clothing (for example, coveralls, aprons, shoes, hats, gloves)
  7. Sweepings
  8. Air filter bags and cartridges
  9. Respiratory cartridge filters
  10. Shop abrasives
  11. Stacking boards
  12. Waste shipping containers (for example, cartons, bags, drums, cardboard)
  13. Paper hand towels
  14. Wiping rags and sponges
  15. Contaminated pallets
  16. Water treatment sludges, filter cakes, residues, and solids
  17. Emission control dusts, sludges, filter cakes, residues, and solids from lead-associated industries (for example, K069 and D008 wastes)
  18. Spent grids, posts, and separators
  19. Spent batteries
  20. Lead oxide and lead oxide residues
  21. Lead plates and groups
  22. Spent battery cases, covers, and vents
  23. Pasting belts
  24. Water filter media
  25. Cheesecloth from pasting rollers
  26. Pasting additive bags
  27. Asphalt paving materials
- <sup>1</sup>Lead-associated industries are lead smelters, lead-acid battery manufacturing, and lead chemical manufacturing (for example, manufacturing of lead oxide or other lead compounds).
- B. Exempt Lead-Bearing Materials When Generated or Originally Produced by Any Industry
1. Charging jumpers and clips
  2. Platen abrasive
  3. Fluff from lead wire and cable casings
  4. Lead-based pigments and compounding pigment dust

## APPENDIX XXVIII

### Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

These are exempt mercury-bearing materials with less than five hundred parts per million of appendix V of chapter 33-24-02 organic constituents when generated by manufacturers or users of mercury or mercury products.

1. Activated carbon.
2. Decomposer graphite.
3. Wood.
4. Paper.
5. Protective clothing.
6. Sweepings.
7. Respiratory cartridge filters.
8. Cleanup articles.
9. Plastic bags and other contaminated containers.
10. Laboratory and process control samples.
11. K106 and other wastewater treatment plant sludge and filter cake.
12. Mercury cell sump and tank sludge.
13. Mercury cell process solids.
14. Recoverable levels ~~of~~ mercury contained in soil.

## CHAPTER 33-24-06 PERMITS

### Section

33-24-06-01	Application for a Permit
33-24-06-02	Continuation of Expiring Permits
33-24-06-03	Signatories to Permit Applications and Reports
33-24-06-04	Conditions Applicable to Permits
33-24-06-05	Establishing Permit Conditions
33-24-06-06	Duration and Scope of Permits
33-24-06-07	Schedules of Compliance
33-24-06-08	Requirements for Recording and Reporting of Monitoring Results
33-24-06-09	Considerations Under Other State and Federal Laws
33-24-06-10	Effect of a Permit
33-24-06-11	Transfer of Permits
33-24-06-12	Modification or Revocation and Reissuance of Permits
33-24-06-13	Termination of Permits and Permit Denial
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33-24-06-15	Noncompliance and Program Reporting by the Department
33-24-06-16	Operating Status Prior to Final Administrative Disposition of the Permit Application
33-24-06-17	Contents of a Permit Application
33-24-06-18	Permits by Rule
33-24-06-19	Special Forms of Permits
33-24-06-20	Research, Development, and Demonstration Permits
33-24-06-21	Fees
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33-24-06-23	[Reserved]
33-24-06-24	[Reserved]
33-24-06-25	[Reserved]
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33-24-06-27	[Reserved]
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33-24-06-30	Remedial Action Plans - General Information
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33-24-06-33	Modification, Revocation and Reissuance or Termination of a Remedial Action Plan
33-24-06-34	Remedial Action Plan Operations
33-24-06-35	Remedial Action Plans for Offsite Locations
33-24-06-36	[Reserved]
33-24-06-37	[Reserved]
33-24-06-38	[Reserved]
33-24-06-39	[Reserved]
33-24-06-40	[Reserved]
33-24-06-41	[Reserved]
33-24-06-42	[Reserved]
33-24-06-43	[Reserved]
33-24-06-44	[Reserved]
33-24-06-45	<del>[Reserved]</del> <a href="#">Standardized Permit - General Information</a>
33-24-06-46	[Reserved]
33-24-06-47	[Reserved]
33-24-06-48	<del>[Reserved]</del> <a href="#">Eligibility for a Standardized Permit</a>
33-24-06-49	[Reserved]
33-24-06-50	[Reserved]

33-24-06-51	[Reserved]
33-24-06-52	<del>[Reserved]</del> <a href="#">Conditions Applicable to a Standardized Permit</a>
33-24-06-53	[Reserved]
33-24-06-54	[Reserved]
33-24-06-55	[Reserved]
33-24-06-56	<del>[Reserved]</del> <a href="#">Standardized Permit Application Process</a>
33-24-06-57	<del>[Reserved]</del> <a href="#">Standardized Permit Application</a>
33-24-06-58	[Reserved]
33-24-06-59	[Reserved]
33-24-06-60	[Reserved]
33-24-06-61	[Reserved]
33-24-06-62	<del>[Reserved]</del> <a href="#">Certification Requirements</a>
33-24-06-63	[Reserved]
33-24-06-64	[Reserved]
33-24-06-65	<del>[Reserved]</del> <a href="#">Recordkeeping Requirements</a>
33-24-06-66	[Reserved]
33-24-06-67	[Reserved]
33-24-06-68	[Reserved]
33-24-06-69	[Reserved]
33-24-06-70	<del>[Reserved]</del> <a href="#">Information Required for Containers</a>
33-24-06-71	[Reserved]
33-24-06-72	[Reserved]
33-24-06-73	<del>[Reserved]</del> <a href="#">Information Required for Tanks</a>
33-24-06-74	[Reserved]
33-24-06-75	[Reserved]
33-24-06-76	<del>[Reserved]</del> <a href="#">Information Required for Equipment</a>
33-24-06-77	[Reserved]
33-24-06-78	[Reserved]
33-24-06-79	[Reserved]
33-24-06-80	<del>[Reserved]</del> <a href="#">Information Required for Air Emissions Control</a>
33-24-06-81	[Reserved]
33-24-06-82	[Reserved]
33-24-06-83	[Reserved]
33-24-06-84	[Reserved]
33-24-06-85	<del>[Reserved]</del> <a href="#">Permit Modification</a>
33-24-06-86	[Reserved]
33-24-06-87	[Reserved]
33-24-06-88	[Reserved]
33-24-06-89	[Reserved]
33-24-06-90	[Reserved]
33-24-06-91	[Reserved]
33-24-06-92	[Reserved]
33-24-06-93	[Reserved]
33-24-06-94	[Reserved]
33-24-06-95	[Reserved]
33-24-06-96	[Reserved]
33-24-06-97	[Reserved]
33-24-06-98	[Reserved]
33-24-06-99	[Reserved]
33-24-06-100	<del>Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions From Startup, Shutdown, and Malfunction Events</del> <a href="#">Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers, and Hydrochloric Acid Production Furnaces to Minimize Emissions from Startup, Shutdown, and Malfunction Events</a>

### 33-24-06-01. Application for a permit.

1. **Permit application.** Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the department as described in this section and section ~~33-24-06-16~~33-24-06-17. Persons currently authorized with interim status shall apply for permits when required by the department. Persons covered by permits by rule (section 33-24-06-18) need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in section 33-24-06-19. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in section 33-24-06-20. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivision a or subdivision b may be eligible for a standardized permit under sections 33-24-06-45 through 33-24-06-85. Procedures for application and issuance of standardized permits are found in sections 33-24-07-40 through 33-24-07-54, and sections 33-24-06-45 through 33-24-06-85.
  - a. The facility generates hazardous waste and then nonthermally treats, or stores hazardous waste onsite in tanks, containers, or containment buildings; or
  - b. The facility receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores, or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.
2. **Who must have a permit?** North Dakota Century Code chapter 23-20.3 requires that a permit be obtained for the treatment, storage, or disposal of any hazardous waste as identified or listed in chapter 33-24-02. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivisions a and b of subsection 1 of section 33-24-06-48, may be eligible for a standardized permit under sections 33-24-06-45 through 33-24-06-85. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, during any compliance period specified under section 33-24-05-53, including any extension of that period under subsection 3 of section 33-24-05-53. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure according to section 33-24-05-64 after January 26, 1983, must have postclosure permits, unless they demonstrate closure by removal as provided under subdivisions d and e. If a postclosure permit is required, the permit must address applicable chapter 33-24-05 ground water monitoring, unsaturated zone monitoring, corrective action, and postclosure care. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a postclosure permit under this section.
  - a. Specific inclusions. Hazardous waste permits are required for:
    - (1) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see section 33-24-06-20). However, the owner or operator with an underground injection control permit will be deemed to have a hazardous waste permit for the injection well itself if the owner or operator complies with requirements of subsection ~~2~~1 of section 33-24-06-18.
    - (2) Treatment, storage, or disposal of hazardous waste at facilities requiring a North Dakota pollutant discharge elimination system permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a hazardous waste permit for that waste if the owner or operator complies with the requirements of subsection ~~3~~2 of section 33-24-06-18.
  - b. Specific exclusions. Hazardous waste permits are not required for:

- (1) Generators who accumulate hazardous waste onsite for less than time periods as provided in section 33-24-03-12.
- (2) Farmers who dispose of pesticide containers from their own use as provided in section 33-24-03-40.
- (3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation by section 33-24-02-04 or 33-24-02-05.
- (4) Owners or operators of totally enclosed treatment facilities as defined in section 33-24-01-04.
- (5) Owners or operators of elementary neutralization units or wastewater treatment units as defined in section 33-24-01-04.
- (6) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of section 33-24-03-08 at a transfer facility for a period of ten days or less.
- (7) Persons mixing absorbent material and waste in a container, provided this mixing occurs at the time waste is first placed in the container, and the person complies with sections 33-24-05-90 and 33-24-05-91, and subsection 2 of section 33-24-05-08.
- (8) Universal waste handlers and universal waste transporters as defined in section 33-24-01-04 managing the wastes listed below. These handlers are subject to regulation under sections 33-24-05-700 through 33-24-05-799.
  - (a) Batteries as described in section 33-24-05-702;
  - (b) Pesticides as described in section 33-24-05-703;
  - (c) Mercury containing ~~devices~~equipment as described in section 33-24-05-704; and
  - (d) Lamps as described in section 33-24-05-705.
- (9) Immediate response activities.
  - (a) A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:
    - [1] A discharge of a hazardous waste.
    - [2] An imminent and substantial threat of a discharge of hazardous waste.
    - [3] A discharge of a material which, when discharged, becomes a hazardous waste.
    - [4] An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 33-24-01-04.

- (b) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.
  - (c) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed and its disposition.
- c. Permits for less than an entire facility. The department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.
- d. Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under chapter 33-24-05 standards must obtain a postclosure permit unless they can demonstrate to the department that the closure met the standards for closure by removal or decontamination in section 33-24-05-122, subsection 5 of section 33-24-05-167, or section 33-24-05-135 respectively. The demonstration may be made in the following ways:
  - (1) If the owner or operator has submitted a part B application for a postclosure permit, the owner or operator may request a determination, based on information contained in the application, that chapter 33-24-05 closure by removal standards were met. If the department believes that chapter 33-24-05 standards were met, the department will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in subdivision e.
  - (2) If the owner or operator has not submitted a part B application for a postclosure permit, the owner or operator may petition the department for a determination that a postclosure permit is not required because the closure met the applicable chapter 33-24-05 closure standards.
    - (a) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under requirements that met or exceeded the chapter 33-24-05 closure by removal standard.
    - (b) The department shall approve or deny the petition according to the procedures outlined in subdivision e.
- e. Procedures for closure equivalency determination.
  - (1) If a facility owner or operator seeks an equivalency demonstration under subdivision d, the department will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within thirty days from the notice. The department will also, in response to a request, or at the department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the closure period. The department will give public notice of the hearing at least thirty days before it occurs (public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

- (2) The department will determine whether the chapter 33-24-05 closure met the standards for closure by removal or decontamination in section 33-24-05-122, subsection 5 of section 33-24-05-167, or section 33-24-05-135 respectively within ninety days of its receipt. If the department finds that the closure did not meet the applicable chapter 33-24-05 standards, the department will provide the owner or operator with a written statement of the reasons why the closure failed to meet chapter 33-24-05 standards. The owner or operator may submit additional information in support of an equivalency demonstration within thirty days after receiving such written statement. The department will review any additional information submitted and make a final determination within sixty days.
  - (3) If the department determines that the facility did not close in accordance with chapter 33-24-05 closure by removal standards, the facility is subject to postclosure permitting requirements.
3. **Who applies?** When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, however, the owner must also sign the permit application.
4. **Completeness.** The department will not issue a permit before receiving a complete application for a permit, except for permits by rule, or emergency permits. An application for a permit is complete when the department receives an application form and any supplemental information which is completed to ~~its~~the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection 10. The department may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.
5. **Information requirements.** All applicants for hazardous waste permits shall provide the information required by section 33-24-06-17 to the department.
6. **Recordkeeping.** Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this chapter for a period of at least three years from the date the application is signed.
7. **When to apply for a permit.**
  - a. Existing hazardous waste management facilities.
    - (1) Owners and operators of existing hazardous waste management facilities shall submit part A of their permit application (see subsection 1 of section 33-24-06-17) to the department no later than:
      - (a) Six months after the date of publication of rules which first require them to comply with the standards set forth in chapter 33-24-05; or
      - (b) Thirty days after the date they first become subject to the standards set forth in chapter 33-24-05,whichever occurs first.
    - (2) The department may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit part A of their permit application if it finds that:

- (a) There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and
  - (b) Such confusion is attributable to ambiguities in the department's rules in chapters 33-24-01 through 33-24-05.
- (3) The department may, by compliance order, extend the date by which the owner or operator of an existing hazardous waste management facility must submit part A of the permit application.
  - (4) The owner and operator of an existing hazardous waste management facility may be required to submit part B of the permit application at any time. Any owner or operator must be allowed at least six months from the date of request to submit the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit an application at any time.
  - (5) Failure to furnish a requested permit application on time or to furnish in full the information required by the application is grounds for termination of the facility's operating status under the procedures of chapter 33-24-07.
- b. New hazardous waste management facilities.
    - (1) No person may begin physical construction of a new hazardous waste management facility without having submitted a complete permit application (including both part A and part B) and having received a finally effective hazardous waste permit.
    - (2) An application for a permit for a new hazardous waste management facility (including both part A and part B) may be filed anytime after promulgation of those standards in sections 33-24-05-89, et seq., applicable to such facility. The application must be submitted to the department at least one hundred eighty days before physical construction is expected to commence.

**8. Updating permit applications.**

- a. If any owner or operator of a hazardous waste management facility has filed part A of a permit application and has not yet filed part B, the owner or operator shall amend part A of the application with the department:
  - (1) No later than the effective date of regulatory provisions listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or
  - (2) As necessary to comply with the provisions of section 33-24-06-16 for changes prior to the department making final administrative disposition of the application.
- b. The owner or operator of a facility who fails to comply with the updating requirements of subdivision a is not authorized to treat, store, or dispose of those wastes not covered by a duly filed part A of the application.

- 9. Reapplications.** Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has been granted by the department (the department shall not grant permission for applications to be submitted later than the expiration date of the existing permit). Any hazardous waste management facility with an effective permit and intending to be covered by a standardized permit, shall submit a notice of intent as described in subdivision a of subsection 4 of section 33-24-06-02, at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has

been granted by the department. The department shall not grant permission for applications or notices of intent to be submitted later than the expiration date of the existing permit, except as allowed by subdivision b of subsection 4 of section 33-24-06-02.

10. **Exposure information.**

- a. Any permit part B applications submitted by an owner or an operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:
  - (1) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
  - (2) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph 1; and
  - (3) The potential magnitude and nature of the human exposure resulting from such releases.
- b. Owners and operators of a landfill or surface impoundment who have already submitted a part B application must submit the exposure information required in subdivision a.

11. **General requirements.** The department may require a permittee or an applicant to submit information in order to establish permit conditions under subdivision b of subsection 42 of section 33-24-06-05 and subsection 1 of section 33-24-06-06.

12. If the department concludes, based on one or more of the factors listed in subdivision a that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the department shall require the additional information or assessments necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health or the environment, or both, resulting from both direct and indirect exposure pathways. The department may also require a permittee or applicant to provide information necessary to determine whether such assessments should be required.

a. The department shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

- (1) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;
- (2) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;
- (3) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);
- (4) Identities and quantities of other offsite sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

- (5) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;
- (6) Volume and types of wastes, for example wastes containing highly toxic constituents;
- (7) Other onsite sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;
- (8) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and
- (9) Such other factors as may be appropriate.

b. [Reserved]

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-02. Continuation of expiring permits.**

1. The conditions of an expired permit (including expired permits issued by the environmental protection agency) continue in force until the effective date of a new permit if:
  - a. The permittee has submitted a timely application which is a complete application for a new permit; and
  - b. The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impractical due to time or resource constraints).
2. Effect. Permits continued under this section remain fully effective and enforceable.
3. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:
  - a. Initiate enforcement action based upon the permit which has been continued.
  - b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit.
  - c. Issue a new permit with appropriate conditions.
  - d. Take other actions authorized by this article.

#### 4. Standardized permits.

- a. The conditions of an expired standardized permit continue in force until the effective date of a new permit (see section 33-24-07-11) if:
  - (1) The permittee has submitted a timely and complete notice of intent under subsection 2 of section 33-24-07-42 requesting coverage under a hazardous waste standardized permit; and
  - (2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impractical due to time or resource constraints).

- b. The department may notify the owner or operator that the facility is not eligible for a standardized permit (see section 33-24-07-46). The conditions of the expired permit will continue in force if the information specified in subdivision a of subsection 1 is submitted within sixty days after receipt of the notification that the facility is not eligible for a standardized permit.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-03. Signatories to permit applications and reports.**

1. **Applications.** All hazardous waste permit applications must be signed as follows:
  - a. For a corporation: by a responsible corporate officer. For the purpose of this section a responsible corporate officer means:
    - (1) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation; or
    - (2) The manager of one or more manufacturing, production, or operating facilities employing more than two hundred fifty persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: The department does not require specific assignments or delegations of authority to responsible corporate officers identified in paragraph 1. The department will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the department to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under paragraph 2 rather than to specific individuals.
  - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
  - c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
    - (1) The chief executive officer of the agency; or
    - (2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. **Reports.** All reports required by permits, and other information requested by the department must be signed by a person described in subsection 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in subsection 1;
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (A

duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

- c. The written authorization is submitted to the department.
3. **Changes to authorization.** If an authorization under subsection 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection 2 must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. **Certification.**
  - a. Any persons signing a document under subsection 1 or 2 shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- b. For remedial action plans under sections 33-24-06-30 through 33-24-06-35, if the operator certifies according to subdivision a, then the owner may make the following certification instead of the certification in subdivision a:

Based on my knowledge of the conditions of the property described in the remedial action plan and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, ~~upon information~~ to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

#### **33-24-06-04. Conditions applicable to permits.**

The following conditions apply to all hazardous waste permits. All conditions applicable to permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this article must be given in the permit.

1. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the North Dakota Century Code and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. However, the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See section 33-24-06-19.)
2. **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

3. **Need to halt or reduce activity not a defense.** It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
4. **Duty to mitigate.** In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent any adverse impacts on human health or the environment.
5. **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance include effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
6. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
7. **Property rights.** This permit does not convey any property rights of any sort or any exclusive privilege.
8. **Duty to provide information.** The permittee shall furnish to the department, within a reasonable time, any relevant information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.
9. **Inspection and entry.** The permittee shall allow the department, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
  - a. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
  - b. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
  - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
  - d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized, any substances or parameters at any location.
10. **Monitoring and records.**
  - a. Samples and measurements taken for the purposes of monitoring must be representative of the monitored activity.
  - b. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by subdivision i of subsection 2 of section 33-24-05-40, and records of all data used to

complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application. This period may be extended by the request of the department at any time.

- c. Records of monitoring information must include:
  - (1) The date, exact place, and time of sampling or measurements;
  - (2) The individuals who performed the sampling or measurements;
  - (3) The dates analyses were performed;
  - (4) The individuals who performed the analyses;
  - (5) The analytical techniques or methods used; and
  - (6) The results of such analyses.
- d. The permittee shall maintain records from all ground water monitoring wells and associated ground water surface elevations for the active life of the facility, and, for disposal facilities, for the postclosure care period as well.

11. **Signatory requirement.** All applications, reports, or information submitted to the department must be signed and certified. (See section 33-24-06-03.)

12. **Reporting requirements.**

- a. Planned changes. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. For a new hazardous waste management facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:
  - (1) The permittee has submitted to the department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and
  - (2) Either of the following:
    - (a) The department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or
    - (b) Within fifteen days of the date of submission of the letter in paragraph 1, the permittee has not received notice from the department of ~~its~~the department's intent to inspect. If so, prior inspection by the department is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.
- b. Anticipated noncompliance. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in section 33-24-06-14, until:
  - (1) The permittee has submitted to the department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

- (2) Complied with the following:
- (a) The department has inspected the modified or newly constructed facility and finds the modified or newly constructed facility is in compliance with the conditions of the permit; or
  - (b) Within fifteen days of the date of submission of the letter in paragraph 1, the permittee has not received notice from the department of the department's intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.
- c. Transfers. This permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See section 33-24-06-11; in some cases, modification or revocation and reissuance is mandatory.)
- d. Monitoring reports. Monitoring results must be reported at the intervals specified elsewhere in this permit.
- e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than fourteen days following each schedule date.
- f. Twenty-four-hour reporting.
- (1) The permittee shall report any noncompliance which may endanger health or the environment.
  - (2) Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which must be reported orally:
    - (a) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies; and
    - (b) Any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste management facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause must include:
      - [1] Name, address, and telephone number of the owner or operator;
      - [2] Name, address, and telephone number of the facility;
      - [3] Date, time, and type of incident;
      - [4] Name and quantity of materials involved;
      - [5] The extent of injuries, if any;
      - [6] An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and
      - [7] Estimated quantity and disposition of recovered material that resulted from the incident.

- (3) A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
  - (4) The department may waive the five-day written notice requirement in favor of a written report within fifteen days.
  - g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under subdivisions a, d, e, and f, at the time monitoring reports are submitted. The reports must contain the information listed in subdivision f.
  - h. Manifest discrepancy reports. If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee shall submit a letter report, including a copy of the manifest to the department.
  - i. Unmanifested waste report. An unmanifested waste report must be submitted to the department within fifteen days of receipt of unmanifested waste.
  - j. Biennial report. A biennial report must be submitted covering facility activities during odd-numbered calendar years.
  - k. Other information. Where the permittee becomes aware that the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, the permittee shall promptly submit such facts or information.
13. **Information repository.** The department may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in subsection 2 of section 33-24-07-27. The information repository will be governed by the provisions of subsections 3 through 6 of section 33-24-07-27.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; July 1, 1997; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-05. Establishing permit conditions.**

- 1. ~~Additional conditions.~~In addition to conditions required in all permits (section 33-24-06-04), the department shall establish conditions in permits, as required on a case-by-case basis, under section 33-24-06-06 (duration of permits), subsection 1 of section 33-24-06-07 (schedules of compliance), and section 33-24-06-08 (monitoring).

~~a. The department shall establish conditions in permits, as required on a case-by-case basis:~~

- ~~(1) To provide for and assure compliance with all applicable requirements of North Dakota Century Code chapter 23-20.3 and its regulations. In satisfying this provision, the department may incorporate applicable requirements of chapter 33-24-05 directly into the permit or establish other permit conditions that are based on that chapter; and~~

~~(2) To establish duration and scope of the permit (section 33-24-06-06), schedules of compliance (section 33-24-06-07), procedures for recording and reporting of monitoring results (section 33-24-06-08), and conditions consistent with other state and federal laws (section 33-24-06-09).~~

~~b. The department shall also establish any other reasonable conditions which it deems necessary.~~

~~c. Any statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit is an applicable requirement within the meaning of this section. Any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in section 33-24-06-12, is also an applicable requirement. Both provide a means for reopening state permit proceedings at the discretion of the department where the new requirements are of sufficient magnitude to make additional proceedings desirable.~~

2. **Incorporation.** All permit conditions must be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit Additional permit conditions.

a. Each hazardous waste permit shall include permit conditions necessary to achieve compliance with North Dakota Century Code chapter 23-20.3 and rules, including each of the applicable requirements specified in chapter 33-24-05. In satisfying this provision, the department may incorporate applicable requirements of chapter 33-24-05 directly into the permit or establish other permit conditions that are based on this chapter.

b. Each permit issued shall contain terms and conditions as the department determines necessary to protect human health and the environment.

c. If, as the result of a assessments of other information, the department determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, chapter 33-24-05 to ensure protection of human health and the environment, the department shall include those terms and conditions in a hazardous waste permit for a hazardous waste combustion unit.

3. An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in section 33-24-06-12.

4. New or reissued permits, and to the extent allowed under section 33-24-06-12, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section and in section 33-24-06-08.

5. All permit conditions must be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-06. Duration and scope of permits.**

1. Hazardous waste permits are effective for a fixed term of five years. Every five years permits must be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of ~~Resource Conservation and Recovery Act sections 3004~~

~~and 3005~~ [North Dakota Century Code sections 23-20.3-04 and 23-20.3-05](#), and take into account improvements in technology as well as applicable rules.

2. Except as provided in section 33-24-06-02, the term of a permit may not be extended by modification beyond the maximum duration specified in this section.

~~3. Permits for less than an entire facility. The department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.~~

**History:** Effective January 1, 1984; amended effective December 1, 1991; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-05

### **33-24-06-07. Schedules of compliance.**

1. The permit may, when appropriate, specify a schedule of compliance leading to compliance with North Dakota Century Code chapter 23-20.3 and its regulations.
  - a. Time for compliance. Any schedules of compliance under this section must require compliance as soon as possible.
  - b. Interim dates. Except as provided in paragraph 2 of subdivision a of subsection 2, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the dates for their achievement.
    - (1) The time between interim dates may not exceed one year.
    - (2) If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit must specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
  - c. Reporting. The permit must be written to require that no later than fourteen days following each interim date and the final date of compliance, the permittee shall notify the department in writing of ~~its~~ [the permittee's](#) compliance or noncompliance with the interim or final requirements.
2. Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities [by receiving a terminal volume of hazardous waste and closing (and conducting postclosure care, where applicable) pursuant to applicable requirements] rather than continue to operate and meet permit requirements as follows:
  - a. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
    - (1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
    - (2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

- b. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit must contain a schedule leading to termination which will ensure timely compliance with applicable requirements.
- c. If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two schedules as follows:
  - (1) Both schedules must contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities.
  - (2) One schedule must lead to timely compliance with applicable requirements.
  - (3) The second schedule must lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.
  - (4) Each permit containing two schedules must require that after the permittee has made a final decision under paragraph 1 the permittee shall (a): follow the schedule leading to compliance if the decision is to continue conducting regulated activities; or (b): follow the schedule leading to termination if the decision is to cease conducting regulated activities.
- d. The applicant's or permittee's decision to cease conducting regulated activities must be evidenced by a firm public commitment satisfactory to the department such as a resolution of the board of directors of a corporation.

**History:** Effective January 1, 1984; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-10. Effect of a permit.**

#### 1. Compliance with a hazardous waste permit.

- 4.a. Compliance with a hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with North Dakota Century Code chapter 23-20.3 except for those requirements not included in the permit which:
  - a.(1) Become effective by statute;
  - b.(2) Are promulgated under sections 33-24-05-250 through 33-24-05-299 restricting the placement of hazardous wastes in or on the land;
  - e.(3) Are promulgated under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, 33-24-05-550 through ~~33-24-05-599~~33-24-05-559, and 33-24-05-800 through 33-24-05-819 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance (CQA) programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of section 33-24-06-14 class 1 permit modifications; or
  - d.(4) Are promulgated under subparts AA, BB, or CC of 40 CFR part 265 limiting air emissions, as incorporated by reference in subsection 5 of section 33-24-06-16.

b. A permit may be modified, revoked and reissued, or terminated during the permit's term for cause as set forth in sections 33-24-06-12 and subsection 1 of section 33-24-06-13, or the permit may be modified upon the request of the permittee as set forth in section 33-24-06-14.

2. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
3. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-11. Transfer of permits.**

1. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under subsection 2 or subdivision b of subsection 2 of section 33-24-06-12) to identify the new permittee and incorporate such other requirements as may be necessary.
2. Changes in the ownership or operational control of a facility may be made as a class 1 modification with prior written approval of the department in accordance with section 33-24-06-14 or as a routine change with prior approval under section 33-24-07-53. The new owner or operator must submit a revised permit application no later than ninety days prior to a scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the department. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of sections 33-24-05-74 through 33-24-05-88 (financial requirements) until the new owner or operator has demonstrated that the owner or operator is complying with the requirements of those sections. The new owner or operator must demonstrate compliance with sections 33-24-05-74 through 33-24-05-88 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with sections 33-24-05-74 through 33-24-05-88, the department shall notify the old owner or operator that the owner or operator no longer needs to comply with sections 33-24-05-74 through 33-24-05-88 as of the date of demonstration.

**History:** Effective January 1, 1984; amended effective December 1, 1991; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-12. Modification or revocation and reissuance of permits.**

When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see section 33-24-06-04), receives a request for revocation and reissuance under section 33-24-07-03 or conducts a review of the permit file), the department may determine whether one or more of the causes listed in subsections 1 and 2 for modification, or revocation and reissuance, or both, exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection 3, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see section 33-24-07-03). If cause does not exist under this section, the department may not modify or revoke and reissue the permit, except on

request of the permittee. If a permit modification is requested by the permittee, the department shall approve or deny the request according to the procedures of section 33-24-06-14, or section 33-24-06-85 and sections 33-24-07-40 through 33-24-07-54. Otherwise, a draft permit must be prepared and other procedures in chapter 33-24-07 followed.

1. **Causes for modifications.** The following are causes for modification, but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:
  - a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
  - b. Information. The department has received information that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.
  - c. New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.
  - d. Compliance schedules. The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.
  - e. Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the department when it comes up for reissuance in accordance with section 33-24-06-06, the department shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in chapters 33-24-01 through 33-24-07.
2. **Causes for modification or revocation and reissuance.** The following are causes to modify or, alternatively, revoke and reissue a permit:
  - a. Cause exists for termination under section 33-24-06-13, and the department determines that modification or revocation and reissuance is appropriate.
  - b. The department has received notification (as required in the permit, see subsection 4 of section 33-24-06-14) of a proposed transfer of the permit.
  - c. The department has received notification under subsection 2 of section 33-24-07-42 of a facility owner's or operator's intent to be covered by a standardized permit.
3. **Facility siting.** Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1991; January 1, 1994; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-14. Permit modification at the request of the permittee.**

1. **Class 1 modifications.**

- a. Except as provided in subdivision b, the permittee may put into effect class 1 modifications listed in appendix I of this section under the following conditions:
  - (1) The permittee must notify the department concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide applicable information required by section 33-24-06-17 and subsections 2 and 3 of section 33-24-06-19.
  - (2) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the department in accordance with chapter 33-24-07, and the appropriate units of state and local governments, as specified in section 33-24-07-06. This notification must be made within ninety calendar days after the change is put into effect. For the class 1 modifications that require prior department approval, the notification must be made within ninety calendar days after the department approves the request.
  - (3) Any person may request the department to review, and the department may for cause reject, any class 1 modification. The department must inform the permittee by certified mail that a class 1 modification has been rejected, explaining the reasons for the rejection. If a class 1 modification has been rejected, the permittee must comply with the original permit conditions.
- b. Class 1 permit modifications identified in appendix I by an asterisk may be made only with the prior written approval of the department.
- c. For a class 1 permit modification, the permittee may elect to follow the procedures in subsection 2 of section 33-24-06-14 for class 2 modifications instead of the class 1 procedures. The permittee must inform the department of this decision in the notice required in subdivision a of subsection 2 of section 33-24-06-14.

**2. Class 2 modifications.**

- a. For class 2 modifications listed in appendix I of this section, the permittee must submit a modification request to the department that:
  - (1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
  - (2) Identifies that the modification is a class 2 modification;
  - (3) Explains why the modification is needed; and
  - (4) Provides the applicable information required by section 33-24-06-17 and subsections 2 and 3 of section 33-24-06-19.
- b. The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the department and to the appropriate units of state and local government as specified in section 33-24-07-06 and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the department evidence of the mailing and publication. The notice must include:

- (1) Announcement of a sixty-day comment period, in accordance with subdivision e of subsection 2 of section 33-24-06-14, and the name and address of a department contact to whom comments must be sent;
  - (2) Announcement of the date, time, and place for a public meeting held in accordance with subdivision d of subsection 2 of section 33-24-06-14;
  - (3) Name and telephone number of the permittee's contact person;
  - (4) Name and telephone number of a department contact person;
  - (5) Location where copies of the modification request and any supporting documents can be viewed and copied; and
  - (6) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the department contact person."
- c. The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.
- d. The permittee must hold a public meeting no earlier than fifteen days after the publication of the notice required in subdivision b and no later than fifteen days before the close of the sixty-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.
- e. The public must be provided sixty days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department contact identified in the public notice.
- f. Notification request.
- (1) No later than ninety days after receipt of the notification request, the department must:
    - (a) Approve the modification request, with or without changes, and modify the permit accordingly;
    - (b) Deny the request;
    - (c) Determine that the modification request must follow the procedures in subsection 3 of section 33-24-06-14 for class 3 modifications for the following reasons:
      - [1] There is significant public concern about the proposed modification; or
      - [2] The complex nature of the change requires the more extensive procedures of class 3;
    - (d) Approve the request, with or without changes, as a temporary authorization having a term of up to one hundred eighty days; or
    - (e) Notify the permittee that the department will decide on the request within the next thirty days.
  - (2) If the department notifies the permittee of a thirty-day extension for a decision, the department must, no later than one hundred twenty days after receipt of the modification request:

- (a) Approve the modification request with or without changes, and modify the permit accordingly;
  - (b) Deny the request; or
  - (c) Determine that the modification request must follow the procedures in subsection 3 of section 33-24-06-14 for class 3 modifications for the following reasons:
    - [1] There is significant public concern about the proposed modification; or
    - [2] The complex nature of the change requires the more extensive procedures of class 3.
  - (d) Approve the request, with or without changes, as a temporary authorization having a term of up to one hundred eighty days.
- (3) If the department fails to make one of the decisions specified in paragraph 2 ~~of subdivision f~~ by the one hundred twentieth day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to one hundred eighty days, without formal department action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of section 33-24-06-16. If the department approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraph 1, 2, or 3 ~~of subdivision f~~, such action cancels the temporary or automatic authorization.
- (4) The following applies:
- (a) In the case of an automatic authorization under paragraph 3 ~~of subdivision f~~, or a temporary authorization under subparagraph d of paragraph 1 ~~of subdivision f~~ or subparagraph d of paragraph 2, if the department has not made a final approval or denial of the modification request by the date fifty days prior to the end of the temporary or automatic authorization, the permittee must, within seven days of that time, send a notification to persons on the facility mailing list, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:
    - [1] The permittee has been authorized temporarily to conduct the activities described in the permit modification request; and
    - [2] Unless the department acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.
  - (b) If the owner or operator fails to notify the public by the date specified in subparagraph a of paragraph 4 ~~of subdivision f~~, the effective date of the permanent authorization will be deferred until fifty days after the owner or operator notifies the public.
- (5) Except as provided in paragraph 7 ~~of subdivision f~~, if the department does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under section 33-24-06-12 or 33-24-06-14. The activities authorized under this paragraph must be conducted as

described in the permit modification request and must be in compliance with all appropriate standards of section 33-24-06-16.

- (6) In making a decision to approve or deny a modification request including a decision to issue a temporary authorization or to reclassify a modification as a class 3, the department must consider all written comments submitted to the department during the public comment period and must respond in writing to all significant comments in the department's decision.
- (7) With the written consent of the permittee, the department may extend, indefinitely or for a specified period, the time periods for final approval or denial of a modification request or for reclassifying a modification as a class 3.
- g. The department may deny or change the terms of a class 2 permit modification request under paragraphs 1 through 3 of subdivision f for the following reasons:
  - (1) Modification request is incomplete;
  - (2) The requested modification does not comply with the appropriate requirements of chapter 33-24-05 or other applicable requirements; or
  - (3) The conditions of the modification fail to protect human health and the environment.
- h. The permittee may perform any construction associated with a class 2 permit modification request beginning sixty days after the submission of the request unless the department establishes a later date for commencing construction and informs the permittee in writing before day sixty.

### 3. **Class 3 modifications.**

- a. For class 3 modifications listed in appendix I of this section, the permittee must submit a modification request to the department that:
  - (1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
  - (2) Identifies that the modification is a class 3 modification;
  - (3) Explains why the modification is needed; and
  - (4) Provides the applicable information required by section 33-24-06-17 and subsections 2, 3, and 4 of section 33-24-06-19.
- b. The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the department and to the appropriate units of state and local government as specified in section 33-24-07-06 and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the department evidence of the mailing and publication. The notice must include:
  - (1) Announcement of a sixty-day comment period, and a name and address of a department contact to whom comments must be sent;
  - (2) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with subdivision d of subsection 3 of section 33-24-06-14;
  - (3) Name and telephone number of the permittee's contact person;

- (4) Name and telephone number of a department contact person;
  - (5) Location where copies of the modification request and any supporting documents can be viewed and copied; and
  - (6) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the department contact person."
- c. The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.
  - d. The permittee must hold a public meeting no earlier than fifteen days after the publication of the notice required in subdivision b and no later than fifteen days before the close of the sixty-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.
  - e. The public must be provided at least sixty days to comment on modification requests. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department contact identified in the notice.
  - f. After the conclusion of the sixty-day comment period, the department must grant or deny the permit modification request according to the permit modification procedures of chapter 33-24-07. In addition, the department must consider and respond to all significant written comments received during the sixty-day comment period.

**4. Other modifications.**

- a. In the case of modifications not explicitly listed in appendix I of this section, the permittee may submit a class 3 modification request to the department, or the permittee may request a determination by the department that the modification should be reviewed and approved as a class 1 or class 2 modification. If the permittee requests that the modification be classified as a class 1 or 2 modification, the permittee must provide the department with the necessary information to support the requested classification.
- b. The department shall make the determination described in subdivision a as promptly as practicable. In determining the appropriate class for a specific modification, the department shall consider the similarity of the modification to other modifications codified in appendix I and the following criteria:
  - (1) Class 1 modifications apply to minor changes to keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of class 1 modifications, the department may require prior approval.
  - (2) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:
    - (a) Common variations in the types and quantities of the wastes managed under the facility permit;
    - (b) Technological advancement; and
    - (c) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(3) Class 3 modifications substantially alter the facility or its operation.

**5. Temporary authorizations.**

- a. Upon request of the permittee, the department may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this section. Temporary authorizations must have a term of not more than one hundred eighty days.
- b. Temporary authorizations.
  - (1) The permittee may request a temporary authorization for:
    - (a) Any class 2 modification meeting the criteria of paragraph 2 of subdivision c; and
    - (b) Any class 3 modification that meets the criteria in subparagraph a or b of paragraph 2 of subdivision c; or that meets the criteria in subparagraphs c through e of paragraph 2 of subdivision c and provides improved management or treatment of a hazardous waste already listed in the facility permit.
  - (2) The temporary authorization request must include:
    - (a) A description of the activities to be conducted under the temporary authorization;
    - (b) An explanation of why the temporary authorization is necessary; and
    - (c) Sufficient information to ensure compliance with chapter 33-24-05 standards.
  - (3) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the department and to appropriate units of state and local governments as specified in section 33-24-07-06. This notification must be made within seven days of submission of the authorization request.
- c. The department shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the department must find:
  - (1) The authorized activities are in compliance with the standards of chapter 33-24-05.
  - (2) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:
    - (a) To facilitate timely implementation of closure or corrective action activities;
    - (b) To allow treatment or storage in tanks or containers, or in containment buildings, in accordance with sections 33-24-05-250 through 33-24-05-299;
    - (c) To prevent disruption of ongoing waste management activities;
    - (d) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or
    - (e) To facilitate other changes to protect human health and the environment.
- d. A temporary authorization may be issued for one additional term of up to one hundred eighty days provided that the permittee has requested a class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

- (1) The reissued temporary authorization constitutes the department's decision on a class 2 permit modification in accordance with subparagraph d of paragraph 1 of subdivision f of subsection 2 or subparagraph d of paragraph 2 of subdivision f of subsection 2; or
- (2) The department determines that the reissued temporary authorization involving a class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection 3 are conducted.

**6. Public notice and appeals of permit modification decisions.**

- a. The department shall notify persons on the facility mailing list and appropriate units of state and local government within ten days of any decision under this section to grant or deny a class 2 or 3 permit modification request. The department shall also notify such persons within ten days after an automatic authorization for a class 2 modification goes into effect under paragraph 3 or 5 of subdivision f of subsection 2.
- b. The department's decision to grant or deny a class 2 or 3 permit modification request under this section may be appealed under the permit appeal procedures of section 33-24-07-14.
- c. An automatic authorization that goes into effect under paragraph 3 or 5 of subdivision f of subsection 2 may be appealed under the permit appeal procedure of section 33-24-07-14; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted pursuant to subsection 3 of section 33-24-07-14, notwithstanding the provisions of subsection 2 of section 33-24-07-11.

**7. Newly regulated wastes and units.**

- a. The permittee is authorized to continue to manage wastes listed or identified as hazardous under chapter 33-24-02 or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:
  - (1) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit of the effective date of the final rule listing or identifying the waste, or regulating the unit;
  - (2) The permittee submits a class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;
  - (3) The permittee is in compliance with the applicable standards of subsection 5 of section 33-24-06-16 and sections 33-24-05-191 through 33-24-05-249, 33-24-05-525 through 33-24-05-549, and 33-24-05-820 through ~~33-24-05-849~~33-24-05-929;
  - (4) The permittee also submits a complete class 2 or 3 modification request within one hundred eighty days of the effective date of the rule listing or identifying the waste or subjecting the unit to hazardous waste management standards; and
  - (5) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable ground water monitoring and financial responsibility requirements in subsection 5 of section 33-24-06-16 on the date twelve months after the effective date of the rule identifying or listing the waste as hazardous or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, the owner or operator will lose authority to operate under this subsection.

- b. New wastes or units added to a facility's permit under this ~~section~~ subsection do not constitute expansions for the purpose of the twenty-five percent capacity expansion limit for class 2 modifications.
8. **Military hazardous waste munitions treatment and disposal.** The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting offsite wastes, if:
- a. The facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to hazardous waste regulatory requirements;
  - b. On or before the date when the waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a class 1 modification request to remove or amend the permit provision restricting the receipt of offsite waste munitions; and
  - c. The permittee submits a complete class 2 modification request within one hundred eighty days of the date when the waste military munitions became subject to hazardous waste regulatory requirements.
9. **Permit modification list.** The department must maintain a list of all approved permit modifications and must publish a notice once a year in a statewide newspaper that an updated list is available for review.
10. **Combustion facility changes to meet 40 CFR part 63 maximum achievable control technology standards.** The following procedures apply to hazardous waste combustion facility permit modifications requested under appendix I to this section, section L(9).
- a. Facility owners or operators must have complied with the notification of intent to comply ~~(NIC)~~ requirements of 40 CFR 63.1210 that ~~was~~ were in effect prior to October 11, 2000 (see 40 CFR part 63 sections 63.1200 through 63.1499 revised as of July 1, 2000) in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.
  - b. Facility owners or operators must comply with the notification of intent to comply requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.
  - ~~b-c.~~ If the department does not approve or deny the requests within ninety days of receiving it, the request shall be deemed approved. The department may, at the department's discretion, extend this ninety-day deadline one time for up to thirty days by notifying the facility owner or operator.
11. Waiver of hazardous waste permit conditions in support of transition to the 40 CFR part 63 maximum achievable control technology standards.
- a. The owner or operator may request to have specific hazardous waste operating and emissions limits waived by submitting a class 1 permit modification request under appendix I of this section, section L(10). The owner or operator must:
    - (1) Identify the specific hazardous waste permit operating and emissions limits which the owner or operator is requesting to waive;

(2) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the hazardous waste permit and maximum achievable control technology compliance; and

(3) Discuss how the revised provisions will be sufficiently protective.

(4) The department shall approve or deny the request within thirty days of receipt of the request. The department may, at the department's discretion, extend this thirty day deadline one time for up to thirty days by notifying the facility owner or operator.

b. To request this modification in conjunction with maximum achievable control technology performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed seven hundred twenty-hours of operation (renewable at the discretion of the department) the owner or operator must:

(1) Submit the modification request to the department at the same time the owner or operator submits the owner's or operator's test plans to the department; and

(2) The department may elect to approve or deny the request contingent upon approval of the test plans.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-15. Noncompliance and program reporting by the department.**

The department shall submit any reports required under this section to the environmental protection agency regional administrator. For purposes of this section only, hazardous waste permittees includes facilities with operating status defined by subsection 45 of section 33-24-06-16, when appropriate.

1. **Quarterly reports.** The department shall submit quarterly narrative reports for major facilities as follows:
  - a. Format. The report must use the following format:
    - (1) An alphabetized list by permittee name. When two or more permittees have the same name, the lowest permit number must be entered first.
    - (2) For each entry on a list, include the following information in the following order:
      - (a) Name, location, and permit number of the noncomplying permittee.
      - (b) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in subdivision b.
      - (c) The dates and a brief description of the actions taken by the department to ensure compliance.
      - (d) Status of the instances of noncompliance with the date of the review of the status or the date of resolution.
      - (e) Any details which tend to explain or mitigate the instances of noncompliance.

- b. Instances of noncompliance to be reported. Any instances of noncompliance within the following categories must be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.
- (1) Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction, e.g., award of a contract, preliminary plans, or a construction step, e.g., begin construction, attain operation level; and the permittee has not returned to compliance by accomplishing the requirement of the schedule within thirty days from the date a compliance schedule is due under the permit.
  - (2) Modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under section 33-24-06-12 or 33-24-06-14 because of the permittee's noncompliance.
  - (3) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule, e.g., progress report or notice of noncompliance or compliance, or a monitoring report; and the permittee has not submitted the complete report within thirty days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.
  - (4) Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the department and thus impede the review of the status of compliance.
  - (5) Noncompliance with other permit requirements. Noncompliance must be reported in the following circumstances:
    - (a) Whenever the permittee has violated a permit requirement (other than reported under paragraph 1 or 2), and has not returned to compliance within forty-five days from the date reporting of noncompliance was due under the permit; or
    - (b) When the department determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or
    - (c) When the department determines significant permit noncompliance or other significant event has occurred, such as a fire or explosion or migration of fluids into an underground source of drinking water.
  - (6) All other. Statistical information must be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under this subsection.
- c. The department shall submit, in a manner and form prescribed by the regional administrator, quarterly reports concerning noncompliance by transporters, e.g., recordkeeping requirements, and by generators that send their wastes to offsite treatment, storage, or disposal facilities.

## 2. Annual reports.

- a. Annual noncompliance report. The department shall submit statistical reports on nonmajor hazardous waste management permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information must be organized to follow the types of noncompliance listed in subsection 1.
- b. In addition to the annual noncompliance report, the department shall prepare a "program report" which contains information (in a manner and form prescribed by the regional administrator) on generators and transporters, and the permit status of regulated facilities. The department shall include on a biennial basis summary information on the quantities and types of hazardous waste generated, transported, stored, treated, and disposed during the preceding odd-numbered year. This summary information must be reported in a manner and form prescribed by the regional administrator and according to environmental protection agency characteristics and lists of hazardous wastes at 40 CFR part 261.

**3. Schedule.**

- a. For all quarterly reports, on the last working day of May, August, November, and February, the department shall submit to the regional administrator information concerning noncompliance with the hazardous waste management requirements in this state in accordance with the following schedule (Reports must also be made available to the public for inspection and copying on this date):

January, February, and March	May 31
April, May, and June	August 31
July, August, and September	November 30
October, November, and December	February 28

- b. For annual reports, the period shall be for one calendar year ending December thirty-first, with reports completed and available to the public no more than sixty days later.

**History:** Effective January 1, 1984; [amended effective January 1, 2016.](#)

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04

**33-24-06-16. Operating status prior to final administrative disposition of the permit application.**

- ~~1. Qualifying for operating status prior to final administrative disposition of the permit application. Any person who owns or operates an existing hazardous waste management facility shall be treated as having been issued a permit to the extent that person has:
 
  - ~~a. Complied with section 3010(a) of the Resource Conservation and Recovery Act by filing a notification of hazardous waste activity form with the department.~~
  - ~~b. Complied with the requirements of subsections 7 and 8 of section 33-24-06-01 governing submission of part A of the application. [\[Reserved\]](#)~~~~
- ~~2. Failure to qualify for operating status prior to final administrative disposition of the permit application. If the department has reason to believe upon examination of a part A application that it fails to meet the requirements of subsection 1 of section 33-24-06-17, it shall notify the owner or operator in writing of the apparent deficiency. Such notice must specify the grounds for the department's belief that the application is deficient. The owner or operator has thirty days from receipt to respond to such a notification and to explain or cure the alleged~~

deficiency in its part A application. If, after such notification and opportunity for response, the department determines that the application is deficient it may take appropriate enforcement action. [Reserved]

3. Coverage. During the period of operating status prior to final administrative disposition of the permit application, the facility may not:

a. Treat, store, or dispose of hazardous waste not specified in part A of the permit application;

b. Employ processes not specified in part A of the permit application; or

c. Exceed the design capacities specified in part A of the permit application. [Reserved]

4. Changes during operating status prior to final administrative disposition of the permit application:

a. New hazardous waste not previously identified in part A of the permit application may be treated, stored, or disposed of at a facility if the owner or operator submits a revised part A of the permit application prior to such a change.

b. Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised part A of the permit application prior to such a change (along with a justification explaining the need for the change) and the department approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or the change is necessary to comply with federal, state, or local requirements.

c. Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised part A of the permit application prior to such a change (along with a justification explaining the need for the change) and the department approves the change because:

(1) It is necessary to prevent a threat to human health or the environment because of an emergency situation; or

(2) It is necessary to comply with federal, state, or local laws or regulations.

d. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised part A permit application no later than ninety days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of sections 33-24-05-74 through 33-24-05-88 (financial requirements), until the new owner or operator has demonstrated to the department that the owner or operator is complying with the requirements of sections 33-24-05-74 through 33-24-05-88. The new owner or operator must demonstrate compliance with sections 33-24-05-74 through 33-24-05-88 within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with sections 33-24-05-74 through 33-24-05-88, the department shall notify the old owner or operator in writing that the owner or operator no longer needs to comply with sections 33-24-05-74 through 33-24-05-88 as of the date of demonstration. All other duties concerning operating status prior to final administrative disposition of the permit application are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

~~e. In no event may changes be made to a hazardous waste facility during operating status prior to final administrative disposition of the permit application which amounts to reconstruction of the facility. Reconstruction occurs when the capital investment and the changes to the facility exceed fifty percent of the capital cost of a comparable entirely new hazardous waste management facility. Changes prohibited under this section do not include changes to treat or store in containers, tanks, or containment buildings hazardous waste subject to land disposal restrictions imposed by sections 33-24-05-250 through 33-24-05-299 or Resource Conservation and Recovery Act section 3004, provided that such changes are made solely for the purpose of complying with sections 33-24-05-250 through 33-24-05-299 or Resource Conservation and Recovery Act section 3004.~~

~~f. Changes made in accordance with an interim status corrective action order issued by the department under state authority or by a court in a judicial action brought by the department. Changes under this subdivision are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.~~  
[Reserved]

5. During operating status prior to final administrative disposition of the permit application, owners or operators shall comply with the federal interim status standards, 40 CFR ~~parts~~part 265 and subpart G of part 270, effective ~~March 1, 2003~~April 17, 2015.
6. Operating status prior to final administrative disposition of the permit application terminates when:
  - a. Final administrative disposition of a permit application, except an application for a remedial action plan under sections 33-24-06-30 through 33-24-06-35, is made; or
  - b. Operating status prior to final administrative disposition of the permit application is terminated as provided in paragraph 5 of subdivision a of subsection 7 of section 33-24-06-01.
7. ~~Subsection 4~~Operating status prior to final administrative disposition of a permit application does not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under article 33-24 has been previously terminated.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-17. Contents of a permit application.**

1. Part A of the application must include the following information:
  - a. The activities conducted by the applicant which require it to obtain a hazardous waste permit.
  - b. Name, mailing address, and location of the facility for which the application is submitted.
  - c. Up to four standard industrial codes which best reflect the principal products or services provided by the facility.
  - d. The operator's name, address, telephone number, ownership status and status as a federal, state, private, public, or other entity.

- e. A listing of all permits or construction approvals at all governmental levels received or applied for under any of the following programs:
    - (1) Hazardous waste management program under the Resource Conservation and Recovery Act.
    - (2) Underground injection control program under the Safe Drinking Water Act.
    - (3) North Dakota pollutant discharge elimination system program under the Clean Water Act.
    - (4) Prevention of significant deterioration program under the Clean Air Act.
    - (5) Nonattainment program under the Clean Air Act.
    - (6) National emissions standards for hazardous air pollutants preconstruction approval under the Clean Air Act.
    - (7) Dredge or fill permits under section 404 of the Clean Water Act.
    - (8) Other relevant environmental permits.
  - f. A topographic map (or other map if a topographic map is unavailable), extending one mile [1.61 kilometers] beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.
  - g. A brief description of the nature of the business.
  - h. The latitude and longitude of the facility.
  - i. The name, address, and telephone number of the owner of the facility.
  - j. An indication of whether the facility is new or existing and whether it is a first or revised application.
  - k. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.
  - l. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and types of future treatment, storage, and disposal areas.
  - m. A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.
  - n. A specification of the hazardous wastes listed or designated under chapter 33-24-02 to be treated, stored, or disposed at the facility; an estimate of the quantity of such waste to be treated, stored, or disposed annually; and a general description of the processes to be used for such wastes.
  - o. For hazardous debris, a description of the debris categories and contaminant categories to be treated, stored, or disposed of at the facility.
2. The information requirements for part B of the permit application presented below reflect the standards in chapter 33-24-05. These information requirements are necessary in order for the

department to determine compliance with chapter 33-24-05 standards. If owners and operators of hazardous waste management facilities can demonstrate that the information required for part B of the application cannot be provided to the extent required, the department may make allowances for submission of such information on a case-by-case basis. Information required for part B of the application must be submitted to the department and signed in accordance with requirements in section 33-24-06-03. Certain technical data, such as design drawings and specifications, and engineering studies must be certified by a ~~registered~~ qualified professional engineer. Part B of the application includes the following (information in subdivisions a through r is required for all hazardous waste management facilities except as section 33-24-05-01 provides otherwise; that in subdivisions s through y and hh is additional information required for specific types of facilities; and that in subdivisions z through gg is additional information regarding protection of ground water, and is required for surface impoundments, piles, land treatment units, and landfills, except as otherwise provided in subsection 2 of section 33-24-05-47):

- a. General description of the facility.
- b. Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses must contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with chapter 33-24-05.
- c. A copy of the waste analysis plan required by subsection 2 of section 33-24-05-04 and, if applicable, subsection 3 of section 33-24-05-04.
- d. A description of the security procedures and equipment required by section 33-24-05-05, or a justification demonstrating the reason for requesting a waiver of this requirement.
- e. A copy of the general inspection schedule required by subsection 2 of section 33-24-05-06; include, where applicable, as part of the inspection schedule, specific requirements in section 33-24-05-93, subsection 9 of section 33-24-05-106, sections 33-24-05-108, 33-24-05-120, 33-24-05-132, 33-24-05-163, 33-24-05-178, 33-24-05-302, 33-24-05-403, 33-24-05-422, 33-24-05-423, 33-24-05-428, 33-24-05-454, 33-24-05-455, 33-24-05-456, and 33-24-05-458.
- f. A justification of any request for waivers of the preparedness and prevention requirements of sections 33-24-05-15 through 33-24-05-25.
- g. A copy of the contingency plan required by sections 33-24-05-26 through 33-24-05-36. Include, where applicable, as part of the contingency plan, specific requirements in sections ~~33-24-05-110~~ 33-24-05-98 and 33-24-05-121.
- h. A description of procedures, structures, or equipment used at the facility to:
  - (1) Prevent hazards in unloading operations, for example, ramps and special forklifts;
  - (2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, and trenches;
  - (3) Prevent contamination of water supplies;
  - (4) Mitigate effects of equipment failure and power outages;
  - (5) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and
  - (6) Prevent releases to atmosphere.

- i. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with section 33-24-05-08, including documentation demonstrating compliance with subsection 3 of section 33-24-05-08.
- j. Traffic pattern, estimated volume (number, type of vehicles) and control, for example, show turns across traffic lanes and stacking lanes, if appropriate; describe access road, surfacing and load-bearing capacity; show traffic control signals.
- k. [Reserved]
- l. An outline of both the introductory and continuing programs by owners or operators to prepare persons to operate and maintain a hazardous waste management facility in a safe manner as required to demonstrate compliance with section 33-24-05-07. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in subdivision c of subsection 1 of section 33-24-05-07.
- m. A copy of the closure plan and where applicable, the postclosure plan required by sections 33-24-05-61, 33-24-05-67, and 33-24-05-110. Include, where applicable, as part of the plans, specific requirements in sections 33-24-05-97, 33-24-05-110, 33-24-05-122, 33-24-05-135, 33-24-05-151, 33-24-05-167, 33-24-05-180, 33-24-05-301, and 33-24-05-303.
- n. For hazardous waste disposal units that have been closed, documentation that notices required under section 33-24-05-68 have been filed.
- o. The most recent closure and, where applicable, postclosure cost estimate for the facility prepared in accordance with section 33-24-05-76 and a copy of the documentation required to demonstrate financial assurance under section 33-24-05-77. For a new facility, a copy of the required documentation may be submitted sixty days prior to the initial receipt of hazardous waste, if that is later than the submission of the part B application.
- p. Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of section 33-24-05-79. For a new facility, documentation showing the amount of insurance meeting the specification of subsection 1, and subsection 2, if applicable, of section 33-24-05-79, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in subsection 3 of section 33-24-05-79.
- q. A topographic map showing a distance of one thousand feet [304.8 meters] around the facility at a scale of two and five-tenths centimeters [1 inch] equal to not more than sixty-one meters [200 feet]. (The department may allow the use of other scales on a case-by-case basis.) Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of one and five-tenths meters [5 feet], if relief is greater than six and one-tenth meters [20 feet], or an interval of six-tenths meter [2 feet], if relief is less than six and one-tenth meters [20 feet]. Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of the facilities. The map must clearly show the following:
  - (1) Map scale and date.

- (2) One hundred-year floodplain area.
  - (3) Surface waters including intermittent streams.
  - (4) Surrounding land uses (residential, commercial, agricultural, recreational).
  - (5) A wind rose, for example, prevailing wind speed and direction.
  - (6) Orientation of the map (north arrow).
  - (7) Legal boundaries of the hazardous waste management facility site.
  - (8) Access control (fences, gates).
  - (9) Injection and withdrawal wells, both onsite and offsite.
  - (10) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and processed sewerage systems, loading and unloading areas, fire control facilities, etc.).
  - (11) Barriers for drainage or flood control.
  - (12) Location of operational units within the hazardous waste management facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).
- r. Applicants may be required to submit such information as may be necessary to enable the department to carry out ~~its~~the department's duties under federal or other state laws as required in section 33-24-06-09.
- s. For facilities that store containers of hazardous waste, except as otherwise provided in section 33-24-05-89:
- (1) A description of the containment system to demonstrate compliance with section 33-24-05-94. Show at least the following:
    - (a) Basic design parameters, dimensions, and materials of construction.
    - (b) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
    - (c) Capacity of the containment system relative to the number and volume of containers to be stored.
    - (d) Provisions for preventing or managing run-on.
    - (e) How accumulated liquids can be analyzed and removed to prevent overflow.
  - (2) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with subsection 3 of section 33-24-05-94, including:
    - (a) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and
    - (b) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

- (3) Sketches, drawings, or data demonstrating compliance with section 33-24-05-95 (location of buffer zone and containers holding ignitable or reactive wastes) and subsection 3 of section 33-24-05-96 (location of incompatible wastes), where applicable.
  - (4) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with subsections 1 and 2 of section 33-24-05-96 and subsections 2 and 3 of section 33-24-05-08.
  - (5) Information on air emission control equipment as required in subdivision hh.
- t. Except as otherwise provided in section 33-24-05-103, owners and operators of facilities that use tanks to store or treat hazardous waste shall provide the following additional information:
- (1) A written assessment that is reviewed and certified by ~~an independent,~~ a qualified, ~~registered~~ professional engineer ~~as~~ to the structural integrity and suitability for handling hazardous waste of each tank system, as required under sections 33-24-05-104 and 33-24-05-105;
  - (2) Dimensions and capacity of each tank;
  - (3) Description of feed systems, safety cutoff, bypass systems, and pressure controls, for example, vents;
  - (4) A diagram of piping, instrumentation, and process flow for each tank system;
  - (5) A description of materials and equipment used to provide external corrosion protection, as required under paragraph 2 of subdivision c of subsection 1 of section 33-24-05-105;
  - (6) For new tank systems, a detailed description of how the tank systems will be installed in compliance with subsections 2, 3, 4, and 5 of section 33-24-05-105;
  - (7) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of subsections 1, 2, 3, 4, 5, and 6 of section 33-24-05-106;
  - (8) For tank systems for which a variance from the requirements of section 33-24-05-106 is sought (as provided by subsection 7 of section 33-24-05-106):
    - (a) Detailed plans and engineering and hydrogeologic reports, as appropriate, ~~describe~~ alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility; or
    - (b) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment;
  - (9) Description of controls and practices to prevent spills and overflows, as required under subsection 2 of section 33-24-05-107;
  - (10) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of sections 33-24-05-111 and 33-24-05-112; and

- (11) Information on air emission control equipment as required in subdivision hh.
- u. For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in section 33-24-05-01:
  - (1) A list of the hazardous wastes placed or to be placed in each surface impoundment.
  - (2) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of sections 33-24-05-10, 33-24-05-119, 33-24-05-126, and 33-24-05-127. This submission must address the following items as specified in those sections.
    - (a) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner system is sought as provided by subsection 2 of section 33-24-05-119, submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time.
    - (b) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of subsection 3 of section 33-24-05-119. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by subsection 4, 5, or 6 of section 33-24-05-119, submit appropriate information.
    - (c) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system.
    - (d) The construction quality assurance ~~(GQA)~~ plan if required under section 33-24-05-10.
    - (e) Proposed action leakage rate, with rationale, if required under section 33-24-05-126, and response action plan, if required under section 33-24-05-127.
    - (f) Prevention of overtopping.
    - (g) Structural integrity of dikes.
  - (3) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping will be inspected in order to meet the requirements of subsections 1, 2, and 4 of section 33-24-05-120. This information must be included in the inspection plan submitted under subdivision e ~~of subsection 2~~.
  - (4) A certification by a qualified engineer which attests to the structural integrity of each dike as required under subsection 3 of section 33-24-05-120. For new units, the owner or operator must submit a statement by a qualified engineer that the engineer will provide such a certification upon completion of construction in accordance with the plans and specifications.

- (5) A description of the procedure to be used for removing a surface impoundment from service as required under subsections 2 and 3 of section 33-24-05-121. This information should be included in the contingency plan submitted under subdivision g ~~of subsection 2~~.
  - (6) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure as required under subdivision a of subsection 1 of section 33-24-05-122. For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how subsection 2 and subdivision b of subsection 1 of section 33-24-05-122 will be complied with. This information should be included in the closure plan and where applicable, the postclosure plan submitted under subdivision m ~~of subsection 2~~.
  - (7) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how section 33-24-05-123 will be complied with.
  - (8) If incompatible wastes or incompatible wastes and materials will be placed in the surface impoundment, an explanation of how section 33-24-05-124 will be complied with.
  - (9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-125. This submission must address the following items as specified in section 33-24-05-125:
    - (a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
    - (b) The attenuative properties of underlying and surrounding soils or other materials.
    - (c) The mobilizing properties of other materials codisposed with these wastes.
    - (d) The effectiveness of additional treatment, design, or monitoring techniques.
  - (10) Information on air emission control equipment as required in subdivision hh.
- v. For facilities that treat or store hazardous waste in waste piles, except as otherwise provided in section 33-24-05-01:
- (1) A list of hazardous wastes placed, or to be placed, in each waste pile.
  - (2) If an exemption is sought to section 33-24-05-131 and sections 33-24-05-47 through 33-24-05-58, as provided by subsection 3 of section 33-24-05-130 or subdivision b of subsection 2 of section 33-24-05-47, an explanation of how the requirements of subsection 3 of section 33-24-05-130 will be complied with or detailed plans and an engineering report describing how the requirements of subdivision b of subsection 2 of section 33-24-05-47 will be met.
  - (3) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of sections 33-24-05-10, 33-24-05-131, 33-24-05-137, and 33-24-05-138. This submission must address the following items as specified in those sections:

- (a) The liner system.
  - [1] The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of subsection 1 of section 33-24-05-131. If an exemption from the requirement for a liner is sought as provided by subsection 2 of section 33-24-05-131, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
  - [2] The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of subsection ~~3~~2 of section 33-24-05-131. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by subsection 4, ~~5, or 6~~3, 4, or 5 of section 33-24-05-131, submit appropriate information;
  - [3] If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
  - [4] The construction quality assurance (~~CQA~~) plan if required under section 33-24-05-10; and
  - [5] Proposed action leakage rate, with rationale, if required under section 33-24-05-137, and response action plan, if required under section 33-24-05-138.
- (b) Control of run-on.
- (c) Control of runoff.
- (d) Management of collection and holding units associated with run-on and runoff control systems.
- (e) Control of wind dispersal of particulate matter, where applicable.
- (4) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of subsections 1, 2, and 3 of section 33-24-05-132. This information must be included in the inspection plan submitted under subdivision e ~~of subsection 2~~.
- (5) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals.
- (6) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of section 33-24-05-133 will be complied with.
- (7) If incompatible wastes or incompatible wastes and materials will be placed in a waste pile, an explanation of how section 33-24-05-134 will be complied with.
- (8) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at the closure, as required under subsection 1 of

section 33-24-05-135. For any wastes not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how subsections 1 and 2 of section 33-24-05-180 will be complied with. This information should be included in the closure plan and where applicable, the postclosure plan, submitted under subdivision m-~~of subsection 2.~~

- (9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a waste pile that is not enclosed (as defined in subsection 3 of section 33-24-05-130) is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-136. This submission must address the following items as specified in section 33-24-05-136:
  - (a) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
  - (b) The attenuative properties of underlying and surrounding soils or other materials.
  - (c) The mobilizing properties of other materials codisposed with these wastes.
  - (d) The effectiveness of additional treatment, design, or monitoring techniques.
- w. For facilities that incinerate hazardous waste, except as section 33-24-05-144 and paragraph 5 provides otherwise, the applicant owner or operator must fulfill the requirements of ~~paragraph~~paragraphs 1, 2, or 3.
  - (1) When seeking an exemption ~~in accordance with subsection~~under subsections 2 or 3 of section 33-24-05-144 (ignitable, corrosive, or reactive wastes only), submit a ~~demonstration~~documentation, that the waste to be burned:
    - (a) Is hazardous (either listed in sections 33-24-02-15 through 33-24-02-19 or fails the characteristic tests in ~~chapter 33-24-02~~sections 33-24-02-10 through 33-24-02-14) solely because it is:
      - [1] Ignitable, or corrosive, or both; or
      - [2] ~~Reactive~~Listed in sections 33-24-02-15 through 33-24-02-19 as reactive for characteristics other than those in subdivisions d and e of subsection 1 of section 33-24-02-13, or fails the characteristic in subdivisions a, b, c, e, f, g, or h of subsection 1 of section 33-24-02-133, and will not be burned when other hazardous wastes are present in the combustion zone; and.
    - ~~(b) Contains insignificant concentrations of the hazardous constituents listed in appendix V of chapter 33-24-02.~~
  - (2) Submit a trial burn plan or the results of a trial burn, including all required determinations in accordance with subsection 2 of section 33-24-06-19.
  - (3) In lieu of a trial burn, the applicant may submit the following information:
    - (a) An analysis of each waste or mixture of wastes to be burned, including:
      - [1] Heat value of the waste in the form and composition in which it will be burned.
      - [2] Viscosity (if applicable), or description of physical form of the waste.

- [3] An identification of any hazardous organic constituents listed in chapter 33-24-02, appendix V ~~of this article~~, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in chapter 33-24-02, appendix V, ~~of this article~~ which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques ~~specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05, or their equivalent.~~
  - [4] An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the appropriate analytical methods ~~specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33-24-01-05.~~
  - [5] A quantification of those hazardous constituents in the waste which may be designated as principal organic hazardous constituents based on data submitted from the other trial or operational burns which demonstrate compliance with the performance standard in section 33-24-05-147.
- (b) A detailed engineering description of the incinerator, including:
- [1] Manufacturer's name and model number of incinerator.
  - [2] Type of incinerator.
  - [3] Linear dimension of incinerator unit including cross-sectional area of combustion chamber.
  - [4] Description of auxiliary fuel system (type/feed).
  - [5] Capacity of prime mover.
  - [6] Description of automatic waste feed cutoff systems.
  - [7] Stack gas monitoring and pollution control monitoring system.
  - [8] Nozzle and burner design.
  - [9] Construction materials.
  - [10] Location and description and temperature, pressure, and flow indicating devices and control devices.
- (c) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in subparagraph a. This analysis should specify the principal organic hazardous constituents which the applicant has identified in the waste for which a permit is sought and any differences from the principal organic hazardous constituents in the waste for which burn data are provided.
- (d) The design and operating conditions of the incinerator unit to be used, compared with that for which comparable burn data are available.

- (e) A description of the results submitted from any previously conducted trial burns, including:
  - [1] Sampling and analysis techniques used to calculate performance standards in section 33-24-05-147.
  - [2] Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).
  - ~~[3] The certification and results required by paragraph 7 of subdivision b of subsection 2 of section 33-24-06-19.~~
- (f) The expected incinerator operation information to demonstrate compliance with sections 33-24-05-147 and 33-24-05-149, including:
  - [1] Expected carbon monoxide level in the stack exhaust gas.
  - [2] Waste feed rate.
  - [3] Combustion zone temperature.
  - [4] Indication of combustion gas velocity.
  - [5] Expected stack gas volume, flow rate, and temperature.
  - [6] Computed residence time for waste in the combustion zone.
  - [7] Expected hydrochloric acid removal efficiency.
  - [8] Expected fugitive emissions and their control procedures.
  - [9] Proposed waste feed cutoff limits based on the identified significant operating parameters.
- (g) Such supplemental information as the department finds necessary to achieve the purposes of this ~~subdivision~~paragraph.
- (h) Waste analysis data, including that submitted in subparagraph a, sufficient to allow the department to specify as permit principal organic hazardous constituents those constituents for which destruction and removal efficiencies will be required.
- (4) The department shall approve a permit application without a trial burn if ~~it~~the department finds that:
  - (a) The wastes are sufficiently similar; and
  - (b) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under section 33-24-05-149) operating conditions that will ensure that the performance standards in section 33-24-05-147 will be met.
- (5) When an owner or operator of a hazardous waste incineration unit becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and

submitting a notification of compliance under 40 CFR sections 63.1207(j) and ~~63.1210(b)~~63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subdivision do not apply, except those provisions the department determines are necessary to ensure compliance with subsections 1 and 3 of section 33-24-05-149 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the department may apply the provisions of this subdivision, on a case-by-case basis, for purposes of information collection in accordance with ~~subsection~~subsections 11 and 12 of section 33-24-06-01 and subdivisions b and c of subsection 2 of section 33-24-06-05.

- x. For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in section 33-24-05-01:
  - (1) A description of plans to conduct a treatment demonstration as required under section 33-24-05-162. The description must include the following information:
    - (a) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste.
    - (b) The data sources to be used to make the demonstration, for example, literature, laboratory data, field data, or operating data.
    - (c) Any specific laboratory or field test that will be conducted, including:
      - [1] The type of test, for example, column leaching, degradation.
      - [2] Materials and methods, including analytical procedures.
      - [3] Expected time for completion.
      - [4] Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices.
  - (2) A description of a land treatment program as required under section 33-24-05-161. This information must be submitted with the plans for the treatment demonstration and updated following the treatment demonstration. The land treatment program must address the following items:
    - (a) The wastes to be land treated.
    - (b) Design measures and operating practices necessary to maximize treatment in accordance with subsection 1 of section 33-24-05-163, including:
      - [1] Waste application method and rate.
      - [2] Measures to control soil pH.
      - [3] Enhancement of microbial or chemical reactions.
      - [4] Control of moisture content.
    - (c) Provisions for unsaturated zone monitoring, including:
      - [1] Sampling equipment, procedures, and frequency.

- [2] Procedures for selecting sampling locations.
  - [3] Analytical procedures.
  - [4] Chain of custody control.
  - [5] Procedures for establishing background values.
  - [6] Statistical methods for interpreting results.
  - [7] Justification for any hazardous constituents recommended for selection as principal hazardous constituents in accordance with the criteria for such selection in subsection 1 of section 33-24-05-165.
- (d) A list of hazardous constituents reasonably expected to be in, or derived from, the waste to be land treated based on waste analysis performed pursuant to section 33-24-05-04.
  - (e) The proposed dimensions of the treatment zone.
- (3) A description of how the unit is, or will be designed, constructed, operated, and maintained in order to meet the requirements of section 33-24-05-163. This submission must address the following items:
    - (a) Control of run-on.
    - (b) Collection and control of runoff.
    - (c) Minimization of runoff of hazardous constituents from the treatment zone.
    - (d) Management of collection and holding facilities associated with run-on and runoff control systems.
    - (e) Periodic inspection of the unit. This information should be included in the inspection plan submitted under subdivision e.
    - (f) Control of wind dispersal of particulate matter, if applicable.
  - (4) If food chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under subsection 1 of section 33-24-05-164 will be conducted, including:
    - (a) Characteristics of the food chain crop for which the demonstration will be made.
    - (b) Characteristics of the waste treatment zone and waste application method and rate to be used in the demonstration.
    - (c) Procedures for crop growth, sample collection, sample analysis, and data evaluation.
    - (d) Characteristics of the comparison crop, including the location and conditions under which it was or will be grown.
  - (5) If food chain crops are to be grown and cadmium is present in the land treated waste, a description of how the requirements of subsection 5 of section 33-24-05-164 will be complied with.

- (6) A description of the vegetative cover to be applied to closed portions of the facility and a plan for maintaining such cover during the postclosure care period as required under subdivision h of subsection 1 and subdivision b of subsection 3 of section 33-24-05-167. This information should be included in the closure plan and where applicable, the postclosure care plan submitted under subdivision m.
  - (7) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of section 33-24-05-168 will be complied with.
  - (8) If incompatible wastes or incompatible wastes or materials will be placed in or on the same treatment zone, an explanation of how section 33-24-05-169 will be complied with.
  - (9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-170. This submission must address the following items as specified in section 33-24-05-170:
    - (a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
    - (b) The attenuative properties of underlying and surrounding soils or other materials.
    - (c) The mobilizing properties of other materials codisposed with these wastes.
    - (d) The effectiveness of additional treatment, design, or monitoring techniques.
- y. For facilities that dispose of hazardous waste in landfills, except as otherwise provided in section 33-24-05-01:
- (1) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell.
  - (2) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to comply with the requirements of sections 33-24-05-10, 33-24-05-177, 33-24-05-178, and 33-24-05-187. This submission must address the following items as specified in those sections:
    - (a) The liner system.
      - [1] The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of subsection 1 of section 33-24-05-177. If an exemption from the requirement for a liner is sought as provided by subsection 2 of section 33-24-05-177, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
      - [2] The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of subsection 3 of section 33-24-05-177. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by subsections 4, 5, or 6 of section 33-24-05-177, submit appropriate information;

- [3] If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
  - [4] The construction quality assurance (~~CQA~~) plan if required under section 33-24-05-10; and
  - [5] Proposed action leakage rate, with rationale, if required under section 33-24-05-187, and response action plan, if required under section 33-24-05-178.
- (b) Control of run-on.
  - (c) Control of runoff.
  - (d) Management of collection and holding facilities associated with run-on and runoff control systems.
  - (e) Control of wind dispersal of particulate matter where applicable.
- (3) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of subsections 1, 2, and 3 of section 33-24-05-178. This information must be included in the inspection plan submitted under subdivision e.
  - (4) A description of how each landfill, including the liner and cover systems will be inspected in order to meet the requirements of subsections 1 and 2 of section 33-24-05-178. This information should be included in the inspection plan submitted under subdivision e.
  - (5) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with subsection 1 of section 33-24-05-180 and a description of how each landfill will be maintained and monitored after closure in accordance with subsection 2 of section 33-24-05-180. This information should be included in the closure and postclosure plans submitted under subdivision m.
  - (6) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of section 33-24-05-181 will be complied with.
  - (7) If incompatible wastes or incompatible wastes and materials will be landfilled, an explanation of how section 33-24-05-182 will be complied with.
  - (8) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of section 33-24-05-184 or 33-24-05-185, as applicable, will be complied with.
  - (9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-186. This submission must address the following items as specified in section 33-24-05-186:
    - (a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

- (b) The attenuative properties of underlying and surrounding soils or other materials.
  - (c) The mobilizing properties of other materials codisposed with these wastes.
  - (d) The effectiveness of additional treatment, design, or monitoring techniques.
- z. [Reserved]
- aa. For land disposal facilities, if a case-by-case extension has been approved under section 33-24-05-254 or a petition has been approved under section 33-24-05-255, a copy of the notice of approval for the extension or petition is required.
- bb. Except as otherwise provided in section 33-24-05-300, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:
- (1) A detailed description of the unit being used or proposed for use, including the following:
    - (a) Physical characteristics, materials of construction, and dimensions of the unit;
    - (b) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of sections 33-24-05-301 and 33-24-05-302; and
    - (c) For disposal units, a detailed description of the plans to comply with the postclosure requirements of section 33-24-05-303.
  - (2) Detailed hydrologic, geologic, and meteorologic assessments and land use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of section 33-24-05-301. If the applicant can demonstrate that the applicant does not violate the environmental performance standards of section 33-24-05-301 and the department agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.
  - (3) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.
  - (4) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.
  - (5) Any additional information determined by the department to be necessary for evaluation of compliance of the unit with the environmental performance standards of section 33-24-05-301.
- cc. Except as otherwise provided in section 33-24-05-01, owners and operators of facilities that have process vents to which sections 33-24-05-400 through 33-24-05-419 apply must provide the following additional information:
- (1) For facilities that cannot install a closed-vent system and control device to comply with the provisions of sections 33-24-05-400 through 33-24-05-419 on the effective date that the facility becomes subject to the provisions of ~~these~~ sections

[33-24-05-400 through 33-24-05-419](#), an implementation schedule as specified in subdivision b of subsection 1 of section 33-24-05-403.

- (2) Documentation of compliance with the process vent standards in section 33-24-05-402, including:
  - (a) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, for example, the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, for example, identify the hazardous waste management units on a facility plot plan.
  - (b) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values, for example, temperatures, flow rates, or concentrations, that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.
  - (c) Information and data used to determine whether or not a process vent is subject to the requirements of section 33-24-05-402.
- (3) If an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of section 33-24-05-402, and chooses to use the test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in subdivision c of subsection 2 of section 33-24-05-405.
- (4) Documentation of compliance with section 33-24-05-403, including:
  - (a) A list of all information references and sources used in preparing the documentation.
  - (b) Records, including the dates, of each compliance test required by subsection 11 of section 33-24-05-403.
  - (c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI course 415: control of gaseous emissions" (incorporated by reference as specified in section 33-24-01-05) or other engineering texts acceptable to the department that present basic control device ~~design~~ information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405.
  - (d) A statement signed and dated by the owner or operator certifying [that](#) the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

- (e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five weight percent or greater unless the total organic emission limits of subsection 1 of section 33-24-05-402 for affected access vents at the facility can be attained by a control device involving vapor recovery at an efficiency level less than ninety-five weight percent.
- dd. Except as otherwise provided in section 33-24-05-01, owners and operators of facilities that have equipment to which sections 33-24-05-420 through 33-24-05-449 apply must provide the following additional information:
- (1) For each piece of equipment to which sections 33-24-05-420 through 33-24-05-449 apply:
    - (a) Equipment identification number and hazardous waste management unit identification.
    - (b) Approximate locations within the facility, for example, identify the hazardous waste management unit on a facility plot plan.
    - (c) Type of equipment, for example, a pump or pipeline valve.
    - (d) Percent by weight total organics in the hazardous waste stream at the equipment.
    - (e) Hazardous waste state at the equipment, for example, gas or vapor or liquid.
    - (f) Method of compliance with the standard, for example, "monthly leak detection and repairs" or "equipped with dual mechanical seals".
  - (2) For facilities that do not install a closed-vent system and control device to comply with the provisions of sections 33-24-05-420 through 33-24-05-449 on the effective date that the facility becomes subject to the provisions of ~~these~~ sections 33-24-05-420 through 33-24-05-449, an implementation schedule as specified in subdivision b of subsection 1 of section 33-24-05-403.
  - (3) If an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in subdivision c of subsection 2 of section 33-24-05-405.
  - (4) Documentation that demonstrates compliance with the equipment standards in sections 33-24-05-422 to 33-24-05-429. This documentation must contain the records required under section 33-24-05-434. The department may request further documentation before deciding if compliance has been demonstrated.
  - (5) Documentation to demonstrate compliance with section 33-24-05-430 must include the following information:
    - (a) A list of all information references and sources used in preparing the documentation.
    - (b) Records, including the dates, of each compliance test required by subsection 10 of section 33-24-05-403.

- (c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on appropriate sections of "ATPI course 415: control of gaseous emissions" (incorporated by reference as specified in section 33-24-01-05) or other engineering texts acceptable to the department that present basic control device ~~design~~-information. The design analysis should address the vent stream characteristics and control device operation parameters as specified in paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405.
  - (d) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.
  - (e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five weight percent or greater.
- ee. Except as otherwise provided by section 33-24-05-01, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:
- (1) A list of hazardous wastes placed or to be placed on each drip pad.
  - (2) If an exemption is sought to sections 33-24-05-47 through 33-24-05-58, as provided by section 33-24-05-47, detailed plans and an engineering report describing how the requirements of subdivision b of subsection 2 of section 33-24-05-47 will be met.
  - (3) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-504, including the as-built drawings and specifications. This submission must address the following items as specified in section 33-24-05-502:
    - (a) The design characteristics of the drip pad;
    - (b) The liner system;
    - (c) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;
    - (d) Practices designed to maintain drip pads;
    - (e) The associated collection system;
    - (f) Control of run-on to the drip pad;
    - (g) Control of runoff from the drip pad;
    - (h) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;
    - (i) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including rinsing, washing with detergents or other appropriate solvents, or steam

cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;

- (j) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;
  - (k) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;
  - (l) Provisions for ensuring that collection and holding units associated with the run-on and runoff control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;
  - (m) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;
  - (n) A description of how each drip pad, including appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of section 33-24-05-504. This information should be included in the inspection plan submitted under subdivision e ~~of subsection 2 of section 33-24-06-17~~;
  - (o) A certification signed by ~~an independent,~~ a qualified, ~~registered~~ professional engineer, stating that the drip pad design meets the requirements of subsections 1 through 6 of section 33-24-05-504; and
  - (p) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under subsection 1 of section 33-24-05-506. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how section 33-24-05-180 will be complied with. This information should be included in the closure plan and, where applicable, the postclosure plan submitted under subdivision m ~~of subsection 2 of section 33-24-06-17~~.
- ff. ~~When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(b) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subdivision do not apply, except those provisions the department determines are necessary to ensure compliance with subdivision a of subsection 5 of section 33-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33-24-05-527 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the department may apply the provisions of this subdivision, on a case-by-case basis, for purposes of information collection in accordance with subsection 11 of section 33-24-06-01 and section 33-24-06-05. Except as otherwise provided by section 33-24-05-01, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste in boilers or industrial furnaces must provide the following additional information:~~ When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler,

liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subdivision do not apply. The requirements of this subdivision do apply, however, if the department determines certain provisions are necessary to ensure compliance with subdivision a of subsection 5 of section 33-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33-24-05-527 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if the permittee is an area source and elects to comply with the sections 33-24-05-530, 33-24-05-531, and 33-24-05-532 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and nonmercury metals; or the department determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with subsections 11 and 12 of section 33-24-06-01 and subdivisions b and c of subsection 2 of section 33-24-06-05.

(1) Trial burns.

- (a) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by section 33-24-05-529, standards to control particulate matter provided by section 33-24-05-530, standards to control metals emissions provided by section 33-24-05-531, or standards to control hydrogen chloride or chlorine gas emissions provided by section 33-24-05-532 must conduct a trial burn to demonstrate conformance with those standards and must submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with subsection 4 of section 33-24-06-19.

[1] A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of sections 33-24-05-529 through 33-24-05-532 and ~~subdivisions~~subparagraphs b through e ~~of subsection 1~~; and

[2] The owner or operator may submit data in lieu of a trial burn, as prescribed in ~~subdivisions~~subparagraph f ~~of subsection 1~~.

- (b) Waiver of trial burn for destruction and removal efficiency.

[1] Boilers operated under special operating requirements. When seeking to be permitted under subdivision d of subsection 1 of section 33-24-05-529 and section 33-24-05-535 that automatically waive the destruction and removal efficiency trial burn, the owner or operator of a boiler must submit documentation that the boiler operates under the special operating requirements provided by section 33-24-05-535.

[2] Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by subdivision e of subsection 1 of section 33-24-05-529 and subsection 1 of section 33-24-05-534 that waive the destruction and removal efficiency trial burn, the owner or operator must submit:

[a] Documentation that the device is operated in conformance with the requirements of subdivision a of subsection 1 of section 33-24-05-534.

- [b] Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix V of chapter 33-24-02, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques ~~specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" SW-846, as incorporated by reference in section 33-24-01-05.~~
  - [c] Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in ~~subparagraph b of paragraph 2 of subdivision b of subsection 1~~ subitem b using procedures provided by paragraph 2 of subdivision b of subsection 1 of section 33-24-05-534.
  - [d] Results of emissions dispersion modeling for emissions identified in ~~subparagraph c of paragraph 2 of subdivision b of subsection 1~~ subitem c using modeling procedures prescribed by subsection 8 of section 33-24-05-531. The department will review the emission modeling conducted by the applicant to determine conformance with these procedures. The department will either approve the modeling or determine that alternate or supplementary modeling is appropriate.
  - [e] Documentation that the maximum annual average ground level concentration of each constituent identified in ~~subparagraph b of paragraph 2 of subdivision b of subsection 1~~ subitem b quantified in conformance with ~~subparagraph d of paragraph 2 of subdivision b of subsection 1~~ subitem d does not exceed the allowable ambient level established in appendices XIX or XX of chapter 33-24-05. The acceptable ambient concentration for emitted constituents for which a specific reference air concentration has not been established in appendix XIX of chapter 33-24-05 or risk-specific dose has not been established in appendix XX of chapter 33-24-05 is 0.1 micrograms per cubic meter, as noted in the footnote to appendix XIX of chapter 33-24-05.
- (c) Waiver of trial burn for metals. When seeking to be permitted under the tier I (or adjusted tier I) metals feed rate screening limits provided by subsections 2 and 5 of section 33-24-05-531 that control metals emissions without requiring a trial burn, the owner or operator must submit:
- [1] Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feedstocks;
  - [2] Documentation of the concentration of each metal controlled by subsection 2 or 5 of section 33-24-05-531 in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;
  - [3] Documentation of how the applicant will ensure that the tier I feed rate screening limits provided by subsection 2 or 5 of section 33-24-05-531 will not be exceeded during the averaging period provided by that subsection;

- [4] Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by subdivisions c through e of subsection 2 of section 33-24-05-531;
  - [5] Documentation of compliance with the provisions of subdivision f of subsection 2 of section 33-24-05-531, if applicable, for facilities with multiple stacks;
  - [6] Documentation that the facility does not fail the criteria provided by subdivision g of subsection 2 of section 33-24-05-531 for eligibility to comply with the screening limits; and
  - [7] Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feedstocks.
- (d) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of subsection 2 of section 33-24-05-534 which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants must submit documentation supporting conformance with ~~paragraph 2 of subdivision b of subsection 1~~item 1 of subparagraph b and ~~subdivision c of subsection 1~~subparagraph c.
- (e) Waiver of trial burn for hydrogen chloride and chlorine. When seeking to be permitted under the tier I (or adjusted tier I) feed rate screening limits for total chloride and chlorine provided by subdivision a of subsection 2 and subsection 5 of section 33-24-05-532 that control emissions of hydrogen chloride and chlorine gas without requiring a trial burn, the owner or operator must submit:
- [1] Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feedstocks;
  - [2] Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;
  - [3] Documentation of how the applicant will ensure that the tier I (or adjusted tier I) feed rate screening limits provided by subdivision a of subsection 2 or subsection 5 of section 33-24-05-532 will not be exceeded during the averaging period provided by that subsection;
  - [4] Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by subdivision c of subsection 2 of section 33-24-05-532;
  - [5] Documentation of compliance with the provisions of subdivision d of subsection 2 of section 33-24-05-532, if applicable, for facilities with multiple stacks;
  - [6] Documentation that the facility does not fail the criteria provided by subdivision c of subsection 2 of section 33-24-05-532 for eligibility to comply with the screening limits; and

[7] Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(f) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with sections 33-24-05-529 through 33-24-05-532 and subsection 4 of section 33-24-06-19 by providing the information required by subsection 4 of section 33-24-06-19 from previous compliance testing of the device in conformance with section 33-24-05-528, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by subsection 4 of section 33-24-06-19 must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. The department shall approve a permit application without a trial burn if the department finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under section 33-24-05-527) operating conditions that will ensure conformance with subsection 3 of section 33-24-05-527. In addition, the following information shall be submitted:

[1] For a waiver from any trial burn:

[a] A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

[b] The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

[c] Such supplemental information as the department finds necessary to achieve the purposes of this subparagraph.

[2] For a waiver of the destruction and removal efficiency trial burn, the basis for selection of principal organic hazardous constituents used in the other trial or operational burns which demonstrate compliance with the destruction and removal efficiency performance standard in subsection 1 of section 33-24-05-529. This analysis should specify the constituents in appendix V of chapter 33-24-02, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the principal organic hazardous constituents in the hazardous waste for which burn data are provided.

(2) Alternative hydrocarbon limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative hydrocarbon limit under subsection 6 of section 33-24-05-529 shall submit the following information at a minimum:

(a) Documentation that the furnace is designed and operated to minimize hydrocarbon emissions from fuels and raw materials;

- (b) Documentation of the proposed baseline flue gas hydrocarbon (and carbon monoxide) concentration, including data on hydrocarbon (and carbon monoxide) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;
  - (c) Test burn protocol to confirm the baseline hydrocarbon (and carbon monoxide) level, including information on the type and flow rate of all feed streams, point of introduction of all feed streams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feed streams, and operating conditions that affect combustion of fuels and destruction of hydrocarbon emissions from nonfuel sources;
  - (d) Trial burn plan to:
    - [1] Demonstrate that flue gas hydrocarbon (and carbon monoxide) concentrations when burning hazardous waste do not exceed the baseline hydrocarbon (and carbon monoxide) level; and
    - [2] Identify the types and concentrations of organic compounds listed in appendix V of chapter 33-24-02, that are emitted when burning hazardous waste in conformance with procedures prescribed by the department;
  - (e) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline hydrocarbon level and procedures to periodically confirm the baseline hydrocarbon level; and
  - (f) Such other information as the department finds necessary to achieve the purposes of this paragraph.
- (3) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under subsection 6 of section 33-24-05-531, the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of subsection 3 or 4 of section 33-24-05-531 and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the department finds necessary to achieve the purposes of this paragraph.
- (4) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any prealarm systems that may be used.
- (5) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in section 33-24-05-536) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by section 33-24-05-536.
- (6) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of section 33-24-05-537 must submit information adequate to demonstrate conformance with those provisions.
- gg. A summary of the preapplication meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under subsection 3 of section 33-24-07-25.

hh. Except as otherwise provided in section 33-24-05-01, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of sections 33-24-05-450 through 33-24-05-474 must provide the following additional information:

- (1) Documentation for each floating roof cover installed on a tank subject to subdivision a or b of subsection 4 of section 33-24-05-454 that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in subdivision a of subsection 5 or subdivision a of subsection 6 of section 33-24-05-454.
- (2) Identification of each container area subject to the requirements of sections 33-24-05-450 through 33-24-05-474 and certification by the owner or operator that the requirements of chapter ~~33-24-06~~sections 33-24-05-450 through 33-24-05-474 are met.
- (3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of subdivision e of subsection 4 of section 33-24-05-454 or paragraph 2 of subdivision a of subsection 5 of section 33-24-05-456 that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.
- (4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of subsection 3 of section 33-24-05-455 that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in subdivision a of subsection 3 of section 33-24-05-455.
- (5) Documentation for each closed-vent system and control device installed in accordance with the requirements of section 33-24-05-457 that includes design and performance information as specified in paragraphs 3 and 4 of subdivision cc.
- (6) An emission monitoring plan for both method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point or points, monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.
- (7) When an owner or operator of a facility subject to ~~subpart CC of 40 CFR part 265 as incorporated by reference at subsection 5 of section 33-24-06-16~~sections 33-24-05-450 through 33-24-05-474 cannot comply with the requirements of sections 33-24-05-450 through 33-24-05-474 by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082 as incorporated by reference at subsection 5 of section 33-24-06-16 must be provided.

3. **Additional information requirements.** The following additional information regarding protection of ground water is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in subsection 2 of section 33-24-05-47.

- a. A summary of the ground water monitoring data obtained during the interim status period under subsection 5 of section 33-24-06-16, where applicable.

- b. Identification of the uppermost aquifer and aquifers hydrologically interconnected beneath the facility property, including ground water flow direction and rate, and the basis for such identification, for example, the information obtained from hydrogeologic investigations of the facility area.
- c. On the topographic map required under subdivision q of subsection 2, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under section 33-24-05-52, the proposed location of ground water monitoring wells as required under section 33-24-05-54, and to the extent possible, the information required in subdivision b.
- d. A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application was submitted:
  - (1) Delineates the extent of the plume on the topographic map required under subdivision q of subsection 2; and
  - (2) Identifies the concentration of each appendix ~~IX~~XII, of chapter 33-24-05, constituent throughout the plume or identifies the maximum concentrations of each appendix ~~IX~~XII constituent in the plume.
- e. Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of section 33-24-05-54.
- f. If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analysis to establish a detection monitoring program which meets the requirements of section 33-24-05-55. This submission must address the following items specified under section 33-24-05-55:
  - (1) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;
  - (2) A proposed ground water monitoring system;
  - (3) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and
  - (4) A description of proposed sampling, analysis, and statistical comparison procedures to be analyzed in evaluating ground water monitoring data.
- g. If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of the permit application, the owner or operator must submit sufficient information, supporting data, and analysis to establish a compliance monitoring program which meets the requirements of section 33-24-05-56. Except as provided in subdivision e of subsection 8 of section 33-24-05-55, the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of section 33-24-05-57 unless the owner or operator obtains a written authorization in advance from the department to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with section 33-24-05-56, the owner or operator must address the following items:
  - (1) A description of the wastes previously handled at the facility;
  - (2) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

- (3) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with sections 33-24-05-54 and 33-24-05-56;
  - (4) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in subsection 1 of section 33-24-05-51, including a justification for establishing any alternate concentration limit;
  - (5) Detailed plans and an engineering report describing the proposed ground water monitoring system, in accordance with the requirements of section 33-24-05-54; and
  - (6) A description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating ground water monitoring data.
- h. If hazardous constituents have been measured in the ground water which exceed the concentration limits established under section 33-24-05-51, table 1, or if ground water monitoring conducted at the time of permit application under sections 33-24-05-47 through 33-24-05-51 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over the background concentrations, the owner or operator must submit sufficient information, supporting data, and analysis to establish a corrective action program which meets the requirements of section 33-24-05-57. However, an owner or operator is not required to submit information to establish a corrective action program if the owner or operator demonstrates to the department that alternate concentration limits will protect human health and the environment after considering the criteria listed in subsection 2 of section 33-24-05-51. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of section 33-24-05-56 and subdivision f. To demonstrate compliance with section 33-24-05-57, the owner or operator must address, at a minimum, the following items:
- (1) A characterization of the contaminated ground water, including concentrations of hazardous constituents;
  - (2) The concentration limit for each hazardous constituent found in the ground water as set forth in section 33-24-05-51;
  - (3) Detailed plans and an engineering report describing the corrective action to be taken; and
  - (4) A description of how the ground water monitoring program will demonstrate the adequacy of the corrective action.
  - (5) The permit may contain a schedule for submittal of the information required in paragraphs 3 and 4 provided the owner or operator obtains written authorization from the department prior to submittal of the complete permit application.
4. Information requirements for solid waste management units.
- a. The following information is required for each solid waste management unit at a facility seeking a permit:
- (1) The location of a unit on the topographic map required under subdivision g of subsection 2.
  - (2) Designation of type of unit.
  - (3) General dimensions and structural description (supply any available drawings).

- (4) When the unit was operated.
  - (5) Specification of all wastes that have been managed at the unit to the extent available.
- b. The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.
  - c. The owner or operator must conduct and provide the results of sampling and analysis of ground water, land surface, and subsurface strata, surface water, or air, which may include the installation of wells, where the department ascertains it is necessary to complete a hazardous waste facility assessment that will determine if a more complete investigation is necessary.

**History:** Effective January 1, 1984; amended effective October 1, 1986; December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-09

### **33-24-06-19. Special forms of permits.**

1. **Emergency permits.** Notwithstanding any other provisions of this chapter or chapter 33-24-07, if the department finds an imminent and substantial endangerment to human health or the environment, the department may issue a temporary emergency permit to a nonpermitted facility to allow treatment, storage, or disposal of hazardous waste or a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit. This emergency permit:
  - a. May be oral or written. If oral, it shall be followed in five days by a written emergency permit;
  - b. May not exceed ninety days in duration;
  - c. Must clearly specify the hazardous wastes to be received and the manner and location of their treatment, storage, or disposal;
  - d. May be terminated by the department at any time without process if ~~it~~[the department](#) determines that termination is appropriate to protect human health and the environment;
  - e. Must be accompanied by a public notice published under subsection 2 of section 33-24-07-06, including:
    - (1) Name and address of the office granting the emergency authorization;
    - (2) Name and location of the permitted hazardous waste management facility;
    - (3) A brief description of the wastes involved;
    - (4) A brief description of the action authorized and reasons for authorizing it; and
    - (5) Duration of the emergency permit; and
  - f. Must incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and chapter 33-24-05.
2. **Hazardous waste incinerator permits.** When an owner or operator [of a hazardous waste incineration unit becomes subject to hazardous waste permit requirements after October 12,](#)

2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and ~~63.1210(b)~~63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subsection do not apply, except those provisions the department determines are necessary to ensure compliance with subsections 1 and 3 of section 33-24-05-149 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the department may apply the provisions of this subsection, on a case-by-case basis, for purposes of information collection in accordance with ~~subsection~~subsections 11 and 12 of section 33-24-06-01 and subdivisions b and c of subsection 2 of section 33-24-06-05.

- a. For the purposes of determining operational readiness following completion of physical construction, the department shall establish permit conditions, including, but not limited to, allowable waste feeds and operating conditions in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed seven hundred twenty hours operating time for treatment of hazardous waste. The department may extend the duration of this operational period once for up to seven hundred twenty additional hours at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 33-24-06-14.
  - (1) Applicants shall submit a statement with the permit application which suggests the conditions necessary to operate in compliance with the performance standards of section 33-24-05-147 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in section 33-24-05-149.
  - (2) The department will review this statement and any other relevant information submitted with the permit application and specify requirements for this period sufficient to meet the performance standards of section 33-24-05-147 based on ~~its~~the department's engineering judgment.
- b. For the purposes of determining feasibility of compliance with the performance standards of section 33-24-05-147 and of determining adequate operating conditions under section 33-24-05-149, the department shall establish conditions in the permit ~~te~~for a new hazardous waste incinerator to be effective during the trial burn.
  - (1) Applicants must propose a trial burn plan prepared under paragraph 2 with the permit application.
  - (2) The trial burn plan must include the following information:
    - (a) An analysis of each waste or mixture of wastes to be burned which includes:
      - [1] Heat value of the waste in the form and composition in which it will be burned.
      - [2] Viscosity (if applicable), or description of physical form of the waste.
      - [3] An identification of any hazardous organic constituents listed in chapter 33-24-02, appendix V, which are present in the ~~wastes~~waste to be burned, except that the applicant need not analyze for constituents listed

in chapter 33-24-02, appendix V, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques ~~specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" SW-846, as incorporated by reference in section 33-24-01-05, or their equivalent.~~

- [4] An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the appropriate analytical methods ~~specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" SW-846, as incorporated by reference in section 33-24-01-05, or their equivalent.~~
- (b) A detailed engineering description of the incinerator for which the ~~trial burn~~ permit is sought, including:
- [1] Manufacturer's name and model number of incinerator (if available).
  - [2] Type of incinerator.
  - [3] Linear dimensions of the incinerator unit, including cross-sectional area of combustion chamber.
  - [4] Description of the auxiliary fuel system (type/feed).
  - [5] Capacity of prime mover.
  - [6] Description of automatic waste feed cutoff system or systems.
  - [7] Stack gas monitoring and pollution control equipment.
  - [8] Nozzle and burner design.
  - [9] Construction materials.
  - [10] Location and description of temperature, pressure, and flow indicating and control devices.
- (c) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
- (d) A detailed test schedule for each waste for which the trial burn is planned, including dates, duration, quantity of waste to be burned, and other factors relevant to the department's decision under paragraph 5.
- (e) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.
- (f) A description of, and planned operating conditions for, any emission control equipment which will be used.
- (g) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

- (h) Such other information as the department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph 5.
- (3) In reviewing the trial burn plan, the department shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection.
- (4) Based on the waste analysis data in the trial burn plan, the department will specify as trial principal organic hazardous constituents those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial principal organic hazardous constituents will be specified by the department based on ~~its~~the department's estimate of the difficulty of incineration of the constituents identified in the waste analysis, ~~the~~their concentration or mass in the waste feed, and, for wastes listed in ~~chapter 33-24-02~~in sections 33-24-02-15 through 33-24-02-19, the hazardous waste organic constituent or constituents identified in appendix IV of ~~that~~chapter 33-24-02 as the basis for listing.
- (5) The department shall approve a trial burn plan if ~~it~~the department finds that:
  - (a) The trial burn is likely to determine whether the incinerator performance standard required by section 33-24-05-147 can be met;
  - (b) The trial burn itself will not present an imminent hazard to human health or the environment;
  - (c) The trial burn will help the department determine operating requirements to be specified under section 33-24-05-149; and
  - (d) The information sought in subparagraphs a and c cannot reasonably be developed through other means.
- (6) The department must send a notice to all persons on the facility mailing list as set forth in paragraph 4 of subdivision a of subsection 3 of section 33-24-07-06 and to the appropriate units of state and local government as set forth in subdivision b of subsection 3 of section 33-24-07-06 announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the department has issued such notice.
  - (a) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the department.
  - (b) This notice must contain:
    - [1] The name and telephone number of the applicant's contact person;
    - [2] The name and telephone number of the department's contact office;
    - [3] The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
    - [4] An expected time period for commencement and completion of the trial burn.

- (7) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:
    - (a) A quantitative analysis of the trial principal organic hazardous constituents in the waste feed to the incinerator.
    - (b) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial principal organic hazardous constituents, oxygen, and hydrogen chloride.
    - (c) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial principal organic hazardous constituents.
    - (d) A computation of destruction and removal efficiency, in accordance with the destruction and removal efficiency formula specified in subsection 1 of section 33-24-05-147.
    - (e) If the hydrogen chloride emission rate exceeds one and eight-tenths kilograms of hydrogen chloride per hour [4 pounds per hour], a computation of the hydrogen chloride removal efficiency in accordance with subsection 2 of section 33-24-05-147.
    - (f) A computation of particulate emissions, in accordance with subsection 3 of section 33-24-05-147.
    - (g) An identification of sources of fugitive emissions and their means of control.
    - (h) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.
    - (i) A continuous measurement of carbon monoxides in the exhaust gas.
    - (j) Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in section 33-24-05-147 and to establish the operating conditions required by section 33-24-05-149 as necessary to meet that performance standard.
  - (8) The applicant shall submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the determinations required in paragraph 6. This submission must be made within ninety days of the completion of the trial burn, or later if approved by the department.
  - (9) All data collected during any trial burn must be submitted to the department following the completion of the trial burn.
  - (10) All submissions required by this ~~subsection~~ [subdivision](#) must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 33-24-06-03.
  - (11) Based on the results of the trial burn, the department shall set the operating requirements in the final permit according to section 33-24-05-149. The permit modification shall proceed according to section 33-24-06-14.
- c. For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to

reflect the trial burn results, the department may establish permit conditions including, but not limited to, allowable waste feeds and operating conditions sufficient to meet the requirements of section 33-24-05-149 in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and modification of the facility permit by the department.

- (1) Applicants shall submit a statement with the permit application which identifies the conditions necessary to operate in compliance with the performance standards of section 33-24-05-147 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in section 33-24-05-149.
  - (2) The department will review this statement and any other relevant information submitted with the permit application and specify those requirements for this period most likely to meet the performance standards of section 33-24-05-147 based on ~~its~~the department's engineering judgment.
- d. For the purpose of determining feasibility of compliance with the performance standards of section 33-24-05-147 and of determining adequate operating conditions under section 33-24-05-149, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with paragraph 2 of subdivision w of subsection 2 of section 33-24-06-17 and paragraphs 2 through 5 and 7 through 10 of subdivision b or, instead, submit other information as specified in paragraph 3 of subdivision w of subsection 2 of section 33-24-06-17. The department must announce the department's intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph 6 of subdivision b. The contents of the notice must also include a schedule of the activities that are required prior to permit issuance. Applicants submitting information under paragraph 1 of subdivision w of subsection 2 of section 33-24-06-17 are exempt from compliance with sections 33-24-05-147 and 33-24-05-149 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results specified in paragraph 6 of subdivision b, with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the department to establish a later date for submission of the part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the department will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

### 3. **Permits for land treatment demonstrations using field tests or laboratory analyses.**

- a. For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of section 33-24-05-162, the department may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in subsection 3 of section 33-24-05-162. The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses or as a two-phase facility permit covering field tests or laboratory analyses and design construction, operation, and maintenance of the land treatment unit.
  - (1) The department may issue a two-phase facility permit if the department finds that based on information submitted in the permit application substantial, although incomplete or inconclusive, information already exists on which to base the issuance of a facility permit.

- (2) If the department finds that not enough information exists upon which the department can establish permit conditions to attempt to provide for compliance with all the requirements of the land treatment requirements in sections 33-24-05-160 through 33-24-05-175, the department shall issue a treatment demonstration permit covering only the field test or laboratory analyses.
  - b. If the department finds that a phased permit may be issued, the department will establish as requirements in the first phase of the facility permit conditions for conducting a field test or laboratory analyses. These permit conditions will contain design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, postdemonstration cleanup activities, and any other conditions which the department finds may be necessary under subsection 3 of section 33-24-05-162. The department will include conditions in the second phase of the facility permit to attempt to meet all the ~~land treatment~~ requirements in sections 33-24-05-160 through 33-24-05-175 pertaining to unit design, construction, operation, and maintenance. The department will establish these conditions in the second phase of the permit, based upon the substantial but incomplete or inconclusive information contained in the permit application.
    - (1) The first phase of the permit will be effective as provided in subsection 2 of section 33-24-07-11.
    - (2) The second phase of the permit will be effective as provided in subdivision d.
  - c. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator shall submit to the department a certification signed by a person authorized to sign a permit application or report under section 33-24-06-03 that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within ninety days of completion of those tests or analyses, unless the department approves a later date.
  - d. If the department determines that the results of the field tests or laboratory analyses meet the requirements of section 33-24-05-162, the department will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with ~~the land treatment requirements of~~ sections 33-24-05-160 through 33-24-05-175, based upon the results of the field tests or laboratory analyses.
    - (1) This permit modification may proceed under section 33-24-06-14, or otherwise proceed as a modification under subdivision b of subsection 1 of section 33-24-06-12. If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.
    - (2) If no modifications of the second phase of the permit are necessary, the department will give notice of the department's final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in subsection 2 of section 33-24-07-11.
4. **Permits for boilers and industrial furnaces burning hazardous waste.** When an owner or operator of a cement ~~or kiln~~, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production

furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and ~~63.1210(b)~~63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subsection do not apply, ~~except those provisions.~~ The requirements of this subsection do apply, however, if the department determines certain provisions are necessary to ensure compliance with subdivision a of subsection 5 of section 33-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33-24-05-527 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. ~~Nevertheless, or if the permittee is an area source and elects to comply with the sections 33-24-05-530, 33-24-05-531, and 33-24-05-532 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and nonmercury metals; or the department may apply the~~determines certain provisions of this subsection apply, on a case-by-case basis, for purposes of information collection in accordance with ~~subsection 11~~subsections 11 and 12 of section 33-24-06-01 and subdivisions b and c of subsection 2 of section 33-24-06-05.

- a. General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of section 33-24-05-528) are subject to subdivisions b through f. Boilers and industrial furnaces operating under the interim status standards of section 33-24-05-528 are subject to subdivision g.
- b. Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:
  - (1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed seven hundred twenty hours operating time when burning hazardous waste, the department must establish in the pretrial burn period of the permit conditions, including, but not limited to, allowable hazardous waste feed rates and operating conditions. The department may extend the duration of this operational period once, for up to seven hundred twenty additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 33-24-06-14.
    - (a) Applicants must submit a statement, with part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of sections 33-24-05-529 through 33-24-05-532 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in subsection 5 of section 33-24-05-527.
    - (b) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of sections 33-24-05-529 through 33-24-05-532 based on the department's engineering judgment.
  - (2) Trial burn period. For the duration of the trial burn, the department must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of sections 33-24-05-529 through 33-24-05-532 and determining adequate operating conditions under subsection 5 of section 33-24-05-527. Applicants must propose a trial burn plan, prepared under subdivision c, to be submitted with part B of the permit application.

- (3) Posttrial burn period.
  - (a) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the department to reflect the trial burn results, the department will establish the operating requirements most likely to ensure compliance with the performance standards of sections 33-24-05-529 through 33-24-05-532 based on the department's engineering judgment.
  - (b) Applicants must submit a statement, with part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of sections 33-24-05-529 through 33-24-05-532. This statement should include, at a minimum, restrictions on the operating requirements provided by subsection 5 of section 33-24-05-527.
  - (c) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of sections 33-24-05-529 through 33-24-05-532 based on the department's engineering judgment.
- (4) Final permit period. For the final period of operation, the department will develop operating requirements in conformance with subsection 5 of section 33-24-05-527 that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of sections 33-24-05-529 through 33-24-05-532. Based on the trial burn results, the department shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to section 33-24-06-14.
- c. Requirements for trial burn plans. The trial burn plan must include the following information. The department, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this ~~paragraph~~subdivision:
  - (1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feedstocks, as fired, that includes:
    - (a) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash; and
    - (b) Viscosity or description of the physical form of the feed stream;
  - (2) An analysis of each hazardous waste, as fired, including:
    - (a) An identification of any hazardous organic constituents listed in appendix V of chapter 33-24-02, that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix V of chapter 33-24-02 that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques ~~specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" SW 846, as incorporated by reference in section 33-24-01-05, or their equivalent.~~
    - (b) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by ~~the~~appropriate analytical

~~methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" as incorporated by reference in section 33-24-01-05, or other equivalent.~~

- (c) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.
  - (3) A detailed engineering description of the boiler or industrial furnace, including:
    - (a) Manufacturer's name and model number of the boiler or industrial furnace;
    - (b) Type of boiler or industrial furnace;
    - (c) Maximum design capacity in appropriate units;
    - (d) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;
    - (e) Capacity of hazardous waste feed system;
    - (f) Description of automatic hazardous waste feed cutoff systems;
    - (g) Description of any air pollution control system; and
    - (h) Description of stack gas monitoring and any pollution control monitoring systems.
  - (4) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.
  - (5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including dates, duration, quantity of hazardous waste to be burned, and other factors relevant to the department's decision under paragraph 2 of subdivision b.
  - (6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in sections 33-24-05-529 through 33-24-05-532.
  - (7) A description of, and planned operating conditions for, any emission control equipment that will be used.
  - (8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.
  - (9) Such other information as the department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this ~~paragraph~~subdivision and the criteria in paragraph 2 of subdivision b.
- d. Trial burn procedures.
- (1) A trial burn must be conducted to demonstrate conformance with the standards of sections 33-24-05-529 through 33-24-05-532 under an approved trial burn plan.

- (2) The department shall approve a trial burn plan if the department finds that:
    - (a) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of sections 33-24-05-529 through 33-24-05-532;
    - (b) The trial burn itself will not present an imminent hazard to human health and the environment;
    - (c) The trial burn will help the department to determine operating requirements to be specified under subsection 5 of section 33-24-05-527; and
    - (d) The information sought in the trial burn cannot reasonably be developed through other means.
  - (3) The department must send a notice to all persons on the facility mailing list as set forth in subdivision a of subsection 3 of section 33-24-07-06 and to the appropriate units of local government as set forth in subdivision b of subsection 3 of section 33-24-07-06 announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the department has issued such notice. This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the department. This notice must contain:
    - (a) The name and telephone number of the applicant's contact person;
    - (b) The name and telephone number of the department contact;
    - (c) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
    - (d) An expected time period for commencement and completion of the trial burn.
  - (4) The applicant must submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan and must submit the results of all the determinations required in subdivision c. This submission shall be made within ninety days of completion of the trial burn, or later if approved by the department.
  - (5) All data collected during any trial burn must be submitted to the department following completion of the trial burn.
  - (6) All submissions required by this ~~paragraph~~subdivision must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 33-24-06-03.
- e. Special procedures for destruction and removal efficiency trial burns. When a destruction and removal efficiency trial burn is required under subsection 1 of section 33-24-05-529, the department will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial principal organic hazardous constituents those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial principal organic hazardous constituents will be specified by the department based on information, including the department's estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in sections 33-24-02-15 through 33-24-05-19,

the hazardous waste organic constituent or constituents identified in appendix IV of chapter 33-24-02 as the basis for listing.

- f. Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:
- (1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);
  - (2) When a destruction and removal efficiency trial burn is required under subsection 1 of section 33-24-05-529:
    - (a) A quantitative analysis of the trial principal organic hazardous constituents in the hazardous waste feed;
    - (b) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial principal organic hazardous constituents; and
    - (c) A computation of destruction and removal efficiency, in accordance with the destruction and removal efficiency formula specified in subsection 1 of section 33-24-05-529;
  - (3) When a trial burn for chlorinated dioxins and furans is required under subsection 5 of section 33-24-05-529, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;
  - (4) When a trial burn for particulate matter, metals, hydrogen chloride or chlorine is required under section 33-24-05-530, subsection 3 or 4 of section 33-24-05-531, or subdivision b of subsection 2 or subsection 3 of section 33-24-05-532, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride and chlorine, and computations showing conformance with the applicable emission performance standards;
  - (5) When a trial burn for destruction and removal efficiency, metals, or hydrogen chloride or chlorine is required under subsection 1 of section 33-24-05-529, subsection 3 or 4 of section 33-24-05-531, or subdivision b of subsection 2 or subsection 3 of section 33-24-05-532, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial principal organic hazardous constituents, metals, and chlorine/chloride;
  - (6) An identification of sources of fugitive emissions and their means of control;
  - (7) A continuous measurement of carbon monoxide, oxygen, and where required, hydrocarbons, in the stack gas; and
  - (8) Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in sections 33-24-05-529 through 33-24-05-532 and to establish the operating conditions required by subsection 5 of section 33-24-05-527 as necessary to meet those performance standards.
- g. Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of sections 33-24-05-529 through

33-24-05-532 and of determining adequate operating conditions under section 33-24-05-528, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of section 33-24-05-528 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this ~~section~~subsection or submit other information as specified in subparagraph f of paragraph 1 of subdivision ff of subsection 2 of section 33-24-06-17. The department must announce its intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph 3 of subdivision d. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of ~~the department~~ contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for department approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in subdivision f with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the department to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the department.

5. **Remedial action plans.** Remedial action plans (RAPs) are special forms of permits that are regulated under sections 33-24-06-30 through 33-24-06-35.

6. **Hazardous waste standardized permits.** Standardized permits are special forms of permits for treatment, storage, or disposal owners or operators that:

a. Generate hazardous waste and then nonthermally treat or store the hazardous waste onsite in tanks, containers, or containment buildings; or

b. Receive hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then store or nonthermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under sections 33-24-06-45 through 33-24-06-85, 33-24-07-40 through 33-24-07-54, and 33-24-05-950 through 33-24-05-1149.

**History:** Effective January 1, 1984; amended effective December 1, 1988; December 1, 1991; January 1, 1994; July 1, 1997; December 1, 2003; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-09

### **33-24-06-20. Research, development, and demonstration permits.**

1. The department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under ~~chapter 33-24-05~~sections 33-24-05-01 through 33-24-05-249, 33-24-05-300 through 33-24-05-659, and 33-24-05-800 through 33-24-05-929. Any such permit must include such terms and conditions as will assure protection of human health and the environment. Such permits:

a. Must provide for the construction of such facilities as necessary, and for operation of a facility for not longer than one year unless renewed as provided in subsection 4;

- b. Must provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the department deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology on human health and the environment; and
  - c. Must include such requirements as the department deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the department deems necessary regarding testing and providing of information to the department with respect to the operation of the facility.
2. For the purpose of expediting review and issuance of permits under this section, the department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in chapters 33-24-06 and 33-24-07 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
  3. The department may order an immediate termination of all operations at the facility at any time ~~he~~the department determines that termination is necessary to protect human health and the environment.
  4. Any permit issued under this section may be renewed not more than three times. Each such renewal is for a period of not more than one year.

**History:** Effective January 1, 1984; amended effective October 1, 1986; January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-30. Remedial action plan - General information.**

1. General information.
  - a. A remedial action plan is a special form of hazardous waste permit that an owner or operator may obtain, instead of a permit issued under sections 33-24-06-01 through ~~33-24-06-21~~33-24-06-15, 33-24-06-17 through 33-24-06-18, subsections 1, 2, 3 and 4 of section 33-24-06-19 and section 33-24-06-20, to authorize the owner or operator to treat, store, or dispose of hazardous remediation waste (as defined in section 33-24-01-04) at a remediation waste management site. A remedial action plan may only be issued for the area of contamination where the remediation wastes to be managed under the remedial action plan originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under subsection 1 of section 33-24-06-35.
  - b. The requirements in sections 33-24-06-01 through ~~33-24-06-21~~33-24-06-15, 33-24-06-17, 33-24-06-18, subsections 1 through 4 of section 33-24-01-19 and section 33-24-06-20 do not apply to remedial action plans unless those requirements for traditional hazardous waste permits are specifically required under sections 33-24-06-30 through 33-24-06-35.
  - c. Notwithstanding any other provision of chapter 33-24-06 or 33-24-07, any document that meets the requirements in this section constitutes a hazardous waste permit under ~~Resource Conservation and Recovery Act section 3005(c)~~section 23-20.3-05 of the North Dakota Century Code.
  - d. A remedial action plan may be:
    - (1) A stand-alone document that includes only the information and conditions required by sections 33-24-06-30 through 33-24-06-35; or

- (2) Part or parts of another document that includes information or conditions, or both, for other activities at the remediation waste management site, in addition to the information and conditions required by sections 33-24-06-30 through 33-24-06-35.
  - e. If the owner or operator is treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by federal or state cleanup authorities, the remedial action plan does not affect the owner's or operator's obligations under those authorities in any way.
  - f. If the owner or operator receives a remedial action plan at a facility operating under interim status, the remedial action plan does not terminate interim status.
2. A remedial action plan is necessary when:
- a. Whenever the owner or operator treats, stores, or disposes of hazardous remediation wastes in a manner that requires a hazardous waste permit, the owner or operator must either obtain:
    - (1) A hazardous waste permit according to sections 33-24-06-01 through ~~33-24-06-21~~ 33-24-06-15, 33-24-06-17, 33-24-06-18, subsections 1 through 4 of section 33-24-06-19 and section 33-24-06-20; or
    - (2) A remedial action plan according to sections 33-24-06-30 through 33-24-06-35.
  - b. Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for remedial action plans under sections 33-24-06-30 through 33-24-06-35.
  - c. The owner or operator may obtain a remedial action plan for managing hazardous remediation waste at an already permitted ~~Resource Conservation and Recovery Act~~ hazardous waste facility. The owner or operator must have these remedial action plans approved as a modification to an existing permit according to the requirements of section 33-24-06-12 or 33-24-06-14 instead of the requirements in sections 33-24-06-30 through 33-24-06-35. When the owner or operator submits an application for such a modification, however, the information requirements in paragraph 1 of subdivision a of subsection 1, paragraph 4 of subdivision a of subsection 2, and paragraph 4 of subdivision a of subsection 3 of section 33-24-06-14 do not apply; instead, the owner or operator must submit the information required under subsection 4 of section 33-24-06-31. When the permit is modified, the remedial action plan becomes part of the hazardous waste permit. Therefore, when a permit (including the remedial action plan portion) is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in sections 33-24-06-11, 33-24-06-12 and 33-24-06-14, revoked and reissued according to the applicable requirements in sections 33-24-06-12 and 33-24-06-13, terminated according to the applicable requirements in section 33-24-06-13, and expire according to the applicable requirements in sections 33-24-06-02 and 33-24-06-06.
3. Rights and obligations under a remedial action plan. The provisions of section 33-24-06-10 apply to remedial action plans. (Note: The provisions of subsection 1 of section 33-24-06-10 provide the owner or operator assurance that, as long as the owner or operator complies with the remedial action plan, the department will consider the owner or operator in compliance with this article and will not take enforcement actions against the owner or operator. However, the owner or operator should be aware of four exceptions to this provision that are listed in section 33-24-06-10.)

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-09

**33-24-06-31. Remedial action plan application process.**

1. To apply for a remedial action plan, the owner or operator must complete an application, sign it, and submit it to the department according to the requirements in sections 33-24-06-30 through 33-24-06-35.
2. Who applies. When a facility or remediation waste management site is owned by one person, but the treatment, storage, or disposal activities are operated by another person, it is the operator's duty to obtain a remedial action plan, except that the owner must also sign the remedial action plan application.
3. Signatory requirements. Both the owner and the operator must sign the remedial action plan application and any required reports according to subsections 1, 2, and 3 of section 33-24-06-03. In the application, both the owner and the operator must also make the certification required under subdivision a of subsection 4 of section 33-24-06-03. However, the owner may choose the alternative certification under subdivision b of subsection 4 of section 33-24-06-03 if the operator certifies under subdivision a of subsection 4 of section 33-24-06-03.
4. Information to be included in the application. The owner or operator must include the following information in the application for a remedial action plan:
  - a. The name, address, and identification number of the remediation waste management site;
  - b. The name, address, and telephone number of the owner and operator;
  - c. The latitude and longitude of the site;
  - d. The United States geological survey or county map showing the location of the remediation waste management site;
  - e. A scaled drawing of the remediation waste management site showing:
    - (1) The remediation waste management site boundaries;
    - (2) Any significant physical structures; and
    - (3) The boundary of all areas onsite where remediation waste is to be treated, stored, or disposed;
  - f. A specification of the hazardous remediation waste to be treated, stored, or disposed of at the facility or remediation waste management site. This must include information on:
    - (1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated or otherwise managed;
    - (2) An estimate of the quantity of these wastes; and
    - (3) A description of the processes the owner or operator will use to treat, store, or dispose of this waste, including technologies, handling systems, and design and operating parameters the owner or operator will use to treat hazardous remediation wastes before disposing of them according to the land disposal restrictions standards of sections 33-24-05-250 through 33-24-05-299, as applicable;

- g. Enough information to demonstrate that operations that follow the provisions in the remedial action plan application will ensure compliance with applicable requirements of sections 33-24-05-01 through ~~33-24-05-599~~33-24-05-559 and 33-24-05-800 through ~~33-24-05-949~~33-24-05-929;
  - h. Such information as may be necessary to enable the department to carry out ~~its~~the department's duties under other federal or other state laws as is required for traditional hazardous waste permits under subdivision r of subsection 2 of section 33-24-06-17; and
  - i. Any other information the department decides is necessary for demonstrating compliance with sections 33-24-06-30 through 33-24-06-35 or for determining any additional remedial action plan conditions that are necessary to protect human health and the environment.
5. Confidentiality of remedial action plan information. The owner or operator may assert any such claim at the time that the owner or operator submits the remedial action plan application or other submissions by stamping the words "confidential business information" on each page containing such information. If the owner or operator asserts a claim at the time of the submission, the department will treat the information as confidential and will not release this information to the public. If the owner or operator does not assert a claim at the time of the submission, the department may make the information available to the public without further notice to the owner or operator. The department will deny any requests for confidentiality of an owner's or operator's name or address, or both.
  6. The owner or operator must submit the completed, signed application for a remedial action plan to the department for approval.
  7. If the owner or operator submits an application for a remedial action plan as a part of another document, the owner or operator must clearly identify the components of that document that constitute the remedial action plan application.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-06-32. Remedial action plan approval process.**

1. Completeness and technical review. The department will not issue a permit before receiving a complete application for a remedial action plan. An application for a remedial action plan is complete when the department receives an application form and any supplemental information which is completed to ~~its~~the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection 10 of section 33-24-06-01. The department may deny a permit for a remedial action plan before receiving a complete application for a permit.
  - a. If the department tentatively finds that a remedial action plan application includes all of the information required by subsection 4 of section 33-24-06-31 and that the proposed remediation waste management activities meet the regulatory standards, the department may make a tentative decision to approve the remedial action plan application. The department will then prepare a draft remedial action plan and provide an opportunity for public comment before making a final decision on the remedial action plan application, according to sections 33-24-06-30 through 33-24-06-35.

- b. If the department tentatively finds that the remedial action plan application does not include all of the information required by subsection 4 of section 33-24-06-31 or that the proposed remediation waste management activities do not meet the regulatory standards, the department may request additional information or ask the owner or operator to correct deficiencies in the application. If the owner or operator fails or refuses to provide any additional information the department requests, or to correct any deficiencies in the remedial action plan application, the department may make a tentative decision to deny the remedial action plan application. After making this tentative decision, the department will prepare a notice of intent to deny the remedial action plan application ("notice of intent to deny") and provide an opportunity for public comment before making a final decision on the remedial action plan application, according to the requirements in sections 33-24-06-30 through 33-24-06-35. The department may deny the remedial action plan application either in its entirety or in part.
2. Contents of the draft remedial action plan. If the department prepares a draft remedial action plan, ~~the department~~ must include the following information:
  - a. Information required under subdivisions a through f of subsection 4 of section 33-24-06-31;
  - b. The following terms and conditions:
    - (1) Terms and conditions necessary to ensure that the operating requirements specified in the remedial action plan comply with applicable requirements of ~~chapter 33-24-05~~sections 33-24-05-01 through 33-24-05-559 and 33-24-05-800 through 33-24-05-929 (including any recordkeeping and reporting requirements). In satisfying this provision, the department may incorporate, expressly or by reference, applicable requirements of ~~chapter 33-24-05~~sections 33-24-05-01 through 33-24-05-559 and 33-24-05-800 through 33-24-05-929 into the remedial action plan or establish site-specific conditions as required or allowed by sections 33-24-05-01 through ~~33-24-05-599~~33-24-05-559 and 33-24-05-800 through ~~33-24-05-949~~33-24-05-929;
    - (2) Terms and conditions in section 33-24-06-04;
    - (3) Terms and conditions for modifying, revoking and reissuing, and terminating the remedial action plan, as provided in subsection 1 of section 33-24-06-33; and
    - (4) Any additional terms or conditions that the department determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the remedial action plan; and
  - c. If the draft remedial action plan is part of another document, as described in paragraph 2 of subdivision d of subsection 1 of section 33-24-06-30, the department must clearly identify the components of that document that constitute the draft remedial action plan.
3. ~~Statement of basis and administrative record.~~ Once the department has prepared the draft remedial action plan or notice of intent to deny, then the department must also prepare the following documents:
  - a. A ~~statement of basis~~fact sheet that briefly describes the derivation of the conditions of the draft remedial action plan and the reasons for them, or the rationale for the notice of intent to deny;
  - b. ~~An administrative record~~The following documentation, including:

- (1) The remedial action plan application, and any supporting data furnished by the applicant;
  - (2) The draft remedial action plan or notice of intent to deny;
  - (3) The ~~statement of basis~~fact sheet and all documents cited therein (material readily available at the department or published material that is generally available need not be physically included ~~with the rest of the record~~, as long as it is specifically referred to in the ~~statement of basis~~fact sheet); and
  - (4) Any other documents that support the decision to approve or deny the remedial action plan; and
- c. Information contained in ~~the administrative record, which~~subdivision b must be available for review by the public upon request.
4. Procedures for public comment.
- a. The department must:
- (1) Send notice to the owner or operator of the intention to approve or deny the remedial action plan application and send the owner or operator a copy of the ~~statement of basis~~fact sheet;
  - (2) Publish a notice of the intention to approve or deny the remedial action plan application in a major local newspaper of general circulation;
  - (3) Broadcast the intention to approve or deny the remedial action plan application over a local radio station; and
  - (4) Send a notice of the intention to approve or deny the remedial action plan application to each unit of local government having jurisdiction over the area in which the site is located, and to each state agency having any authority under state law with respect to any construction or operations at the site.
- b. The notice required by subdivision a must provide an opportunity for the public to submit written comments on the draft remedial action plan or notice of intent to deny within at least forty-five days.
- c. The notice required by subdivision a must include:
- (1) The name and address of the office processing the remedial action plan application;
  - (2) The name and address of the remedial action plan applicant, and if different, the remediation waste management site or activity the remedial action plan will regulate;
  - (3) A brief description of the activity the remedial action plan will regulate;
  - (4) The name, address, and telephone number of ~~a~~the department's person from whom interested persons may obtain further information, including copies of the draft remedial action plan or notice of intent to deny, ~~statement of basis~~fact sheet, and the remedial action plan application;
  - (5) A brief description of the comment procedures in this ~~section~~subsection, and any other procedures by which the public may participate in the remedial action plan decision;

- (6) If a hearing is scheduled, the date, time, location, and purpose of the hearing;
  - (7) If a hearing is not scheduled, a statement of procedures to request a hearing;
  - (8) The location of ~~the administrative record~~ additional information and times when it will be open for public inspection; and
  - (9) Any additional information the department considers necessary or proper.
- d. If, within the comment period, the department receives written notice of opposition to the intention to approve or deny the remedial action plan application and a request for a hearing, the department must hold an informal public hearing to discuss issues relating to the approval or denial of the remedial action plan application. The department may also determine on the department's own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the department must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in subdivision a. This notice must, at a minimum, include the information required by subdivision c and:
- (1) Reference to the date of any previous public notices relating to the remedial action plan application;
  - (2) The date, time, and place of the hearing; and
  - (3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
5. Basis for final decision.
- a. The department must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft remedial action plan or notice of intent to deny, and revise the draft remedial action plan based on those comments, as appropriate.
  - b. If the department determines that the remedial action plan includes the information and terms and conditions required in subsection 2, then the department will issue a final decision approving the remedial action plan and, in writing, notify the owner or operator and all commenters on the draft remedial action plan that the remedial action plan application has been approved.
  - c. If the department determines that the remedial action plan does not include the information required in subsection 2, then the department will issue a final decision denying the remedial action plan and, in writing, notify the owner or operator and all commenters on the draft remedial action plan that the remedial action plan application has been denied.
  - d. If the department's final decision is that the tentative decision to deny the remedial action plan application was incorrect, the department will withdraw the notice of intent to deny and proceed to prepare a draft remedial action plan, according to the requirements in sections 33-24-06-30 through 33-24-06-35.
  - e. When the department issues a final remedial action plan decision, the final decision must refer to the procedures for appealing the decision under subsection 6.
  - f. ~~Before issuing the final remedial action plan decision, the department must compile an administrative record. Material readily available at the department or published materials~~

~~which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final remedial action plan must include information in the administrative record for the draft remedial action plan (subdivision b of subsection 3) and~~The department shall maintain the following documents:

- (1) All comments received during the public comment period;
  - (2) Tapes or transcripts of any hearings;
  - (3) Any written materials submitted at these hearings;
  - (4) The responses to comments;
  - (5) Any new material placed in the record since the draft remedial action plan was issued;
  - (6) Any other documents supporting the remedial action plan; and
  - (7) A copy of the final remedial action plan.
- g. The department must make information ~~contained in the administrative record~~ available for review by the public upon request.
6. Administrative appeal process of the department's decision to approve or deny a remedial action plan application.
- a. Any commenter on the draft remedial action plan or notice of intent to deny, or any participant in any public hearing on the draft remedial action plan, may appeal the department's decision to approve or deny the remedial action plan application. Any person who did not file comments, or did not participate in any public hearing on the draft remedial action plan, may petition for administrative review only to the extent of the changes from the draft to the final remedial action plan decision. Appeals of remedial action plans may be made to the same extent as for final permit decisions under section 33-24-07-11. Instead of the notice required under subsection 3 of section 33-24-07-14, and section 33-24-07-06, the department will give public notice of any grant of review of remedial action plans through the same means used to provide notice under subsection 4 of section 33-24-06-32. The notice will include:
    - (1) The briefing schedule for the appeal as provided by the department;
    - (2) A statement that any interested person may file an amicus brief with the department; and
    - (3) The information specified in subdivision c of subsection 4, as appropriate.
  - b. This appeal is a prerequisite to seeking judicial review of these department actions.
7. Effective date of a remedial action plan. A remedial action plan becomes effective thirty days after the department notifies the owner or operator and all commenters that the remedial action plan is approved unless:
- a. The department specifies a later effective date in the final decision;
  - b. The owner or operator or another person has appealed the remedial action plan under subsection 6 (if the remedial action plan is appealed, and the request for review is

granted under subsection 6, conditions of the remedial action plan are stayed according to section 33-24-07-12); or

- c. No commenters requested a change in the draft remedial action plan, in which case the remedial action plan becomes effective immediately when it is issued.
8. The owner or operator may not begin physical construction of new units permitted under the remedial action plan for treating, storing, or disposing of hazardous remediation waste before receiving a finally effective remedial action plan.

**History:** Effective December 1, 2003; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-09

**33-24-06-33. Modification, revocation and reissuance, or termination of a remedial action plan.**

1. In the remedial action plan, the department must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of the remedial action plan. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change the management of the remediation waste, or that otherwise merits public review and comment. If the remedial action plan has been incorporated into a traditional hazardous waste permit, as allowed under subdivision c of subsection 2 of section 33-24-06-30, then the remedial action plan will be modified according to the applicable requirements in sections 33-24-06-11, 33-24-06-12, and 33-24-06-14, revoked and reissued according to the applicable requirements in sections 33-24-06-12 and 33-24-06-13, or terminated according to the applicable requirements of section 33-24-06-13.
2. Modifications by the department.
  - a. The department may modify the final remedial action plan on the department's own initiative only if one or more of the following reasons exist. If one or more of these reasons do not exist, then the department will not modify the final remedial action plan, except at the request of the owner or operator. Reasons for modification are:
    - (1) The owner or operator made material and substantial alterations or additions to the activity that justify applying different conditions;
    - (2) The department finds new information that was not available at the time of remedial action plan issuance and would have justified applying different remedial action plan conditions at the time of issuance;
    - (3) The standards or regulations on which the remedial action plan was based have changed because of new or amended statutes, standards, or regulations, or by judicial decision after the remedial action plan was issued;
    - (4) If the remedial action plan includes any schedules of compliance, the department may find reasons to modify the compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the owner or operator ~~as the owner or operator~~ have little or no control and for which there is no reasonably available remedy;
    - (5) The owner or operator is not in compliance with conditions of the remedial action plan;

- (6) The owner or operator failed in the application or during the remedial action plan issuance process to disclose fully all relevant facts, or the owner or operator misrepresented any relevant facts at the time;
  - (7) The department has determined that the activity authorized by the remedial action plan endangers human health or the environment and can only be remedied by modifying; or
  - (8) The owner or operator have notified the department (as required in the remedial action plan under subdivision c of subsection 12 of section 33-24-06-04) of a proposed transfer of a remedial action plan.
- b. Notwithstanding any other provision in this ~~section~~subsection, when the department reviews a remedial action plan for a land disposal facility under subsection 6, the department may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in chapters ~~33-24-05~~33-24-01 through 33-24-0733-24-04, 33-24-06, 33-24-07, sections 33-24-05-01 through 33-24-05-249, 33-24-05-300 through 33-24-05-559, and 33-24-05-800 through 33-24-05-929.
  - c. The department will not reevaluate the suitability of the facility location at the time of remedial action plan modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the remedial action plan was issued.
3. Revocation and reissuance of a remedial action plan.
- a. The department may revoke and reissue the final remedial action plan on the department's own initiative only if one or more reasons for revocation and reissuance exist. If one or more reasons do not exist, then the department will not modify or revoke and reissue the final remedial action plan, except at the request of the owner or operator. Reasons for modification or revocation and reissuance are the same as the reasons listed for remedial action plan modifications in paragraphs 5 through 8 of subdivision a of subsection 2 if the department determines that revocation and reissuance of the remedial action plan is appropriate.
  - b. The department will not reevaluate the suitability of the facility location at the time of remedial action plan revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the remedial action plan was issued.
4. Termination or denial of a renewal application of a remedial action plan. The department may terminate the final remedial action plan on the department's own initiative, or deny the renewal application for the same reasons as those listed for remedial action plan modifications in paragraphs 5 through 7 of subdivision a of subsection 2 if the department determines that termination of the remedial action plan or denial of the remedial action plan renewal application is appropriate.
5. Administrative appeal of a decision to deny a modification, revocation and reissuance, or termination of a remedial action plan.
- a. Any commenter on the modification, revocation and reissuance, or termination, or any person who participated in any hearing on these actions, may appeal the department's decision to approve a modification, revocation and reissuance, or termination of the remedial action plan, according to subsection 6 of section 33-24-06-32. Any person who did not file comments or did not participate in any public hearing on the modification,

revocation and reissuance, or termination may petition for administrative review only of the changes from the draft to the final remedial action plan decision.

- b. Any commenter on the modification, revocation and reissuance, or termination, or any person who participated in any hearing on these actions, may informally appeal the department's decision to deny a request for modification, revocation and reissuance, or termination to the department. Any person who did not file comments, or did not participate in any public hearing on the modification, revocation and reissuance, or termination may petition for administrative review only of the changes from the draft to the final remedial action plan decision.
  - c. The process for informal appeals of remedial action plans is as follows:
    - (1) The person appealing the decision must send a letter to the department. The letter must briefly set forth the relevant facts.
    - (2) The department has sixty days after receiving the letter to act on it.
    - (3) If the department does not take action on the letter within sixty days after receiving it, the appeal shall be considered denied.
  - d. This informal appeal is a prerequisite to seeking judicial review of these department actions.
6. ~~Expiration of a remedial action plan. Remedial action plans must be issued for a fixed term, not to exceed ten years, although they may be renewed upon approval by the department in fixed increments of no more than ten years. In addition, the department must review any remedial action plan for hazardous waste land disposal five years after the date of issuance or reissuance and the owner or operator or the department must follow the requirements for modifying the remedial action plan as necessary to assure that the owner or operator continues to comply with currently applicable requirements in Resource Conservation and Recovery Act sections 3004 and 3005.~~ Expiration of a remedial action plan. Remedial action plans are effective for a fixed term of five years. Every five years any remedial action plan for hazardous waste land disposal must be modified as necessary to assure that the owner or operator continues to comply with currently applicable requirements in North Dakota Century Code sections 23-20.3-04 and 23-20.3-05, and take into account improvements in technology as well as applicable rules.
7. Renewal. Any facility with an effective remedial action plan shall submit a new application at least one hundred eighty days before the expiration date of the effective remedial action plan unless permission for a later date has been granted by the department (the department shall not grant permission for applications to be submitted later than the expiration date of the existing remedial action plan). The owner or operator must follow the process for application and issuance of remedial action plans in sections 33-24-06-30 through 33-24-06-35.
8. Continuance of an expiring remedial action plan. The conditions of an expired remedial action plan continue in force until the effective date of a new remedial action plan if:
- a. The owner or operator has submitted a timely application which is a complete application for a new remedial action plan; and
  - b. The department, through no fault of the owner or operator, does not issue a new remedial action plan with an effective date on or before the expiration date of the previous remedial action plan (for example, when issuance is impractical due to time or resource constraints) or the denial of the remedial action plan application.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05, 23-20.3-09

**33-24-06-45. [Reserved] Standardized permit - General information.**

A hazardous waste standardized permit is a special type of permit that authorizes an owner or operator to manage hazardous waste. A standardized permit is issued under sections 33-24-07-40 through 33-24-07-54 and sections 33-24-06-45 through 33-24-06-85.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-48. [Reserved] Eligibility for a standardized permit.**

1. The owner or operator may be eligible for a standardized permit if the facility:

- a. Generates hazardous waste and then stores or nonthermally treats the hazardous waste onsite in containers, tanks, or containment buildings; or
- b. Receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.
- c. The department will inform the owner or operator of eligibility when a decision is made on the permit application.

2. [Reserved]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-52. [Reserved] Conditions applicable to a standardized permit.**

The following requirements of chapter 33-24-06 apply to a standardized permit:

- 1. Sections 33-24-06-01, 33-24-06-09, 33-24-06-10, 33-24-06-15, 33-24-01-04, and subdivision a of subsection 3 of section 33-24-01-05.
- 2. Section 33-24-06-03, subsection 2 of section 33-24-06-13, and subsection 1 of section 33-24-06-17, and 33-24-01-16.
- 3. Sections 33-24-06-04, 33-24-06-05, 33-24-06-07, and 33-24-06-08.
- 4. Sections 33-24-06-11, 33-24-06-12, and subsection 1 of section 33-24-06-13.
- 5. Sections 33-24-06-02 and 33-24-06-06.
- 6. Subsection 6 of section 33-24-06-19.
- 7. Section 33-24-06-16.
- 8. Sections 33-24-06-45 through 33-24-06-85.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-56. ~~Reserved~~ Standardized permit application process.**

To apply for a standardized permit, the owner or operator must follow the procedures in sections 33-24-07-40 through 33-24-07-54, and sections 33-24-06-45 through 33-24-06-85.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-57. ~~Reserved~~ Standardized permit application.**

The information in subsections 1 through 10 will be the basis of the standardized permit application. This information must be submitted to the department when submitting a notice of intent under subsection 2 of section 33-24-07-42 requesting coverage under a hazardous waste standardized permit:

1. The part A information described in subsection 1 of section 33-24-06-17.
2. A meeting summary and other materials required by section 33-24-07-25.
3. Documentation of compliance with the location standards of section 33-24-05-968.
4. Information that allows the department to carry out obligations under other state and federal laws required in section 33-24-06-09.
5. Solid waste management unit information required by subsection 4 of section 33-24-06-17.
6. A certification meeting the requirements of section 33-24-06-62, and an audit of the facility's compliance status with sections 33-24-05-950 through 33-24-05-1149 as required by section 33-24-06-62.
7. A closure plan prepared in accordance with sections 33-24-05-1040 through 33-24-05-1047.
8. The most recent closure cost estimate for the facility prepared under section 33-24-05-1062, and a copy of the documentation required to demonstrate financial assurance under section 33-24-05-1063. For a new facility, the required documentation must be compiled sixty days before the initial receipt of hazardous wastes.
9. If wastes generated offsite are managed, the waste analysis plan.
10. If waste generated from offsite are managed, documentation showing that the waste generator and the offsite facility are under the same ownership.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-62. ~~Reserved~~ Certification requirements.**

A signed certification based on an audit of the facility's compliance with sections 33-24-05-950 through 33-24-05-1149 must be submitted.

1. The certification must read: I certify under penalty of law that:
  - a. I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with sections 33-24-05-950 through 33-24-05-1149, which supports this certification. Based on my inquiry of those individuals

immediately responsible for conducting the audit and preparing the report, I believe that (include paragraph 1 and 2, whichever applies):

(1) My existing facility complies with all applicable requirements of sections 33-24-05-950 through 33-24-05-1149 and will continue to comply until the expiration of the permit; or

(2) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of sections 33-24-05-950 through 33-24-05-1149, and will continue to comply until expiration of the permit.

b. I will make all information that I am required to maintain at my facility by sections 33-24-06-65 through 33-24-06-80 readily available for review by the department and the public; and

c. I will continue to make all information required by sections 33-24-06-65 through 33-24-06-80 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

2. This certification must be signed following the requirements of subdivisions a through c of subsection 1 of section 33-24-06-03.

3. This certification must be based upon an audit that the owner or operator conducted of the facility's compliance status with sections 33-24-05-950 through 33-24-05-1149. A written audit report, signed and certified as accurate by the auditor, must be submitted to the department with the subsection 2 of section 33-24-07-42 notice of intent.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-65. ~~Reserved~~ Recordkeeping requirements.**

The owner or operator must keep the following information at the facility:

1. A general description of the facility.

2. Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information for treating or storing the wastes properly under the requirements of sections 33-24-05-950 through 33-24-05-1149.

3. A copy of the waste analysis plan required by subsection 2 of section 33-24-05-963.

4. A description of the security procedures and equipment required by section 33-24-05-964.

5. A copy of the general inspection schedule required by subsection 2 of section 33-24-05-965. The inspection schedule must include applicable requirements of sections 33-24-05-1084, 33-24-05-1103, 33-24-05-1105, 33-24-05-403, 33-24-05-422, 33-24-05-423, 33-24-05-428, and 33-24-05-458.

6. A justification of any modification of the preparedness and prevention requirements of sections 33-24-05-980 through 33-24-05-986.

7. A copy of the contingency plan required by sections 33-24-05-990 through 33-24-05-998.

8. A description of procedures, structures, or equipment used at the facility to:

- a. Prevent hazards in unloading operations (for example, use ramps, special forklifts);
- b. Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches);
- c. Prevent contamination of water supplies;
- d. Mitigate effects of equipment failure and power outages;
- e. Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing); and
- f. Prevent releases to atmosphere.

9. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by section 33-24-05-967.

10. Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

11. [Reserved]

12. An outline of both the introductory and continuing training programs used to prepare employees to operate or maintain the facility safely as required by section 33-24-05-966. A brief description of how training will be designed to meet actual job tasks under subdivision b of subsection 1 of section 33-24-05-966 requirements.

13. A copy of the closure plan required by section 33-24-05-1042. Include, where applicable, as part of the plans, specific requirements in sections 33-24-05-1086, 33-24-05-1111, and 33-24-05-1138.

14. [Reserved]

15. The most recent closure cost estimate for the facility prepared under section 33-24-05-1062 and a copy of the documentation required to demonstrate financial assurance under section 33-24-05-1063. For a new facility, the required documentation must be compiled sixty days before the initial receipt of hazardous wastes.

16. [Reserved]

17. Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of section 33-24-05-1067. For a new facility, documentation showing the amount of insurance meeting the specification of subsection 1 of section 33-24-05-1067 that is planned to be in effect before initial receipt of hazardous waste for treatment or storage.

18. [Reserved]

19. A topographic map showing a distance of one thousand feet around the facility at a scale of two and one half centimeters (one inch) equal to not more than sixty one meters (two hundred feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of one and one half meters (five feet), if relief is greater than six and one tenth meters (twenty feet), or an interval of six tenths meters (two feet), if relief is less than six and one tenth meters (twenty feet). If the facility is in a mountainous area, use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

- a. Map scale and date;
- b. One hundred year flood plain area;
- c. Surface waters including intermittent streams;
- d. Surrounding land uses (residential, commercial, agricultural, recreational);
- e. A wind rose (for example, prevailing wind speed and direction);
- f. Orientation of the map (north arrow);
- g. Legal boundaries of the facility site;
- h. Access control (fences, gates);
- i. Injection and withdrawal wells both onsite and offsite;
- j. Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities);
- k. Barriers for drainage or flood control; and
- l. Location of operational units within the facility, where hazardous waste is (or will be) treated or stored (including equipment cleanup areas).

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-70. [Reserved] Information required for containers.**

If hazardous waste is stored or treated in containers, the following information must be kept at the facility:

1. A description of the containment system to demonstrate compliance with the container storage area provisions of section 33-24-05-1083. This description must show the following:
  - a. Basic design parameters, dimensions, and materials of construction;
  - b. How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;
  - c. Capacity of the containment system relative to the number and volume of containers to be stored;
  - d. Provisions for preventing or managing run-on; and
  - e. How accumulated liquids can be analyzed and removed to prevent overflow.
2. For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with subsection 3 of section 33-24-05-1083, including:
  - a. Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and
  - b. A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

3. Sketches, drawings, or data demonstrating compliance with section 33-24-05-1084 (location of buffer zone (fifteen meters or fifty feet) and containers holding ignitable or reactive wastes) and subsection 3 of section 33-24-05-1085 (location of incompatible wastes in relation to each other), where applicable.
4. Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with subsections 1 and 2 of section 33-24-05-1085 and subsections 2 and 3 of section 33-24-05-967.
5. Information on air emission control equipment as required by section 33-24-06-80.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-73. [Reserved]Information required for tanks.**

If hazardous waste is stored or treated in tanks, the following information must be kept at the facility:

1. A written assessment that is reviewed and certified by a qualified professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under sections 33-24-05-1101 and 33-24-05-1102.
2. Dimensions and capacity of each tank.
3. Description of feed systems, safety cutoff, bypass systems, and pressure controls (for example, vents).
4. A diagram of piping, instrumentation, and process flow for each tank system.
5. A description of materials and equipment used to provide external corrosion protection, as required under section 33-24-05-1101.
6. For new tank systems, a detailed description of how the tank systems will be installed in compliance with sections 33-24-05-1102 and 33-24-05-1104.
7. Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of sections 33-24-05-1105 and 33-24-05-1106.
8. [Reserved].
9. Description of controls and practices to prevent spills and overflows, as required under section 33-24-05-1108.
10. For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of sections 33-24-05-1112 and 33-24-05-1113.
11. Information on air emission control equipment as required by section 33-24-06-80.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-76. ~~Reserved~~ Information required for equipment.**

If the facility has equipment to which sections 33-24-05-420 through 33-24-05-449 applies, the following information must be kept at the facility:

1. For each piece of equipment to which sections 33-24-05-420 through 33-24-05-449 applies:
  - a. Equipment identification number and hazardous waste management unit identification;
  - b. Approximate locations within the facility (for example, identify the hazardous waste management unit on a facility plot plan);
  - c. Type of equipment (for example, a pump or a pipeline valve);
  - d. Percent by weight of total organics in the hazardous waste stream at the equipment;
  - e. Hazardous waste state at the equipment (for example, gas or vapor, or both, or liquid); and
  - f. Method of compliance with the standard (for example, monthly leak detection and repair, or equipped with dual mechanical seals).
2. For facilities that cannot install a closed-vent system and control device to comply with sections 33-24-05-420 through 33-24-05-449 on the effective date that the facility becomes subject to sections 33-24-05-420 through 33-24-05-449 provisions, an implementation schedule as specified in subdivision b of subsection 1 of section 33-24-05-403.
3. Documentation that demonstrates compliance with the equipment standards in sections 33-24-05-422 and 33-24-05-429. This documentation must contain the records required under section 33-24-05-434.
4. Documentation to demonstrate compliance with section 33-24-05-430 must include the following information:
  - a. A list of all information references and sources used in preparing the documentation.
  - b. Records, including the dates, of each compliance test required by subsection 10 of section 33-24-05-403.
  - c. A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "Course 415--Control of Gaseous Emissions" (incorporated by reference in section 33-24-01-05) or other engineering texts acceptable to the department that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in paragraph 3 of subdivision d of subsection 2 of section 33-24-05-405.
  - d. A statement signed by the owner or operator and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.
  - e. A statement signed by the owner or operator and dated certifying that the control device is designed to operate at an efficiency of ninety-five weight percent or greater.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-80. ~~[Reserved]~~Information required for air emissions control.**

If the facility has air emission control equipment subject to sections 33-24-05-450 through 33-24-05-474, the following information must be kept at the facility:

1. Documentation for each floating roof cover installed on a tank subject to subdivisions a and b of subsection 4 of section 33-24-05-454 that includes information the owner or operator prepared or the cover manufacturer or vendor, or both, provided describing the cover design, and the owner's or operator's certification that the cover meets applicable design specifications listed in subdivision a of subsection 5 or subdivision a of subsection 6 of section 33-24-05-454.
2. Identification of each container area subject to the requirements of sections 33-24-05-450 through 33-24-05-474 and the owner's or operator's certification that the requirements of sections 33-24-05-450 through 33-24-05-474 are met.
3. Documentation for each enclosure used to control air pollutant emissions from tanks or containers under the requirements of subdivision e of subsection 4 of section 33-24-05-454 or paragraph 2 of subdivision a of subsection 5 of section 33-24-05-456. The owner or operator must include records for the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.
4. ~~[Reserved]~~
5. Documentation for each closed vent system and control device installed under the requirements of section 33-24-05-457 that includes design and performance information as specified in paragraphs 3 and 4 of subdivision cc of subsection 2 of section 33-24-06-17.
6. An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A, and control device monitoring methods. This plan must include the following information--monitoring points, monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-06-85. ~~[Reserved]~~Permit modification.**

The owner or operator can modify a hazardous waste standardized permit by following the procedures found in sections 33-24-07-51 through 33-24-07-54.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**~~33-24-06-100. Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events~~Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.**

- 1. Facilities with existing permits.**

- a. Revisions to permit conditions after documenting compliance with maximum achievable control technology. The owner or operator of a hazardous waste permitted incinerator, cement kiln, ~~or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the department address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to subsection 2 of section 33-24-05-144 and subsection 2 of section 33-24-05-525:

(1) Retain relevant permit conditions. Under this option, the department will:

- (a) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2); and
- (b) Limit applicability of those permit conditions only to when the facility is operating under ~~its~~the facility's startup, shutdown, and malfunction plan.

(2) Revise relevant permit conditions.

(a) Under this option, the department will:

- [1] Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information, including the source's startup, shutdown, and malfunction plan, design, and operating history.
- [2] Retain or add these permit requirements to the permit to apply only when the facility is operating under ~~its~~the facility's startup, shutdown, and malfunction plan.

(b) Changes that may significantly increase emissions.

- [1] The permittee must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The permittee must notify the department of such changes within five days of making such changes. The permittee must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.
- [2] The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

[a] Upon permit renewal, or, if warranted; ~~or~~

[b] By modifying the permit under subsection 1 of section 33-24-06-12 or section 33-24-06-14.

~~(3)~~[c] Remove permit conditions. Under this option:

~~(a)~~[1] The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the department under 40 CFR 63.1206(c)(2)(ii)(B); and

~~(b)~~[2] The department will remove permit conditions that are no longer applicable according to subsection 2 of section 33-24-05-144 and subsection 2 of section 33-24-05-525.

b. Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, ~~or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the department a notification of compliance documenting compliance with the standards of 40 CFR part 63, subpart EEE, may request in the application to reissue the permit for the combustion unit that the department control emissions from startup, shutdown, and malfunction events under any of the following options:

(1) Hazardous waste option A. Under this option, the department will:

- (a) Include, in the permit, conditions that ensure compliance with subsections 1 and 3 of section 33-24-05-149 or subdivision a of subsection 5 of section 33-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33-24-05-527 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and
- (b) Specify that these permit requirements apply only when the facility is operating under ~~its~~the facility's startup, shutdown, and malfunction plan; or

(2) Hazardous waste option B.

(a) Under this option, the department will:

- [1] Include in the permit conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information, including the source's startup, shutdown, and malfunction plan, design, and operating history; and
- [2] Specify that these permit requirements apply only when the facility is operating under ~~its~~the facility's startup, shutdown, and malfunction plan.

(b) Changes that may significantly increase emissions.

- [1] The permittee must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The permittee must notify the department of such changes within five days of making such changes. The permittee must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.
- [2] The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized

during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

- [a] Upon permit renewal, or, if warranted; ~~or~~
- [b] By modifying the permit under subsection 1 of section 33-24-06-12 or section 33-24-06-14; or

~~(3)~~[c] Clean Air Act option. Under this option:

- ~~(a)~~{1} The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the department under 40 CFR 63.1206(c)(2)(ii)(B); and
- ~~(b)~~{2} The department will omit from the permit conditions that are not applicable under subsection 2 of section 33-24-05-144 and subsection 2 of section 33-24-05-525.

## 2. Interim status facilities.

- a. Interim status operations. In compliance with subsection 5 of section 33-24-06-16 and subsection 2 of section 33-24-05-525, the owner or operator of an incinerator, cement kiln, ~~or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of subsection 5 of section 33-24-06-16 or sections ~~33-24-05-201~~33-24-05-191 through 33-24-05-249 ~~and sections~~, 33-24-05-525 through 33-24-05-549, and 33-24-05-820 through 33-24-05-929 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the department a notification of compliance documenting compliance with the standards of 40 CFR part 63, subpart EEE:
  - (1) Hazardous waste option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of subsection 5 of section 33-24-06-16 or sections ~~33-24-05-201~~33-24-05-191 through 33-24-05-249 ~~and sections~~, 33-24-05-525 through 33-24-05-549, and 33-24-05-820 through 33-24-05-929 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or
  - (2) Clean Air Act option. Under this option, the owner or operator is exempt from the interim status standards of subsection 5 of section 33-24-06-16 or sections ~~33-24-05-201~~33-24-05-191 through 33-24-05-249 ~~and sections~~, 33-24-05-525 through 33-24-05-549, and 33-24-05-820 through 33-24-05-929 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the department that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the department under 40 CFR 63.1206(c)(2)(ii)(B).
- b. Operations under a subsequent hazardous waste permit. When an owner or operator of an incinerator, cement kiln, ~~or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of subsection 5 of section 33-24-06-16 or sections ~~33-24-05-201~~33-24-05-191 through 33-24-05-249 ~~and sections~~, 33-24-05-525 through 33-24-05-549, and 33-24-05-820 through 33-24-05-949 submits a hazardous waste permit application, the owner or operator may request that the department control emissions from startup,

shutdown, and malfunction events under any of the options provided by ~~paragraphs 1, 2, or 3~~ subitems a, b, or c of item 2 of subparagraph b of paragraph 2 of subdivision b of subsection 1 ~~of section 33-24-06-100.~~

3. **New units.** Hazardous waste incinerator, cement kiln, light weight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to hazardous waste permit requirements after October 12, 2005, must control emissions of toxic compounds during startup, shutdown, and malfunction events, under either of the following options:

a. Comply with the requirements specified in 40 CFR 63.1206(c)(2); or

b. Request to include in the hazardous waste permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The department will specify that these permit conditions apply only when the facility is operating under the facility's startup, shutdown, and malfunction plan.

**History:** Effective December 1, 2003; amended effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**Appendix I to Section 33-24-06-14 -**

**Classification of Permit Modification (Continued)**

	Modifications	Class
A.	General Permit Provisions	
	1. Administrative and informational changes.	1
	2. Correction of typographical errors.	1
	3. Equipment replacement or upgrading with functionally equivalent components (for example, pipes, valves, pumps, conveyors, controls).	1
	4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
	a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
	b. Other changes.	2
	5. Schedule of compliance:	
	a. Changes in interim compliance dates, with prior approval of the department.	1 <sup>1</sup>
	b. Extension of final compliance date.	3
	6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the department.	1 <sup>1</sup>
	7. Changes in ownership or operational control of a facility, provided the procedures of subsection 2 of section 33-24-06-11 are followed.	1 <sup>1</sup>
	8. Changes to remove permit conditions that are no longer applicable (for example, because the standards upon which they are based are no longer applicable to the facility).	1 <sup>1</sup>
	<u>9. Changes to remove permit conditions applicable to a unit excluded under the provisions of section 33-24-02-04.</u>	<u>1<sup>1</sup></u>
	<u>10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of section 33-24-02-04.</u>	<u>1<sup>1</sup></u>
B.	General Facility Standards	
	1. Changes to waste sampling or analysis methods:	
	a. To conform with department guidance or regulations.	1

Modifications	Class
b. To incorporate changes associated with F039 (multisource leachate) sampling or analysis methods.	1
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.	1 <sup>1</sup>
d. Other changes.	
2. Changes to analytical quality assurance/control plan:	
a. To conform with department guidance or regulations.	1
b. Other changes.	2
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.	2
b. Other changes.	1
6. Contingency plan:	
a. Changes in emergency procedures (for example, spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or telephone number of coordinators or other persons or agencies identified in the plan.	1
7. Construction quality assurance plan:	
a. Changes that the <b>GQA construction quality assurance</b> officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.	1
b. Other changes.	2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

#### C. Ground Water Protection

1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground water monitoring system.	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.	1
2. Changes in ground water sampling or analysis procedures or monitoring schedule, with prior approval of the department.	1 <sup>1</sup>
3. Changes in statistical procedure for determining whether a statistically significant change in ground water quality between upgradient and downgradient wells has occurred, with prior approval of the department.	1 <sup>1</sup>
4. Changes in point of compliance.	2 <sup>+</sup>
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including <b>ACLs alternate concentration limits</b> ):	
a. As specified in the ground water protection standard.	3
b. As specified in the detection monitoring program.	2
6. Changes to a detection monitoring program as required by subsection 8 of section 33-24-05-55, unless specified in this appendix.	2
7. Compliance monitoring program:	
a. Addition of compliance monitoring program as required by subdivision d of subsection 7 of section 33-24-05-55 and section 33-24-05-56.	3
b. Changes to a compliance monitoring program as required by subsection 10 of section 33-24-05-56, unless otherwise specified in this appendix.	2
8. Corrective action program:	

Modifications		Class
a.	Addition of a corrective action program as required by subdivision b of subsection 8 of section 33-24-05-56 and section 33-24-05-57.	3
b.	Changes to a corrective action program as required by subsection 8 of section 33-24-05-57, unless otherwise specified in this appendix.	2
D.	Closure	
1.	Changes to the closure plan:	
a.	Changes in estimate of maximum extent of operations or maximum inventory of waste onsite at any time during the active life of the facility, with prior approval of the department.	11
b.	Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the department.	11
c.	Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the department.	11
d.	Changes in procedures for decontamination of facility equipment or structures, with prior approval of the department.	11
e.	Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.	2
2.	Creation of a new landfill unit as part of closure.	3
3.	Addition of the following new units to be used temporarily for closure activities:	
a.	Surface impoundments.	3
b.	Incinerators.	3
c.	Waste piles that do not comply with subsection 3 of section 33-24-05-130.	3
d.	Waste piles that comply with subsection 3 of section 33-24-05-130.	2
e.	Tanks or containers (other than specified below).	2
f.	Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the department.	11
g.	Staging piles.	2
E.	Postclosure	
1.	Changes in name, address, or telephone number of contact in postclosure plan.	1
2.	Extension of postclosure care period.	2
3.	Reduction in the postclosure care period.	3
4.	Changes to the expected year of final closure, where other permit conditions are not changed.	1
5.	Changes in postclosure plan necessitated by events occurring during the active life of the facility, including partial and final closure.	2
F.	Containers	
1.	Modification or addition of container units:	
a.	Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	3
b.	Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	2
c.	Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" with prior approval of the department. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	11
2.		
a.	Modification of a container unit without increasing the capacity of the unit.	2

Modifications		Class
b.	Addition of a roof to a container unit without alteration of the containment system.	1
3.	Storage of different wastes in containers, except as provided in F(4) below:	
a.	That require additional or different management practices from those authorized in the permit.	3
b.	That do not require additional or different management practices from those authorized in the permit.	2
Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.		
4.	Storage or treatment of different wastes in containers:	
a.	That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	11
b.	That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	11
G.	Tanks	
1.		
a.	Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below.	3
b.	Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below.	2
c.	Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	2
d.	After prior approval of the department, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	11
e.	Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003), with prior approval of the department. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	11
2.	Modification of a tank unit or secondary containment system without increasing the capacity of the unit.	2
3.	Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided:	1
a.	The capacity difference is no more than 1,500 gallons;	
b.	The facility's permitted tank capacity is not increased; and	

Modifications		Class
c.	The replacement tank meets the same conditions in the permit.	
4.	Modification of a tank management practice.	2
5.	Management of different wastes in tanks:	
a.	That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below.	3
b.	That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in G(5)(d).	2
c.	That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003). The modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	11
d.	That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1

Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.

#### H. Surface Impoundments

1.	Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.	3
2.	Replacement of a surface impoundment unit.	3
3.	Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.	2
4.	Modification of a surface impoundment management practice.	2
5.	Treatment, storage, or disposal of different wastes in surface impoundments:	
a.	That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	3
b.	That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	2
c.	That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003), and provided that the unit meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33-24-05-254. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1

Modifications

Class

- d. That are residues from wastewater treatment or incineration, provided that 1 disposal occurs in a unit that meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33-24-05-254, and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).
- 6. Modifications of unconstructed units to comply with subsection 3 of section ~~33-24-05-116~~33-24-05-119, section ~~33-24-05-123~~33-24-05-126, section ~~33-24-05-124~~33-24-05-127, and subsection 4 of section ~~33-24-05-117~~33-24-05-120. 11
- 7. Changes in response action plan:
  - a. Increase in action leakage rate. 3
  - b. Change in a specific response reducing its frequency or effectiveness. 3
  - c. Other changes. 2

Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.

- I. Enclosed Waste Piles. For all waste piles except those complying with subsection 3 of section 33-24-05-130, modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with subsection 3 of section 33-24-05-130.
  - 1. Modification or addition of waste pile units:
    - a. Resulting in greater than 25% increase in the facility's waste pile storage or 3 treatment capacity.
    - b. Resulting in up to 25% increase in the facility's waste pile storage or 2 treatment capacity.
  - 2. Modification of waste pile unit without increasing the capacity of the unit. 2
  - 3. Replacement of a waste pile unit with another waste pile unit of the same design 1 and capacity and meeting all waste pile conditions in the permit.
  - 4. Modification of a waste pile management practice. 2
  - 5. Storage or treatment of different wastes in waste piles:
    - a. That require additional or different management practices or different design3 of the unit.
    - b. That do not require additional or different management practices or different 2 design of the unit.
  - ~~Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.~~
  - 6. Conversion of an enclosed waste pile to a containment building unit. 2

Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.

- J. Landfills and Unenclosed Waste Piles
  - 1. Modification or addition of landfill units that result in increasing the facility's 3 disposal capacity.
  - 2. Replacement of a landfill. 3
  - 3. Addition or modification of a liner, leachate collection system, leachate detection 3 system, runoff control, or final cover system.
  - 4. Modification of a landfill unit without changing a liner, leachate collection system, 2 leachate detection system, runoff control, or final cover system.
  - 5. Modification of a landfill management practice. 2
  - 6. Landfill different wastes:
    - a. That require additional or different management practices or different design3 of the liner, leachate collection system, or leachate detection system.

Modifications

Class

- b. That do not require additional or different management practices or different design of the liner, leachate collection system, or leachate detection system.
- c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003), and provided that the landfill unit meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33-24-05-254. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028). 1
- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33-24-05-254, and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028). 1
- 7. Modifications of unconstructed units to comply with subsection 3 of section 33-24-05-131, section 33-24-05-137, section 33-24-05-138, subsection 3 of section 33-24-05-132, subsection 3 of section 33-24-05-177, section 33-24-05-187, subsection 3 of section 33-24-05-178, and section 33-24-05-188. 11
- 8. Changes in response action plan:
  - a. Increase in action leakage rate. 3
  - b. Change in a specific response reducing its frequency or effectiveness. 3
  - c. Other changes. 2

Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.

K. Land Treatment

- 1. Lateral expansion of or other modification of a land treatment unit to increase areal extent. 3
- 2. Modification of run-on control system. 2
- 3. Modify runoff control system. 3
- 4. Other modifications of land treatment unit component specifications or standards required in permit. 2
- 5. Management of different wastes in land treatment units:
  - a. That require a change in permit operating conditions or unit design specifications. 3
  - b. That do not require a change in permit operating conditions or unit design specifications. 2

Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.

- 6. Modification of a land treatment unit management practice to:
  - a. Increase rate or change method of waste application. 3
  - b. Decrease rate of waste application. 1
- 7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions. 2
- 8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops. 3
- 9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to subdivision b of subsection 7 of section 33-24-05-165. 3

	Modifications	Class
	10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or which replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.	3
	11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or which replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements.	2
	12. Changes in background values for hazardous constituents in soil and soil-pore liquid.	2
	13. Changes in sampling, analysis, or statistical procedure.	2
	14. Changes in land treatment demonstration program prior to or during the demonstration.	2
	15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the department's prior approval has been received.	1
	16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the department.	1
	17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.	3
	18. Changes in vegetative cover requirements for closure.	2
L.	Incinerators, Boilers, and Industrial Furnaces:	
	1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
	2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	2
	3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove hydrogen chloride and chlorine metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3

Modifications		Class
4.	Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The department may require a new trial burn to demonstrate compliance with the regulatory performance standards.	2
5.	Operating requirements:	
a.	Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b.	Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.	3
c.	Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.	2
6.	Burning different wastes:	
a.	If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b.	If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.	2
Note: See subsection 7 of section 33-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.		
7.	Shakedown and trial burn:	
a.	Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.	2
b.	Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the department.	11
c.	Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the department.	11
d.	Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the department.	11
8.	Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit.	1
9.	Technology changes needed to meet standards under 40 CFR part 63 (subpart EEE--national emission standards for hazardous air pollutants from hazardous waste combustors), provide the procedures of subsection 10 of section 33-24-06-14 are followed.	11

Modifications

Class

10. Changes to hazardous waste permit provisions needed to support transition to 40 CFR part 63 (subpart EEE - national emission standards for hazardous air pollutants from hazardous waste combustors), provided the procedures of subsection 11 of section 33-24-06-14 are followed. 11

M. Containment Buildings

1. Modification or addition of containment building units:
  - a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity. 3
  - b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity. 2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit. 2
3. Replacement of a containment building with a containment building that meets the same design standards provided:
  - a. The unit capacity is not increased. 1
  - b. The replacement containment building meets the same conditions in the permit. 1
4. Modification of a containment building management practice. 2
5. Storage or treatment of different wastes in containment buildings:
  - a. That require additional or different management practices. 3
  - b. That do not require additional or different management practices. 2

N. Corrective Action

1. Approval of a corrective action management unit pursuant to section 33-24-05-552. 3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to section 33-24-05-553. 2
3. Approval of a staging pile or staging pile operating term extension pursuant to section 33-24-05-554. 2

O. Burden Reduction

1. Development of one contingency plan based on integrated contingency plan guidance pursuant to subsection 2 of section 33-24-05-27. 1
2. Changes to recordkeeping and reporting requirements pursuant to subsection 9 of section 33-24-05-31 and subsection 7 of section 33-24-05-57. 1
3. Changes to inspection frequency for tank systems pursuant to subsection 2 of section 33-24-05-108. 1
4. Changes to detection and compliance monitoring program pursuant to subsection 4 of section 33-24-05-55, subdivisions b and c of subsection 7 of section 33-24-05-55, and subsections 6 and 7 of section 33-24-05-56. 1

FOOTNOTE: <sup>1</sup>Class 1 modifications requiring prior department approval.

**CHAPTER 33-24-07  
PERMITTING PROCEDURES**

Section

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### **33-24-07-03. Modification, revocation and reissuance, or termination of permits.**

1. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the department's initiative. However, permits may only be modified, revoked and reissued, or terminated by the department for the reasons specified in section 33-24-06-12 or 33-24-06-13. All requests shall be in writing and shall contain facts or reasons supporting the request.
2. If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comments, or hearings. Denials by the department may be informally appealed to the department by letter briefly setting forth the relevant facts. The department may then begin modification, revocation and reissuance, or termination proceedings under subsection 3. The appeal shall be considered denied if the department takes no action on the letter within sixty days after receiving it.
3. Requirements to modify or revoke.
  - a. If the department tentatively decides to modify or revoke and reissue a permit under section 33-24-06-12 ~~and~~ (other than subdivision c of subsection 2 of section 33-24-06-12) or subsection 3 of section 33-24-06-14, the department shall prepare a draft permit under section 33-24-07-04 incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, other than under subdivision c of subsection 2 of section 33-24-06-12, the department shall require the submission of a new application. In the case of revoked and reissued permits under subdivision c of subsection 2 of section 33-24-06-12, the department and the permittee shall comply with the appropriate requirements in sections 22-24-07-40 through 33-24-07-54 for hazardous waste standardized permits.
  - b. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
  - c. "Class 1 and 2 modifications" as defined in section 33-24-06-14 are not subject to the requirements of this section.
4. If the department tentatively decides to terminate a permit under section 33-24-06-13, the department shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 33-24-07-04.

**History:** Effective January 1, 1984; amended effective December 1, 1988; January 1, 1994; December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-08. Public hearings.**

1. The department shall hold a public hearing:
  - a. Whenever ~~it~~the department finds, on the basis of requests, a significant degree of public interest in a draft permit;
  - b. At ~~its~~the department's discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision; or
  - c. Whenever ~~it~~the department receives written notice of opposition to a draft permit and a request for a hearing within forty-five days of public notice under subdivision a of subsection 2 of section 33-24-07-06.
2. Whenever possible, the department shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.
3. Public notice of the hearing shall be given as specified in section 33-24-07-06.
4. Whenever a public hearing will be held, the department shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.
5. Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required. The public comment period under section 33-24-07-06 must automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.
6. A tape recording or written transcript of the hearing must be made available to the public.

**History:** Effective January 1, 1984; amended effective December 1, 1988; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-12. Stays of contested permit conditions.**

1. Stays.
  - a. If a request for review of a permit under section 33-24-07-14 is granted, the effect of the contested permit conditions is stayed and is not subject to judicial review pending final department action. If the permit involves a new facility, the applicant is without a permit for the proposed new facility pending final agency action.
  - b. Uncontested conditions which are not severable from those contested must be stayed together with the contested conditions. Stayed provisions of permits for existing facilities must be identified by the department. All other provisions of the permit for the existing facility remain fully effective and enforceable.
2. Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the department under section 33-24-07-14 of one permit may result in changes to another permit only when each of the permits involved has been appealed to the department and ~~it~~the department has accepted each appeal.
3. Any facility or activity holding an existing permit shall:

- a. Comply with the conditions of that permit during any modification or revocation and reissuance proceedings under section 33-24-07-03; and
- b. To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which corresponds to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

**History:** Effective January 1, 1984; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-14. Appeal of permit.**

1. Within thirty days after a final permit decision (or a decision under subsection 2 of section 33-24-06-13 to deny a permit for the active life of a hazardous waste management facility or unit) has been issued under section 33-24-07-11, any person who filed comments on that draft permit or participated in the public hearing may petition the department to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The thirty-day period within which a person may request review under this section begins with the service of notice of the department's action unless a later date is specified in that notice. The petition must include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these rules and, when appropriate, a showing that the condition in question is based on.
  - a. A finding of fact or conclusion of law which is clearly erroneous; or
  - b. An exercise ~~erof~~ discretion or an important policy consideration which the department should, in ~~its~~[the department's](#) discretion, review.
2. The department may also decide on ~~its~~[the department's](#) initiative to review any condition of any permit issued under this article. The department must act under this section within thirty days of the service date of notice of the department's action.
3. Within a reasonable time following the filing of the petition for review, the department shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final department action. Public notice of any grant of review by the department under subsection 1 or 2 must be given as provided in section 33-24-07-06. Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. A notice of denial of review may be sent only to the person requesting review.
4. Final department action occurs when a final permit is issued or denied by the department and the department review procedures are exhausted. A final permit decision must be issued by the department:
  - a. When the department issues notice to the parties that review has been denied.
  - b. When the department issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or upon the completion of remand proceedings if the proceedings are remanded, unless the department remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

**History:** Effective December 1, 1991; [amended effective January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-25. Preapplication public meeting and notice.**

1. Applicability. The requirements of this section apply to all hazardous waste part B applications seeking initial permits for hazardous waste management units. The requirements of this section also apply to hazardous waste part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under section 33-24-06-14. [The requirements of this section also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a hazardous waste standardized permit \(see sections 33-24-06-45 through 33-24-06-85\), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at subsection 3 of section 33-24-07-51.](#) The requirements of this section do not apply to permit modifications under section 33-24-06-14 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.
2. Prior to the submission of a part B hazardous waste permit application for a facility, [or to the submission of a written notice of intent to be covered by a hazardous waste standardized permit \(see sections 33-24-06-45 through 33-24-06-85\)](#), the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.
3. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 2, and copies of any written comments or materials submitted at the meeting, to the department as a part of the part B application, in accordance with subsection 2 of section 33-24-06-17, [or with the written notice of intent to be covered by a hazardous waste standardized permit \(see sections 33-24-06-45 through 33-24-06-85\)](#).
4. The applicant shall provide public notice of the preapplication meeting at least thirty days prior to the meeting. The applicant shall maintain, and provide to the department upon request, documentation of the notice.
  - a. The applicant shall provide public notice in all of the following forms:
    - (1) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subdivision b, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the department shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the department determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.
    - (2) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subdivision b. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.
    - (3) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subdivision b, at least once on at least one local radio station or

television station. The applicant may employ another medium with prior approval of the department.

- (4) A notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with subdivision b of subsection 3 of section 33-24-07-06.
- b. The notices required under subdivision a must include:
- (1) The date, time, and location of the meeting;
  - (2) A brief description of the purpose of the meeting;
  - (3) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location;
  - (4) A statement encouraging people to contact the facility at least seventy-two hours before the meeting if they need special access to participate in the meeting; and
  - (5) The name, address, and telephone number of a contact person for the applicant.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-26. Public notice requirements at the application stage.**

1. Applicability. The requirements of this section apply to all hazardous waste part B applications seeking initial permits for hazardous waste management units. The requirements of this section also apply to hazardous waste part B applications seeking renewal of permits for such units under section 33-24-06-02. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a hazardous waste standardized permit (see sections 33-24-06-45 through 33-24-06-85). The requirements of this section also do not apply to permit modifications under section 33-24-06-14 or permit applications submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.
2. Notification at application submittal.
  - a. The department shall provide public notice as set forth in paragraph 4 of subdivision a of subsection 3 of section 33-24-07-06, and notice to appropriate units of state and local government as set forth in subdivision b of subsection 3 of section 33-24-07-06, that a part B permit application has been submitted to the department and is available for review.
  - b. The notice must be published within a reasonable period of time after the application is received by the department. The notice must include:
    - (1) The name and telephone number of the applicant's contact person;
    - (2) The name and telephone number of the department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;
    - (3) An address to which people can write in order to be put on the facility mailing list;
    - (4) The location where copies of the permit application and any supporting documents can be viewed and copied;

- (5) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice; and
  - (6) The date that the application was submitted.
3. Concurrent with the notice required under subsection 2, the department must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office.

**History:** Effective July 1, 1997; amended effective December 1, 2003; [January 1, 2016](#).

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

[33-24-07-28. \[Reserved\]](#).

[33-24-07-29. \[Reserved\]](#).

[33-24-07-30. \[Reserved\]](#).

[33-24-07-31. \[Reserved\]](#).

[33-24-07-32. \[Reserved\]](#).

[33-24-07-33. \[Reserved\]](#).

[33-24-07-34. \[Reserved\]](#).

[33-24-07-35. \[Reserved\]](#).

[33-24-07-36. \[Reserved\]](#).

33-24-07-37. [Reserved].

33-24-07-38. [Reserved].

33-24-07-39. [Reserved].

**33-24-07-40. Standardized permit.**

The standardized permit is a special form of hazardous waste permit which may consist of two parts--A uniform portion that the department issues in all cases, and a supplemental portion that the department issues at the department's discretion. Standardized permit is defined in section 33-24-01-04.

1. The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit or units operating at the facility, contained in sections 33-24-05-950 through 33-24-05-1149. If the owner or operator intends to operate under the standardized permit, the owner or operator shall comply with these applicable terms and conditions.
2. The supplemental portion of a standardized permit consists of site specific terms and conditions, beyond those of the uniform portion, which the department may impose on the facility, as necessary to protect human health and the environment. If the department issues a supplemental portion, the owner or operator shall comply with the site specific terms and conditions the department imposes.
  - a. When required under section 33-24-05-1031, provisions to implement corrective action will be included in the supplemental portion.
  - b. Unless otherwise specified, these supplemental permit terms and conditions apply to the facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-41. Eligibility for a standardized permit.**

1. The owner or operator may be eligible for a standardized permit if the facility:
  - a. Generates hazardous waste and then stores or nonthermally treats the hazardous waste on site in containers, tanks, or containment buildings; or
  - b. Receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.
  - c. The department will inform the owner or operator of eligibility when a decision is made on the facility permit.
2. [Reserved]

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-42. Applying for a standardized permit.**

1. The owner or operator shall follow the requirements in sections 33-24-07-40 through 33-24-07-54, section 33-24-07-25, section 33-24-06-01 and sections 33-24-06-45 through 33-24-06-85.
2. The owner or operator shall submit to the department a written notice of intent to operate under the standardized permit and shall include the information and certifications required under sections 33-24-06-45 through 33-24-06-85.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-43. Switching from a hazardous waste permit to a standardized permit.**

If all units in the hazardous waste permit are eligible for the standardized permit, the permittee may request the individual permit be revoked and reissued as a standardized permit, in accordance with section 33-24-07-03. If only some of the units in the hazardous waste permit are eligible for the standardized permit, the permittee may request the individual permit be modified to no longer include those units and issue a standardized permit for those units in accordance with section 33-24-07-44.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-44. Draft standardized permit.**

1. The department shall:
  - a. Review the notice of intent and supporting information submitted by the facility owner or operator.
  - b. Determine whether the facility is or is not eligible to operate under the standardized permit.
    - (1) If the facility is eligible for the standardized permit, the department shall propose terms and conditions, if any, to include in a supplemental portion. If the department determines these terms and conditions are necessary to protect human health and the environment and cannot be imposed, the department tentatively shall deny coverage under the standardized permit.
    - (2) If the facility is not eligible for the standardized permit, the department tentatively shall deny coverage under the standardized permit. Cause for ineligibility may include the following:
      - (a) Failure of the facility owner or operator to submit all the information required under section 33-24-06-57.
      - (b) Information submitted that is required under section 33-24-06-57 is determined to be inadequate.
      - (c) Facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(d) Demonstrated history of significant noncompliance with applicable requirements.

(e) Permit conditions cannot ensure protection of human health and the environment.

c. Prepare a draft permit decision within one hundred twenty days after receiving the notice of intent and supporting documents from a facility owner or operator. A tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site specific conditions in a supplemental portion, constitutes a draft permit decision. A one time extension of thirty days to prepare the draft permit decision is allowed. When the use of the thirty-day extension is anticipated, the department should inform the permit applicant during the initial one-hundred-twenty-day review period. Reasons for an extension may include needing to complete review of submissions with the notice of intent (for example, closure plans, waste analysis plans, for facilities seeking to manage hazardous waste generated offsite).

2. The draft permit decision must be accompanied by a fact sheet. In preparing the draft permit decision, the following provisions apply:

a. Section 33-24-07-01.

b. Subsections 1 and 4 of Section 33-24-07-02.

c. Section 33-24-07-05; however, in the context of the standardized permit, the reference to the public comment period is section 33-24-07-48 instead of section 33-24-07-06.

d. Paragraphs 4 and 5 of subdivision a of subsection 3 of section 33-24-07-06, sections 33-24-07-47 through 33-24-07-49.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-45. Final standardized permit.**

The department shall consider all comments received during the public comment period in making a final permit decision. In preparing a final permit decision, the following provisions apply:

1. Section 33-24-07-01.

2. Section 33-24-07-48.

3. Subsections 4, 5 and 6 of section 33-24-07-08.

4. Section 33-24-07-09; however, in the context of the standardized permit, the reference to the public comment period is section 33-24-07-48 instead of section 33-24-07-06.

5. Section 33-24-07-10; however, in the context of the standardized permit, use the following reference: in subdivision a of subsection 1 of section 33-24-07-10 use reference to section 33-24-07-44 instead of section 33-24-07-04; in subdivision c of subsection 1 of section 33-24-07-10 use reference to section 33-24-07-48 instead of section 33-24-07-06; in subsection 2 of section 33-24-07-10 use reference to section 33-24-07-47 instead of section 33-24-07-06.

6. Section 33-24-07-11; however, in the context of the standardized permit, the reference to the public comment period is section 33-24-07-48 instead of section 33-24-07-06.

7. Section 33-24-07-12.

8. Section 33-24-07-49.

9. Section 33-24-07-14.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-46. Situations requiring an application for an individual permit.**

1. Cases where the department may determine a facility is not eligible for the standardized permit include the following:

a. The facility does not meet the criteria in section 33-24-07-41.

b. The facility has a demonstrated history of significant noncompliance with rules, regulations or permit conditions.

c. The facility has a demonstrated history of submitting incomplete or deficient permit application information.

d. The facility has submitted incomplete or inadequate materials with the notice of intent.

2. If the department determines a facility is not eligible for the standardized permit, the department shall inform the facility owner or operator that the facility owner or operator must apply for an individual hazardous waste permit.

3. The department may require any facility that has a standardized permit to apply for and obtain an individual hazardous waste permit. Any interested person may petition the department to take action under this subsection. Cases where the department may require an individual hazardous waste permit include the following:

a. The facility is not in compliance with the terms and conditions of the standardized permit.

b. Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

4. The department may require any facility authorized by a standardized permit to apply for an individual hazardous waste permit only if the department has notified the facility owner or operator in writing that an individual permit application is required. The notice must include a brief statement of the reasons for the department's decision, a statement setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the individual hazardous waste permit, the facility's standardized permit automatically terminates. Additional time may be granted upon request from the facility owner or operator.

5. Issuance of an individual hazardous waste permit to an owner or operator otherwise subject to a standardized permit, the standardized permit for the facility will automatically cease to apply on the effective date of the individual permit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### 33-24-07-47. Public notice of permit actions and public involvement.

1. The department shall provide public notice of the department's draft permit decision and shall provide an opportunity for the public to submit comments and request a hearing on that decision. The public notice must be provided to:
  - a. The applicant;
  - b. Any other agency that the department knows has issued or is required to issue a hazardous waste permit for the same facility or activity, including the environmental protection agency;
  - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the advisory council on historic preservation, state historic preservation officers, including any affected states;
  - d. To everyone on the facility mailing list developed according to the requirements in paragraph 4 of subdivision a of subsection 3 of section 33-24-07-06; and
  - e. To any units of local government having jurisdiction over the area where the facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of the facility.
2. The public notice must be issued according to the following methods:
  - a. Publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;
  - b. In a manner constituting legal notice to the public under state law and must comply with subsection 8 of North Dakota Century Code section 23-20.3-05; and
  - c. Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
3. The following information must be included in the public notice:
  - a. The name and telephone number of the contact person at the facility.
  - b. The name and telephone number of the office processing the permit action, and a mailing address to which people may direct comments, information, opinions, or inquiries.
  - c. An address to which people may write to be put on the facility mailing list.
  - d. The location where people may view and make copies of the draft standardized permit and the notice of intent and supporting documents.
  - e. A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.
  - f. The date that the facility owner or operator submitted the notice of intent and supporting documents.
4. At the same time that the public notice is issued under this section, the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the notice of

intent and supporting documents, and the fact sheet must be placed in a location accessible to the public in the vicinity of the facility or at the department's office.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-48. Public comment and request for public hearings.**

1. The public notice issued under section 33-24-07-47 must allow at least a forty-five day public comment period for people to submit written comments on the draft permit decision. The public comment period is automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.
2. During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing.
3. The department shall hold a public hearing whenever it receives a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under subsection 1. The department also may hold a public hearing at the department's discretion whenever such a hearing might clarify one or more issues involved in the permit decision.
4. Whenever possible, the department shall schedule a hearing under this section at a location convenient to the nearest population center to the facility. The department shall give public notice of the hearing at least thirty days before the date set for the hearing.
5. The department shall give public notice of the hearing according to the methods in subsections 1 and 2 of section 33-24-07-47. The hearing must be conducted according to the procedures in subsections 4, 5 and 6 of section 33-24-07-08.
6. In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include the facility's eligibility for the standardized permit, the tentative supplemental conditions proposed, and the need for additional supplemental conditions.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-49. Response to comments.**

1. At the time a final standardized permit is issued, the department shall respond to comments received during the public comment period on the draft permit. This response must:
  - a. Specify which additional conditions (for example, those in the supplemental portion), if any, have been changed in the final permit, and the reasons for the change.
  - b. Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (for example, those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.
  - c. Make the comments and responses accessible to the public.
2. The department may request additional information from the facility owner or operator or inspect the facility if additional information is needed to adequately respond to significant

comments or to make decisions about conditions that may need to be added to the supplemental portion of the standardized permit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-50. Appeal of permit.**

Any person may petition for administrative review of the department's final permit decision, including the decision that the facility is eligible for the standardized permit, according to the procedures of section 33-24-07-14. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-51. Permit changes at the request of the permittee.**

The permittee may make both routine changes, routine changes with prior department approval, and significant changes. For the purposes of this section:

1. "Routine changes" are any changes to the standardized permit that qualify as a class 1 permit modification (without prior department approval) under section 33-24-06-14, appendix I;
2. "Routine changes with prior department approval" are for those changes to the standardized permit that would qualify as a class 1 modification with prior department approval, or a class 2 permit modification under section 33-24-06-14, appendix I; and
3. "Significant changes" are any changes to the standardized permit which:
  - a. Qualify as a class 3 permit modification under section 33-24-06-14, appendix I;
  - b. Are not explicitly identified in section 33-24-06-14, appendix I; or
  - c. Amend any terms or conditions in the supplemental portion of the standardized permit.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

### **33-24-07-52. Routine changes.**

1. The permittee may make routine changes to the standardized permit without obtaining approval from the department. However, the permittee first must determine whether the routine change will amend the information submitted under section 33-24-06-57 with the notice of intent to operate under the standardized permit.
2. If the routine changes will amend the information submitted under section 33-24-06-57 with the notice of intent to operate under the standardized permit, then before making the routine changes the permittee must:
  - a. Submit to the department the revised information pursuant to subdivision a of subsection 1 of section 33-24-06-57; and

- b. Provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in paragraphs 4 through 6 of subdivision a of subsection 3 of section 33-24-07-06.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-53. Routine changes with prior approval.**

1. Routine changes to the standardized permit with prior department approval may only be made with the prior written approval of the department.
2. The permittee also must follow the procedures in subdivisions a and b of subsection 2 of section 33-24-07-52.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**33-24-07-54. Significant changes.**

1. The permittee shall first provide notice of and conduct a public meeting.
  - a. Public meeting. The permittee shall hold a meeting with the public to solicit questions from the community and inform the community of the permittee's proposed modifications to the permittee's hazardous waste management activities. The permittee must post a sign in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.
  - b. Public Notice. At least thirty days before planning to hold the meeting, the permittee shall issue a public notice in accordance with the requirements of subsection 4 of section 33-24-07-25.
2. After holding the public meeting, the permittee shall submit a modification request to the department that:
  - a. Describes the exact change or changes and whether they are changes to information provided under section 33-24-06-57 or to terms and conditions in the supplemental portion of the standardized permit;
  - b. Explain why the modification is needed; and
  - c. Includes a summary of the public meeting under subsection 1, along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.
3. Once the department receives the modification request, the department shall make a tentative determination within one hundred twenty days to approve or disapprove the request. The department is allowed a one time extension of thirty days to prepare the draft permit decision. When the use of the thirty-day extension is anticipated, the department should inform the permittee during the initial one hundred twenty-day review period.
4. After the department makes this tentative determination, the procedures in section 33-24-07-45 and sections 33-24-07-47 through 33-24-07-50 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 23-20.3-03

**Law Implemented:** NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

**TITLE 38**  
**HIGHWAY PATROL**



## JANUARY 2016

### CHAPTER 38-06-02

#### 38-06-02-01. General rules.

1. The North Dakota highway patrol may issue annual permits for the movement of overwidth vehicles and loads and single trip permits for the movement of oversize or overweight, or both, vehicles and loads. Unless otherwise exempted by the superintendent, permits will not be issued for loads that can be reasonably made to conform to legal limits.
2. All permits must be in possession of the permittee prior to starting movement unless prior approval is obtained from the highway patrol.

~~3. Single trip permits includes self-issuing single trip movement approval forms.~~

**History:** Effective January 1, 1988; amended effective January 1, 1992; April 1, 2008; [January 1, 2016](#).

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

#### 38-06-02-02. Flagging, sign, lighting, and mirror requirements.

1. All overdimensional vehicles and loads must have minimum eighteen-inch by eighteen-inch [45.72-centimeters by 45.72-centimeters] red or bright orange flags displayed on the traffic sides front and rear.
2. When the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length. when a movement is overwidth. or when the overall length of an overdimensional movement exceeds seventy-five feet [22.86 meters] in length and the movement is overwide, there must be a minimum twelve-inch by sixty-inch [304.8-millimeters by 1524-millimeters] oversize load sign on the front or roofline of the towing vehicle, and the rear of the vehicle/load. The lettering must be black on yellow background. Letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4-millimeters] brush stroke. When the movement is overlength only, exceeding seventy-five feet [22.86 meters] in overall length, a long load sign that is a minimum twelve inches by sixty inches [304.8 millimeters by 1524 millimeters] in size may be used in lieu of the oversize load sign. The lettering must be black on yellow background. The letters must be at least eight inches [203.2 millimeters] high with one-inch [25.4-millimeters] brush stroke. The sign must be covered or removed when the movement is not overdimensional.
3. A motor vehicle must have two outside mirrors, one on each side, to reflect to the driver a rear view of the roadway for a distance of no less than two hundred feet [60.96 meters].

~~3-4.~~ Between a half hour after sunset and a half hour before sunrise, a permitted overwidth vehicle or load must be equipped with the society of automotive engineers-approved class 1 lights and reflectors, in addition to those required in North Dakota Century Code chapter 39-21 and Code of Federal Regulations, title 49, part 393.

- a. One rotating or two flashing amber lights shall be mounted above the cab and visible from the front and rear for a distance not less than five hundred feet [152.4 meters], under clear atmospheric conditions at night. If the lights on the cab are not visible to the rear, additional flashing amber lights are required at the rear.
- b. Clearance lights must be visible from the front, rear, and side, marking the outermost portion of the vehicle and load which extends beyond eight feet six inches [2.5908 meters].
- c. Vehicles must be capable of traveling at the posted highway speed unless otherwise noted on the permit.

**History:** Effective January 1, 1988; amended effective February 1, 1999; April 1, 2008; July 1, 2013; January 1, 2016.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

#### **38-06-02-06. Size and weight limitations.**

- ~~1. Unless otherwise authorized by the superintendent, single trip permits for overdimensional movements may not exceed fourteen feet six inches [4.42 meters] in overall width, fifteen feet six inches [4.72 meters] in overall height, and one hundred twenty feet [36.58 meters] in overall length.~~
- ~~2. Limitations for single trip permits for overweight movements must be as determined by department of transportation engineers.~~

**History:** Effective January 1, 1988; amended effective January 1, 1992; January 1, 2016.

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

#### **38-06-02-07. Travel restrictions.**

1. Permits may not be issued for overdimensional movements between one-half hour after sunset and one-half hour before sunrise unless otherwise authorized by the superintendent.
2. ~~Single~~Except as authorized in this section, single trip permits for overwidth exceeding sixteen feet [4.88 meters] may not be issued authorizing movements on Saturday after twelve noon, all day Sunday, and on holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. No overwidth permit exceeding sixteen feet [4.88 meters] will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.
3. The superintendent may authorize a single trip permit for weekends or holidays.
- ~~4.~~ Permits do not authorize movements when inclement weather prevails, highways are slippery, or when visibility is poor.

~~4-5.~~ Permits do not authorize travel on shoulders of road.

- | ~~5.6.~~ A single trip permit is required for each movement that is overdimensional or overweight. An annual permit for overwidth vehicle and load movements is required in lieu of the single trip permit issued for overwidth movements.
- | ~~6.7.~~ A minimum distance of one thousand feet [304.80 meters] is required between vehicles in a convoy of two or more vehicles.

**History:** Effective January 1, 1988; amended effective August 1, 1993; February 1, 1999; April 1, 2008; July 1, 2013; [January 1, 2016](#).

**General Authority:** NDCC 39-12-02

**Law Implemented:** NDCC 39-12-02

## CHAPTER 38-06-03

### 38-06-03-01. Permit fees.

The following fees are in addition to those found in North Dakota Century Code section 39-12-02:

~~1.~~ The fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.

~~2.~~ The single trip permit fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip movement approval form. If the permit is issued on official receipt/permit, SFN 3507, the fee is ten dollars.

~~3.~~2. The fee for a seasonal permit is fifty dollars per year. The seasonal permit is issued to vehicles referenced in subdivision d of subsection 1 of North Dakota Century Code section 39-12-04.

~~4.~~3. There is a graduated fee schedule for overweight single trip movements exceeding one hundred fifty thousand pounds [68035 kilograms] gross vehicle weight.

#### Gross Vehicle Weight

150,001 - 160,000 lbs.	<u>[68039 -72574 kilograms]</u>
160,001 - 170,000 lbs.	<u>[72575-77110 kilograms]</u>
170,001 - 180,000 lbs.	<u>[77111-81646 kilograms]</u>
180,001 - 190,000 lbs.	<u>[81647-86182 kilograms]</u>
190,001 lbs. and over	<u>[86183 kilograms and over]</u>

#### Permit Fee

\$30
\$40
\$50
\$60
\$70

~~5.~~4. There is an additional ton/mile [907 kilogram/1.6 kilometers] fee of \$.05 per ton per mile on all those movements that exceed two hundred thousand pounds [90718 kilograms] gross vehicle weight. The ton/mile [907 kilogram/1.6 kilometers] fee is only assessed upon that portion of gross vehicle weight exceeding two hundred thousand pounds [90718 kilograms] gross vehicle weight.

~~6.~~5. ~~On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of fifty cents per mile [kilometer] and fifty dollars per hour. The superintendent shall assess a fee of fifty cents per mile [1.6 kilometers] or fifty dollars per hour, or both, per trooper, on those movements of extraordinary size or weight when an escort by the highway patrol is required or when the highway patrol is requested to weigh a vehicle with portable scales.~~

~~7.~~6. The fee for an equipment approval certificate is fifteen dollars.

~~8.~~7. The ton-mile [907 kilogram-1.6 kilometers] fee for a vehicle or load movement that exceeds the weight limits on highways during the spring thaw or on highways with load limits year-round is as follows:

- a. One dollar per ton-mile [907 kilogram-1.6 kilometers] when exceeding axle weight limits.
- b. The fees for vehicle or vehicle combinations hauling a load and in excess of the gross vehicle weight limit:
  - (1) One dollar per ~~ton~~-mile [1.6 kilometers] when the gross vehicle weight exceeds one hundred five thousand five hundred pounds [47853 kilograms] and travel is on highways restricted by legal weight or eight-ton [7257 kilograms] and seven-ton [6350 kilograms] designated state highways.

(a) Vehicles authorized by the director of the department of transportation to haul construction equipment to state highway construction projects are exempt from one dollar per mile [1.6 kilometers] fee.

(b) The total number of single trip permits for a state highway construction project that may be waived from the one dollar per mile [1.6 kilometers] fee may not exceed ten single trip permits.

- (2) Five dollars per ton-mile [907 kilograms-1.6 kilometers] when the gross vehicle weight exceeds:
- (a) One hundred thirty thousand pounds [58967 kilograms] on highways restricted by legal weight.
  - (b) One hundred twenty thousand pounds [58967 kilograms] on eight-ton [7257 kilograms] highways.
  - (c) One hundred ten thousand pounds [49895 kilograms] on seven-ton [6350 kilograms] highways.
  - (d) Eighty thousand pounds [36287 kilograms] on six-ton [5443 kilograms] highways.
- (3) The five dollar per ton-mile [907 kilograms-1.6 kilometers] fee for self-propelled special mobile equipment is assessed when the gross vehicle weight exceeds:
- (a) One hundred five thousand five hundred pounds [58967 kilograms] on highways restricted by legal weight.
  - (b) One hundred five thousand five hundred pounds [58967 kilograms] on eight-ton [7527 kilograms] highways.
  - (c) One hundred five thousand five hundred pounds [58967 kilograms] on seven-ton [6350 kilograms] highways.
  - (d) Eighty thousand pounds [36287 kilograms] on six-ton [5443 kilograms] highways.

~~9:8.~~ The fee for a weight increase on a work-over service rig is nine hundred ninety dollars. The fee shall be assessed on a work-over service rig that exceeds six hundred seventy pounds [303 kilograms] per inch [2.54 centimeters] of tire width on a single or tandem axle, exceeds sixty thousand pounds [27215 kilograms] on a triple axle, and sixty-eight thousand pounds [30844 kilograms] on a four-axle group.

- a. The weight increase is valid for a calendar year.
- b. The weight increase can only be assessed on model year 2010 work-over service rigs and older.

~~40:9.~~ All permit fees must be deposited into the state highway distribution fund.

**History:** Effective January 1, 1988; amended effective May 1, 1988; January 1, 1992; August 1, 1993; February 1, 1999; February 1, 2000; April 1, 2008, July 1, 2013; January 1, 2016.

**General Authority:** NDCC 39-12-02, 39-12-03, 39-12-04, 39-12-05.3

**Law Implemented:** NDCC 39-12-02, 39-12-04, 39-12-05.3

## CHAPTER 38-06-04

### 38-06-04-02. Permit cancellation and hearing request.

1. The highway patrol ~~has the authority to~~may revoke or cancel permit privileges when the applicant or permittee is in violation of the regulations adopted herein or conditions of the permit.
2. ~~The revocation or cancellation of permit privileges includes the privilege to use the self-issuing single trip permits.~~
- ~~3.~~—When notification is made of the cancellation of permit privileges, the applicant or permittee has ten days to request a hearing with the superintendent.

**History:** Effective January 1, 1988; January 1, 2016.

**General Authority:** NDCC 39-12-02, 39-12-04, 39-12-05.3

**Law Implemented:** NDCC 39-12-02, 39-12-04, 39-12-05.3

**TITLE 45**  
**INSURANCE, COMMISSIONER OF**



## JANUARY 2016

### CHAPTER 45-02-02

#### 45-02-02-02. Applications for licenses.

##### 1. Resident insurance producers' applications.

- a. An application must be completed in accordance with the instruction sheet and submitted either electronically or with a paper filing on a commissioner-approved application form.
- b. An applicant licensed in another state within the preceding ninety days who moves to this state must provide, with the application, proof of clearance from the state in which the insurance producer is currently or was most recently licensed as a resident insurance producer.
- c. An application form is required to add an additional line of insurance.
- d. Every application submitted to the department through either a paper or electronic filing must be accompanied by the appropriate fee made payable to either the commissioner or the commissioner's designee.

##### 2. Nonresident insurance producers' applications.

- a. An application for a nonresident insurance producer's license must comply with subdivisions a, c, and d of subsection 1 and must contain a written designation of the commissioner and the commissioner's successors in office as that insurance producer's true and lawful attorney for purposes of service of process.
- b. An applicant for a nonresident insurance producer's license must have the state, which issued the agent's resident license, supply to the department a certificate showing the lines for which the agent is licensed and eligible to write in that state. This certification may be submitted by the national association of insurance commissioners' producer data base.

##### 3. Surplus lines insurance producers' applications. A surplus lines insurance producer's application must be submitted in accordance with chapter 45-09-01.

##### 4. Consultants' applications.

- a. An application for a consultant's license must be submitted in accordance with the instruction sheet provided by the department and submitted on the appropriate form.

- b. No person holding a license as an insurance producer or surplus lines insurance producer may obtain and simultaneously hold a license as a consultant. If the applicant holds such licenses at the time of application, the licenses must be ~~terminated~~ canceled prior to obtaining a consultant's license.

**5. Temporary license applications.**

- a. An application for a temporary insurance producer's license must be submitted in accordance with section 45-02-02-02.
- b. The application must be accompanied by a written statement of the reasons for requesting the issuance of a temporary license.
- c. A temporary license will not be granted for the sole reason that the applicant has failed to pass the insurance producers' examination and desires to be licensed until such time as a passing examination score is obtained.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 1987; April 1, 1996; January 1, 2000; December 1, 2001; January 1, 2008; January 1, 2016.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-12, 26.1-26-13

**45-02-02-04. Specific examination requirements.**

1. An applicant applying to conduct insurance in the following lines must pass the following examinations:
 

a. Life and annuity	Life and annuity
b. Accident and health	Accident and health
c. Property	Property
d. Casualty	Casualty
e. Variable life and annuity	Life and annuity
2. An applicant applying for a license for title insurance is exempt from any examination requirement but must meet the following qualifications:
  - a. The applicant must be a licensed abstracter or attorney; or
  - b. The applicant must have a minimum of eighty hours of training provided by an insurer licensed in the line of title insurance. A certification by the insurer that the training has been completed must accompany the application.
3. An applicant for a license to write travel and baggage insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier is exempt from examination requirements.
4. An applicant for a license with the line of authority of surety shall take and pass the casualty examination. Surety coverage is insurance or a bond that covers obligations to pay the debts of or answer for the default of another, including faithlessness in a position of public or private trust, but not including bail bonds.
5. An applicant for a license to write the following products need only take the reduced examination required for that specific product:
  - a. Bail bonds.

- b. Credit including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of credit insurance.
  - c. Crop or crop hail. Crop or crop hail insurance is insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions, or perils provided by the private insurance market, or that is subsidized by the federal crop insurance corporation, including multiperil crop insurance.
  - d. Legal expense, including prepaid legal service.
  - e. Personal lines. Personal lines is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.
6. An applicant for a consultant's license shall take and pass the insurance producer's examination for the lines in which the applicant seeks to consult. If an applicant for a consultant's license holds a North Dakota insurance producer's license, the applicant is exempt from the testing requirements for the lines held on the insurance producer's license within the twelve months preceding the date on which the consultant application is filed with the commissioner. However, the applicant must ~~terminate~~cancel the insurance producer's license prior to obtaining a consultant's license.

**History:** Effective September 1, 1983; amended effective October 1, 1984; January 1, 2000; December 1, 2001; January 1, 2008; April 1, 2010; January 1, 2016.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-25

**45-02-02-12. Administrative ~~terminations~~cancellations.**

- 1. An insurance producer may ~~terminate~~cancel one's North Dakota insurance license voluntarily and have a letter of clearance issued by filing a written request with the department.
- 2. The insurance producer must return the licenses to the department.
- 3. The insurance producer is responsible for notifying the appointing companies of the ~~termination~~cancellation.
- 4. A surplus lines insurance producer or consultant may ~~terminate~~cancel one's license voluntarily and have a letter of clearance issued by the department upon receipt of a written request from the licenseholder.

**History:** Effective September 1, 1983; amended effective January 1, 2000; December 1, 2001; January 1, 2016.

**General Authority:** NDCC 26.1-26-49

**Law Implemented:** NDCC 26.1-26-31

**CHAPTER 45-03-05**  
**INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH REPORTING**  
**FORMS AND INSTRUCTIONS**

Section

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<a href="#">45-03-05-12.2</a>	<a href="#">Preacquisition Notification</a>
45-03-05-13	<a href="#">Annual</a> Registration of Insurers - <del>Registration</del> <a href="#">Statement</a> Filing
45-03-05-13.1	Summary of <a href="#">Changes</a> Registration - Statement Filing
45-03-05-14	Amendments to Form B
45-03-05-15	Alternative and Consolidated Registration
45-03-05-16	Exemptions [Repealed]
45-03-05-17	Disclaimers and Termination of Registration
45-03-05-17.1	Transactions Subject to Prior Notice - Notice Filing
<a href="#">45-03-05-17.2</a>	<a href="#">Enterprise Risk Report</a>
45-03-05-18	Extraordinary Dividends and Other Distributions
45-03-05-19	Adequacy of Surplus

**45-03-05-04. Forms - General requirements.**

1. Forms A, B, C, ~~and D, E, and F~~ are intended to be guides in the preparation of the statements required by North Dakota Century Code sections 26.1-10-03 ~~and 26.1-10-03.1~~, 26.1-10-04, ~~and 26.1-10-05~~. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted; provided, the answers are prepared ~~so in such a manner~~ as to indicate ~~to the reader clearly~~ the ~~scope and~~ coverage of the items ~~without the necessity of the reader referring to the text of the items or the instructions thereto~~. All instructions, whether appearing under the items of the form or elsewhere in the form, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.
2. Two complete copies of each statement including exhibits and all other papers and documents filed as a part of the statement shall be filed with the commissioner by personal delivery or mail addressed to: Commissioner of Insurance, Fifth Floor, State Capitol, Bismarck, North Dakota 58505, Attention: Legal Department. ~~A copy of Form C must be filed in each state in which an insurer is authorized to do business, if the commissioner of that state has notified the insurer of its request in writing, in which case the insurer has ten days from the receipt of the notice to file such form.~~ At least one of the copies shall be ~~manually~~ signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of ~~such~~[the](#) power of attorney or other authority shall also be filed with the statement.

3. If an applicant requests a hearing on a consolidated basis under subdivision c of subsection 4 of section 26.1-10-03 of the North Dakota Century Code, in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the national association of insurance commissioners in electronic form.

4. ~~Statements should be prepared on paper eight and one half inches by eleven inches or eight and one half inches by thirteen inches [21.59 centimeters by 27.94 centimeters or 21.59 centimeters by 33.02 centimeters] in size and preferably bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear,~~electronically. Statements must be easily readable, and suitable for photocopying review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

**History:** Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-03, 26.1-10-04

#### **45-03-05-05. Forms - Incorporation by reference, summaries, and omissions.**

1. Information required by any item of Form A, Form B, ~~or Form D,~~ Form E, or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, ~~or Form D,~~ Form E, or Form F provided ~~such~~the document ~~or paper~~ is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents ~~already~~currently on file with the commissioner which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that ~~such~~the material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where ~~such~~the incorporation would render the statement incomplete, unclear, or confusing.
2. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the ~~most important~~pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which were filed within three years and may be qualified in its entirety by the reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents a copy of which is filed.

**History:** Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-03, 26.1-10-04

#### 45-03-05-06. Forms - Information unknown or unavailable and extension of time to furnish.

- ~~1. Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to all of the following conditions:~~
  - ~~a. The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.~~
  - ~~b. The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.~~
- ~~2. If it is impractical to furnish any required information, document, or report at the time it is required to be filed, there ~~may~~must be filed with the commissioner ~~as a separate document and application~~ (a) identifying:
  1. Identifying the information, document, or report in question; ~~(b) stating~~
  2. Stating why the filing thereof at the time required is impractical; and ~~(c) requesting~~
  3. Requesting an extension of time for filing the information, document, or report to a specified date. The ~~application shall~~request for extension must be deemed granted unless the commissioner, within forty-five days after receipt thereof, enters an order denying the ~~application~~request.~~

**History:** Effective January 1, 1982; amended effective January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-03, 26.1-10-04

#### 45-03-05-07. Forms - Additional information and exhibits.

In addition to the information expressly required to be included in Form A, Form B, Form C, ~~and Form D, there shall be added such~~Form E, and Form F, the commissioner may request further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file ~~such~~the exhibits as it may desire in addition to those expressly required by the statement. ~~Such~~The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, ~~or D, E, or F~~ must include on the top of the cover page the phrase: "Change No. (insert number) to" and must indicate the date of the change and not the date of the original filing.

**History:** Effective January 1, 1982; amended effective January 1, 1992; January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-03, 26.1-10-04

#### 45-03-05-09. Definitions.

1. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
2. ~~"Foreign insurer" includes an alien insurer except where clearly noted otherwise.~~

~~3.~~ "Ultimate controlling person" means that person which is not controlled by any other person.

4. Unless the context otherwise requires, other terms found in this chapter and in North Dakota Century Code section 26.1-10-01 are used as defined in that section. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined in the code.

**History:** Effective January 1, 1982; amended effective January 1, 1992; [January 1, 2016](#).

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-01

#### **45-03-05-10. Subsidiaries of domestic insurers.**

~~1.~~ The authority to invest in subsidiaries under subsection 2 of North Dakota Century Code section 26.1-10-02 is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

~~2.~~ ~~An investment by a subsidiary under subdivision c of subsection 2 of North Dakota Century Code section 26.1-10-02 may cause the total investment of the insurer to exceed any of the limitations contained in any of the individual sections referred to in that subdivision; provided, that it does not exceed the aggregate amount which could be invested under all of those sections with respect to the type of asset involved.~~

**History:** Effective January 1, 1982; [amended effective January 1, 2016](#).

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-02, 26.1-10-03

#### **45-03-05-11. Acquisition of control - Statement filing.**

A person required to file a statement pursuant to North Dakota Century Code section 26.1-10-03 shall furnish the required information on Form A, hereby made a part of this chapter. [The person shall also furnish the required information on Form E, hereby made a part of this chapter and described in section 45-03-05-12.2.](#)

**History:** Effective January 1, 1982; [amended effective January 1, 2016](#).

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-03

#### **45-03-05-12. Amendments to Form A.**

The applicant shall promptly advise the commissioner of any changes in the information so furnished on Form A arising subsequent to the date upon which ~~such~~[the](#) information was furnished but prior to the commissioner's disposition of the application.

**History:** Effective January 1, 1982; amended effective January 1, 1992; [January 1, 2016](#).

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-03, 26.1-10-04

#### **45-03-05-12.1. Acquisition of [subdivision d of subsection 1 of North Dakota Century Code section 26.1-10-03](#) insurers.**

1. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of [subdivision d of subsection 1 of North Dakota Century Code section 26.1-10-03](#), the name of the domestic insurer on the cover page must be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company".

2. Whereif subdivision d of subsection 1 of North Dakota Century Code section 26.1-10-03 insurer is being acquired, references to "the ~~insured~~insurer" contained in Form A must refer to both the domestic subsidiary insurer and the person being acquired.

**History:** Effective January 1, 1992; amended effective January 1, 2016.

**General Authority:** NDCC 28-32

**Law Implemented:** NDCC 26.1-02-02, 26.1-06.1-01, 26.1-10-05

#### 45-03-05-12.2. Preacquisition notification.

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to subdivision a of subsection 1 of North Dakota Century Code section 26.1-10-03, that person shall file a preacquisition notification Form E, which was developed pursuant to subdivision a of subsection 3 of North Dakota Century Code section 26.1-10-03.1.

Additionally, if a nondomiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to North Dakota Century Code section 26.1-10-03.1, that person shall file a preacquisition notification Form E. No preacquisition notification form need be filed if the acquisition is beyond the scope of North Dakota Century Code section 26.1-10-03.1 as set forth in subdivision b of subsection 2 of North Dakota Century Code section 26.1-10-03.1.

In addition to the information required by Form E, the commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 28-32

**Law Implemented:** NDCC 26.1-10

#### **45-03-05-13. Registration**Annual registration of insurers - RegistrationStatement filing.

An insurer required to file ~~a~~an annual registration statement pursuant to North Dakota Century Code section 26.1-10-04 shall furnish the required information on Form B, hereby made a part of this chapter.

**History:** Effective January 1, 1982; amended effective January 1, 1992; February 28, 1992; January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-04

#### **45-03-05-13.1. Summary of changes to registration - Statement filing.**

An insurer required to file ~~a~~an annual registration statement pursuant to North Dakota Century Code section 26.1-10-04 is also required to furnish information required on Form C. ~~An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state,~~ hereby made a part of this chapter.

**History:** Effective January 1, 1992; amended effective February 28, 1992; January 1, 2016.

**General Authority:** NDCC 28-32

**Law Implemented:** NDCC 26.1-10-04

#### **45-03-05-14. Amendments to Form B.**

1. An amendment to Form B ~~shall~~must be filed within fifteen days after the end of the month in which there is a material change to the information provided in the annual registration statement.

2. Amendments must be filed in the Form B format with only those items which are being amended reported. Each such amendment must include at the top of the cover page: "Amendment No. (insert number) to Form B for (insert year)" and must indicate the date of the change and not the date of the original filings.

**History:** Effective January 1, 1982; amended effective January 1, 1992; February 28, 1992; [January 1, 2016](#).

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-04

#### **45-03-05-15. Alternative and consolidated registrations.**

1. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under North Dakota Century Code section 26.1-10-04. A registration statement may include information [not required by North Dakota Century Code chapter 26.1-10](#) regarding any insurer in the insurance holding company system even if ~~such~~the insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:
  - a. The statement or report contains substantially similar information required to be furnished on Form B; and
  - b. The filing insurer is the principal insurance company in the insurance holding company system.
2. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a [simplebrief](#) statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.
3. With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection 1.
4. Any insurer may take advantage of the provisions of subsection 6 or 7 of North Dakota Century Code section 26.1-10-04 without obtaining the prior approval of the commissioner. The commissioner, however, reserves the right to require individual filings if the commissioner deems such filings necessary in the interest of clarity, ease of administration, or the public good.

**History:** Effective January 1, 1982; [amended effective January 1, 2016](#).

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-04

#### **45-03-05-17. Disclaimers and termination of registration.**

1. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the subject) shall contain the following information:
  - a. The number of authorized, issued and outstanding voting securities of the subject.
  - b. With respect to the person whose control is denied and all affiliates of that person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of ~~such~~the shares concerning which there is a right to acquire, directly or indirectly.

- c. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of that person.
  - d. A statement explaining why that person should not be considered to control the subject.
2. A request for termination of registration shall be deemed to have been granted unless the commissioner, within ~~ten~~thirty days after the commissioner receives the request, notifies the registrant otherwise.

**History:** Effective January 1, 1982; amended effective January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-04

#### **45-03-05-17.1. Transactions subject to prior notice - Notice filing.**

1. An insurer required to give notice of a proposed transaction pursuant to North Dakota Century Code section 26.1-10-05 shall furnish the required information on Form D, hereby made a part of these rules.

2. **Agreements for cost-sharing services and management services must at a minimum and as applicable:**

a. Identify the person providing services and the nature of the services;

b. Set forth the methods to allocate costs;

c. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the national association of insurance commissioners accounting practices and procedures manual;

d. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

e. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

f. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

g. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

h. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

i. Include standards for termination of the agreement with and without cause;

j. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

k. Specify that, if the insurer is placed in receivership or seized by the commissioner under North Dakota Century Code chapter 26.1-06.1:

(1) All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

(2) All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver's or the commissioner's request;

l. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to North Dakota Century Code chapter 26.1-06.1; and

m. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under North Dakota Century Code chapter 26.1-06.1, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

**History:** Effective January 1, 1992; amended effective January 1, 2016.

**General Authority:** NDCC 28-32

**Law Implemented:** NDCC 26.1-10-05

#### 45-03-05-17.2. Enterprise risk report.

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to subsection 12 of North Dakota Century Code section 26.1-10-04 shall furnish the required information on Form F, hereby made a part of this chapter.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 28-32

**Law Implemented:** NDCC 26.1-10

#### **45-03-05-18. Extraordinary dividends and other distributions.**

1. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

a. The amount of the proposed dividend;

b. The date established for payment of the dividend~~;~~

~~b.c.~~ A statement as to whether the dividend is to be in cash or other property and, if in property, a description of the property, its cost, and its fair market value together with an explanation of the basis for valuation~~;~~

~~c.~~ ~~The amount of the proposed dividend.~~

d. A copy of the calculations determining that the proposed dividend is extraordinary. The workpaper must include the following information:

(1) The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(2) Surplus as regards policyholders (total capital and surplus) as of the next preceding December thirty-first;

(3) If the insurer is a life insurer, the net gain from operations for the twelve-month period ending the next preceding December thirty-first;

- (4) If the insurer is not a life insurer, the net income less realized capital gains for the twelve-month period ending the next preceding December thirty-first and the two preceding twelve-month periods; and
  - (5) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.
- e. A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
  - f. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
2. Subject to ~~subsections 3, 4, and 5~~ subsection 2 of North Dakota Century Code section 26.1-10-05, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within ~~ten~~ fifteen business days following the declaration thereof, including the same information required by ~~paragraphs 1 through 4 of~~ subdivision d of subsection 1.

**History:** Effective January 1, 1982; amended effective January 1, 1992; February 28, 1992; January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-04

#### **45-03-05-19. Adequacy of surplus.**

The factors set forth in subsection 6 of North Dakota Century Code section 26.1-10-05 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus, no single factor ~~shall be~~ is controlling. The commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

**History:** Effective January 1, 1982; amended effective January 1, 1992; October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-10-12

**Law Implemented:** NDCC 26.1-10-05

**FORM A**  
**STATEMENT REGARDING THE**  
**ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Domestic Insurer

BY

\_\_\_\_\_  
Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

\_\_\_\_\_  
(State of domicile of insurer  
being acquired)

Dated: \_\_\_\_\_, 20 \_\_\_\_

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

ITEM 1. ~~INSURER AND~~ METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

1. State the name and address of the applicant seeking to acquire control over the insurer.
2. If the applicant is not an individual, state the nature of its business operations for the past five years or for ~~such~~<sup>a</sup> lesser period as ~~such~~<sup>the</sup> person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
3. Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. ~~No affiliate need be identified if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person affiliated with the applicant.~~ Indicate in ~~such~~<sup>the</sup> chart or listing the percentage of voting securities of each ~~such~~ person which is owned or controlled by the applicant or by any other ~~such~~ person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of ~~such~~<sup>the</sup> control. As to each person specified in ~~such~~<sup>the</sup> chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State On the biographical affidavit, include a third-party background check, and state the following with respect to (1) the applicant if the applicant is an individual or (2) all persons who are directors, executive officers, or owners of ten percent or more of the voting securities of the applicant if the applicant is not an individual:

1. Name and business address.
2. Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which ~~such~~the employment is carried on.
3. Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each ~~such~~ occupation, position, office, or employment was carried on; if any ~~such~~ occupation, position, office, or employment required licensing by or registration, with any federal, state, or municipal governmental agency, indicate ~~such~~the fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.
4. Whether or not ~~such~~the person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

#### ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

1. Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.
2. Explain the criteria used in determining the nature and amount of ~~such~~the consideration.
3. If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant must specifically request that the identity be kept confidential.

#### ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate ~~such~~the insurer, to sell its assets to or merge it with any person or persons, or to make any other material change in its business operations or corporate structure or management.

#### ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates, and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

#### ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

## ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. ~~Such~~The description shall identify the persons with whom ~~such~~the contracts, arrangements, or understandings have been entered into.

## ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement. Include in ~~such~~the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any ~~such~~ shares so purchased are hypothecated.

## ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement.

## ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

## ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

1. Financial statements ~~and~~, exhibits ~~shall~~, and three-year financial projections of the insurers must be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. The financial statements ~~shall~~must include the annual financial statements of the persons identified in Item 2 (c) for the preceding five fiscal years (or for ~~such~~a lesser period as ~~such~~an applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of ~~such~~the person's last fiscal year, if ~~such~~the information is available. ~~Such~~The statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if ~~such~~the consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant ~~shall~~must be accompanied by the certificate of an independent public accountant to the effect that ~~such~~the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of ~~such~~the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of ~~such~~the state.

3. File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if

distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory, or management contracts concerning the insurer, annual reports to the stockholders of the insurer, and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or sections 45-03-05-04 and 45-03-05-06.

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen days after the end of the month in which the acquisition of control occurs.

ITEM ~~13~~14. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code ~~section~~Section 26.1-10-03, \_\_\_\_\_ has caused this application to be duly

signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL)

\_\_\_\_\_  
Name of Applicant

BY: \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that the applicant has duly executed the attached application dated \_\_\_\_\_, 20 \_\_\_\_, for and on behalf of \_\_\_\_\_; that the applicant is the

(Name of Applicant)

\_\_\_\_\_  
(Title of officer) of ~~such~~the company and that the applicant is

authorized to execute and file ~~such~~the instrument. Deponent further says that deponent is familiar with ~~such~~the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature)\_\_\_\_\_

(Type or print name beneath)\_\_\_\_\_

FORM B

INSURANCE HOLDING COMPANY SYSTEM REGISTRATION STATEMENT

Filed with the Insurance Department of the State of \_\_\_\_\_

By

\_\_\_\_\_  
Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_\_

Name, title, address and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the methods by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. ~~No affiliate need be shown if its total assets are equal to less than one half of one percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding (insert amount).~~ The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of ~~such~~the control. As to each person specified in ~~such~~the chart or listing indicate the type of organization, e.g., corporation, trust, partnership, and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

- 1. Name.

2. Home office address.
3. Principal executive office address.
4. The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
5. The principal business of the person.
6. The name and address of any person who holds or owns ten percent or more of any class of voting security, the class of ~~such~~the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
7. If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

#### ITEM 4. BIOGRAPHICAL INFORMATION

~~Furnish~~If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, the individual's principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations ~~during the past ten years~~. If the ultimate controlling person is an individual, furnish the individual's name and address, principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations.

#### ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

1. Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;
2. Purchases, sales, or exchanges of assets;
3. Transactions not in the ordinary course of business;
4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
5. All management agreements, service contracts, and all cost-sharing arrangements;
6. Reinsurance agreements;
7. Dividends and other distributions to shareholders;
8. Consolidated tax allocation agreements; and
9. Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if ~~such~~the information is not material for purposes of North Dakota Century Code Section 26.1-10-04 ~~of the North Dakota Century Code~~.

Sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of the registrant's admitted assets as of next preceding December thirty-first shall not be deemed material.

The description ~~shall~~must be in a manner as to permit the proper evaluation thereof by the commissioner, and ~~shall~~must include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to ~~such~~the transaction, and relationship of the affiliated parties to the Registrant.

#### ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which ~~such~~the litigation or proceeding is or was pending:

1. Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
2. Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

#### ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

#### ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

1. Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
2. ~~The~~If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements ~~shall~~must include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent ~~such~~the information is available. ~~Such~~The financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if ~~such~~the consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, the financial statement must be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the securities and exchange commission or audited generally accepted accounting principles financial statements shall be deemed to be an appropriate form and format.

Unless the commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that ~~such~~the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of ~~such insurer filed with the~~

~~insurance department of~~ the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of ~~such~~the state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the personal financial statements guide by the American institute of certified public accountants. Personal financial statements shall be accompanied by the independent public accountant's standard review report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

3. Exhibits ~~shall~~must include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or North Dakota Administrative Code sections 45-03-05-04 and 45-03-05-06.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code Section 26.1-10-04 ~~of the North Dakota Century Code~~, the registrant has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_, and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Name of registrant)  
By: \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of officer)  
\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that the undersigned has duly executed the attached annual registration statement dated \_\_\_\_\_, 20 \_\_\_\_, for and on behalf of \_\_\_\_\_; that the

(Name of company)  
undersigned is the \_\_\_\_\_ of ~~such~~the company, and that  
(Title of officer)

the undersigned has authority to execute and file ~~such~~the instrument. The deponent further says that deponent is familiar with ~~such~~the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**FORM C**  
**SUMMARY OF CHANGES TO REGISTRATION STATEMENT**  
Filed with the Insurance Department of the State of \_\_\_\_\_

BY

\_\_\_\_\_  
Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address


Date: \_\_\_\_\_, 20\_\_

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:


Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include specific references to item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where ~~such~~the changes are ones which result in ownership or holdings of ten percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's registration statement has been changed, the nature of ~~such~~the change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

**SIGNATURE AND CERTIFICATION**

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of North Dakota Century Code Section 26.1-10-04 ~~of the North Dakota Century Code~~, the registrant has caused this ~~summary of~~annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Name of Applicant)

By: \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that the deponent has duly executed the attached ~~summary of~~annual registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of

\_\_\_\_\_;

(Name of company)

\_\_\_\_\_ of ~~such~~the company;

(Title of officer)

and that the deponent is authorized to execute and file ~~such~~the instrument. Deponent further says that deponent is familiar with ~~such~~the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**FORM D  
PRIOR NOTICE OF A TRANSACTION**

Filed with the Insurance Department of the State of \_\_\_\_\_  
BY

\_\_\_\_\_  
Name of Registrant

On Behalf of the Following Insurance Companies

Name

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. IDENTITY OF PARTIES TO TRANSACTION**

Furnish the following information for each of the parties to the transaction:

1. Name.
2. Home office address.
3. Principal executive office address.
4. The organizational structure, i.e., corporation, partnership, individual, trust, etc.
5. A description of the nature of the parties' business operations.
6. Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.
7. Where the transaction is with a nonaffiliate, the names of the affiliates which will receive, in whole or in substantial part, the proceeds of the transaction.

**ITEM 2. DESCRIPTION OF THE TRANSACTION**

Furnish the following information for each transaction for which notice is being given:

1. A statement as to whether notice is being given under subdivision a, b, c, d, or e of subsection 2 of North Dakota Century Code Section 26.1-10-05;
2. A statement of the nature of the transaction-;
3. A statement of how the transaction meets the fair and reasonable standards of subdivision a of subsection 1 of North Dakota Century Code Section 26.1-10-05; and

2.4. The proposed effective date of the transaction.

### ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES, OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost, and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit, or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under ~~such~~the loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee, or other arrangement, state the time period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of ~~such~~the investments, guarantees, or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than: (a) in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders, or (b) in the case of life insurers, three percent of the insurer's admitted assets, each as of the next preceding December thirty-first.

### ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making ~~such~~the loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of ~~such~~the funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost, and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders or, with respect to life insurers, three percent of the insurer's admitted assets, each as of the next preceding December thirty-first.

### ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by paragraph 2 of subdivision c of subsection 2 of North Dakota Century Code Section 26.1-10-04(2)(6) of the North Dakota Century Code 26.1-10-05, or a reinsurance pooling agreement or modification thereto as described by paragraph 1 of subdivision c of subsection 2 of North Dakota Century Code Section 26.1-10-05, furnish a description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement

whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than five percent of the insurer's surplus as regards policyholders, as of the next preceding December thirty-first. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

#### ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS, AND COST-SHARING ARRANGEMENTS

For management and service agreements, furnish:

1. A brief description of the managerial responsibilities or services to be performed.
2. A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

1. A brief description of the purpose of the agreement.
2. A description of the period of time during which the agreement is to be in effect.
3. A brief description of each party's expenses or costs covered by the agreement.
4. A brief description of the accounting basis to be used in calculating each party's costs under the agreement.
5. A brief statement as to the effect of the transaction upon the insurer's policyholder surplus.
6. A statement regarding the cost allocation methods that specifies whether proposed charges are based on cost or market. If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable.
7. A statement regarding compliance with the National Association of Insurance Commissioners Accounting Practices and Procedure Manual regarding expense allocation.

#### ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of ~~Sections 26.1-10-04 and~~ North Dakota Century Code Section 26.1-10-05 of the North Dakota Century Code, \_\_\_\_\_ has caused this ~~notice~~ application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL)

\_\_\_\_\_  
(Name of Applicant)

By: \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that the deponent has duly executed the attached notice application dated \_\_\_\_\_, 20 \_\_\_\_, for and on behalf of \_\_\_\_\_; that the deponent is the \_\_\_\_\_ of such the

(Name of Applicant)

(Title of officer)

company and that the deponent is authorized to execute and file such the instrument. Deponent further says that deponent is familiar with such the instrument and the contents thereof, and that the facts therein set forth are true to the best of deponent's knowledge, information, and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**FORM E**  
**PRE-ACQUISITION NOTIFICATION FORM REGARDING THE POTENTIAL COMPETITIVE IMPACT**  
**OF A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY INSURER DOING**  
**BUSINESS IN THIS STATE OR BY A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of Other Person Involved in Merger or Acquisition

Filed with the Insurance Department of

Dated: \_\_\_\_\_, 20\_\_

Name, title, address, and telephone number of person completing this statement:

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of the data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in subsection 4 of North Dakota Century Code Section 26.1-10-03.1. If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

**FORM F**  
**ENTERPRISE RISK REPORT**

Filed with the Insurance Department of the State of \_\_\_\_\_  
BY \_\_\_\_\_

\_\_\_\_\_  
Name of Registrant/Applicant

On Behalf of the Following Insurance Companies

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Name, title, address, and telephone number of individual to whom notices and correspondence concerning this statement should be addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. ENTERPRISE RISK**

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in subsection 3 of North Dakota Century Code Section 26.1-10-01, provided the information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- Any changes of shareholders of the insurance holding company system exceeding 10 percent or more of voting securities;
- Developments in various investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system;
- Business plan of the insurance holding company system and summarized strategies for next 12 months;
- Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;
- Identification of insurance holding company system capital resources and material distribution patterns;
- Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer

financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

- Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should the guarantees be called upon; and
- Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the United States Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the United States, it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

## ITEM 2. OBLIGATION TO REPORT

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

## CHAPTER 45-03-07.1 CREDIT FOR REINSURANCE MODEL REGULATION

### Section

45-03-07.1-01	Credit for Reinsurance - Reinsurer Licensed in This State
45-03-07.1-02	Credit for Reinsurance - Accredited Reinsurers
45-03-07.1-03	Credit for Reinsurance - Reinsurer Domiciled in Another State
45-03-07.1-04	Credit for Reinsurance - Reinsurers Maintaining Trust Funds
<u>45-03-07.1-04.1</u>	<u>Credit for Reinsurance - Certified Reinsurers</u>
45-03-07.1-05	Credit for Reinsurance Required by Law
45-03-07.1-06	Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of Sections 45-03-07.1-01 Through 45-03-07.1-05
45-03-07.1-07	Trust Agreements Qualified Under Section 45-03-07.1-06
45-03-07.1-08	Letters of Credit Qualified Under Section 45-03-07.1-06
45-03-07.1-09	Other Security
45-03-07.1-10	Reinsurance Contract
45-03-07.1-11	Contracts Affected

### **45-03-07.1-01. Credit for reinsurance - Reinsurer licensed in this state.**

Pursuant to subsection 1 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

**History:** Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

### **45-03-07.1-02. Credit for reinsurance - Accredited reinsurers.**

1. Pursuant to subsection 2 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of anythe date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer ~~is one which~~must:
  - a. ~~Files~~File a properly executed form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
  - b. ~~Files~~File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
  - c. ~~Files~~File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
  - ~~(1)d. Maintains~~Maintain a surplus as regards policyholders in an amount not less than twenty million dollars ~~and whose accreditation has not been denied by the commissioner within ninety days of its submission; or~~
  - ~~(2) Maintains a surplus as regards policyholders of less than twenty million dollars, and whose accreditation has been approved by the commissioner.~~ or obtain the

affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

2. If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit may not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

**History:** Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

#### **45-03-07.1-03. Credit for reinsurance - Reinsurer domiciled in another state.**

1. Pursuant to subsection 3 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of ~~the any~~ date ~~of the ceding insurer's~~ on which statutory financial statement credit for reinsurance is claimed:
  - a. Is domiciled ~~and licensed~~ in, or, in the case of a United States branch of an alien assuming insurer, is entered through ~~and licensed in~~, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under North Dakota Century Code chapter 26.1-31.2 and this chapter;
  - b. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
  - c. Files a properly executed form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.
2. The provisions of this section relating to surplus as regards policyholders do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of North Dakota Century Code chapter 26.1-31.2 and this chapter.

**History:** Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

#### **45-03-07.1-04. Credit for reinsurance - Reinsurers maintaining trust funds.**

1. Pursuant to subsection 4 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution as defined in subsection 2 of North Dakota Century Code section 26.1-31.2-03, for the payment of the valid claims of its United States ~~policyholders and~~ domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

2. The following requirements apply to the following categories of assuming insurer:
- a. The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars, except as provided in subdivision b.
  - b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
  - c. (1) The trust fund for a group, including incorporated and individual unincorporated underwriters, must consist of:
    - (a) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the ~~group's aggregate~~ respective underwriters' several liabilities attributable to business ~~written in~~ ceded by the United States ~~and, in domiciled ceding insurers to any underwriter of the group;~~
    - (b) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
    - (c) In addition to these trusts, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.
  - (2) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of regulation solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:
    - (a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
    - (b) If a certification is unavailable, a financial statement prepared by independent public accountants, of each underwriter member of the group.
  - e.d. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars,

calculated and reported in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the national association of insurance commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must:

- (a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of ~~such~~the group; ~~and~~
  - (b) Maintain a joint trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and
  - (c) File a properly executed form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any ~~such~~ examination.
- (2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the members' domiciliary regulators and financial statements, prepared by independent public accountants, of each underwriter member of the group.
3. a. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that:
- (1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
  - (2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest;
  - (3) The trust shall be subject to examination as determined by the commissioner;
  - (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
  - (5) No later than February twenty-eighth of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding yearend, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the ~~next~~ following December thirty-first.
- b. ~~Credit for reinsurance will not be granted unless the assuming insurer agrees in the trust agreement to the following conditions:~~

- (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
  - (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
  - (3) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
  - (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
4. For purposes of this rule section, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are ~~not~~ otherwise secured by acceptable means, and, includes:
- a. For business ceded by domestic insurers authorized to write accident and health and property and casualty insurance:
    - (1) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
    - (2) Reserves for losses reported and outstanding;
    - (3) Reserves for losses incurred but not reported;
    - (4) Reserves for allocated loss expenses; and
    - (5) Unearned premiums.
  - b. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:
    - (1) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
    - (2) Aggregate reserves for accident and health policies;
    - (3) Deposit funds and other liabilities without life or disability contingencies; and
    - (4) Liabilities for policy and contract claims.
5. Assets deposited in trusts established pursuant to North Dakota Century Code section 26.1-31.2-01 and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in subsection 1 of North Dakota Century Code section

26.1-31.2-03, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in [subsection 1 of North Dakota Century Code section 26.1-31.2-03](#), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under paragraph 5 of subdivision a, subdivision c, paragraph 2 of subdivision f, and subdivision g, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of North Dakota Century Code section 26.1-31.2-01 shall be invested only as follows:

- a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:
  - (1) The United States or by any agency or instrumentality of the United States;
  - (2) A state of the United States;
  - (3) A territory, possession, or other governmental unit of the United States;
  - (4) An agency or instrumentality of a governmental unit referred to in paragraphs 2 and 3 if the obligations shall be by law, statutory or otherwise, payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
  - (5) The government of any other country that is a member of the organization for economic cooperation and development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- b. Obligations that are issued in the United States, or that are dollar-denominated and issued in a non-United States market, by a solvent United States institution other than an insurance company or that are assumed or guaranteed by a solvent United States institution other than an insurance company and that are not in default as to principal or interest if the obligations:
  - (1) Are rated A or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
  - (2) Are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners; or
  - (3) Have been designated as class one or class two by the securities valuation office of the national association of insurance commissioners.

- c. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the organization for economic cooperation and development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.
- d. An investment made pursuant to the provisions of subdivisions a, b, or c shall be subject to the following additional limitations:
  - (1) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;
  - (2) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;
  - (3) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent of the assets of the trust; and
  - (4) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs 1 and 3 of subdivision b, but shall not exceed two percent of the assets of the trust.
- e. As used in this section:
  - (1) "Mortgage-related security" means an obligation that is rated AA or higher or the equivalent by a securities rating agency recognized by the securities valuation office of the national association of insurance commissioners and that either:
    - (a) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates, or participation, that:
      - [1] Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
      - [2] Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to 12 U.S.C.A. sections 1709 and 1715-b, or, when the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the secretary of housing and urban development pursuant to 12 U.S.C.A. section 1703; or
    - (b) Is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or

reasonable projections of payments, or notes meeting the requirements of subparagraph a.

- (2) "Promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

f. Equity interests.

- (1) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

- (a) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
- (b) The equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. § 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the ~~national association of securities dealers, incorporated~~ financial industry regulatory authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

- (2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the organization for economic cooperation and development, if:

- (a) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners; and
- (b) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the organization for economic cooperation and development.

- (3) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent of the assets in the trust.

- g. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the national association of insurance commissioners.

h. Investment companies.

- (1) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. ~~§ 802~~ section 80a, are permissible investments if the investment company:

- (a) Invests at least ninety percent of its assets in the types of securities that qualify as an investment under subdivision a, b, or c or invests in securities that are

determined by the commissioner to be substantively similar to the types of securities set forth in subdivision a, b, or c; or

- (b) Invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under paragraph 1 of subdivision f.
- (2) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:
- (a) An investment in an investment company qualifying under subparagraph a of paragraph 1 shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent of the assets in the trust; and
  - (b) Investments in an investment company qualifying under subparagraph b of paragraph 1 shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph 1 of subdivision f.

i. Letters of credit.

- (1) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
- (2) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which ~~such a~~ draw would be required shall be deemed to be negligence or willful misconduct.

6. A specific security provided to a ceding insurer by an assuming insurer pursuant to section 45-03-07.1-06 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

**History:** Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; [January 1, 2016](#).

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

**45-03-07.1-04.1. Credit for reinsurance - Certified reinsurers.**

1. Pursuant to subsection 5 of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of subsection 5 of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-07, 45-03-07.1-08, or 45-03-07.1-09. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings Security Required

<u>Secure - 1</u>	<u>0%</u>
<u>Secure - 2</u>	<u>0%</u>
<u>Secure - 3</u>	<u>20%</u>
<u>Secure - 4</u>	<u>50%</u>
<u>Secure - 5</u>	<u>75%</u>
<u>Vulnerable - 6</u>	<u>100%</u>

b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

c. The commissioner shall require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the national association of insurance commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (1) Line 1: Fire.
- (2) Line 2: Allied lines.
- (3) Line 3: Farmowners multiple peril.
- (4) Line 4: Homeowners multiple peril.
- (5) Line 5: Commercial multiple peril.
- (6) Line 9: Inland marine.
- (7) Line 12: Earthquake.
- (8) Line 21: Auto physical damage.

e. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

2. Certification procedure.

a. The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by this subdivision.

b. The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection 1. The commissioner shall publish a list of all certified reinsurers and their ratings.

c. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection 3.

(2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated in accordance with paragraph 8 of subdivision d. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

(3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(a) Standard & Poor's;

(b) Moody's Investors Service;

(c) Fitch Ratings;

(d) A.M. Best Company; or

(e) Any other nationally recognized statistical rating organization.

(4) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include the following:

- (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
<u>Secure - 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure - 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure - 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure - 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure - 5</u>	<u>B++, B+</u>	<u>BBB+, BBB, Baa1, Baa2, BBB+, BBB-, Baa3</u>	<u>Baa3</u>	<u>BBB-</u>
<u>Vulnerable - 6</u>	<u>B, B-, C++, C+, C, C-, D, E, F</u>	<u>BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R</u>	<u>Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C</u>	<u>BB+, BB, BB-, B+, B, B-, CCC, CC, CCC-, DD</u>

- (2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (3) For certified reinsurers domiciled in the United States, a review of the most recent applicable national association of insurance commissioners annual statement blank, either schedule F for property and casualty reinsurers, or schedule S for life and health reinsurers;
- (4) For certified reinsurers not domiciled in the United States, a review annually of form CR-F for property and casualty reinsurers, or form CR-S for life and health reinsurers, attached as exhibits to this chapter;
- (5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- (6) Regulatory actions against the certified reinsurer;
- (7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 8;
- (8) For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. Acceptable audited financial statements are those performed using:
- (a) United States generally accepted accounting principles;
- (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or

(c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial application for certification, the commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

(9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(11) Any other information deemed relevant by the commissioner.

e. Based on the analysis conducted under paragraph 5 of subdivision d of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph 1 of subdivision d if the commissioner finds that:

(1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each ceding; or

(2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.

f. The assuming insurer must submit a properly executed form CR-1, attached as an exhibit to this chapter, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under North Dakota Century Code section 44-04-18 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(1) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;

(2) Annually, form CR-F or CR-S, as applicable;

(3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 4;

(4) Annually, audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. Acceptable audited financial statements are those performed using:

(a) United States generally accepted accounting principles;

(b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or

(c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

(5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(7) Any other information that the commissioner may reasonably require.

h. Change in rating or revocation of certification.

(1) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph 1 of subdivision d.

(2) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(3) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(4) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 45-03-07.1-06 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 45-03-07.1-04, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect

the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

### 3. Qualified jurisdictions.

a. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

b. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include the following:

- (1) The framework under which the assuming insurer is regulated.
- (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
- (3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
- (4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
- (5) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.
- (6) The history of performance by assuming insurers in the domiciliary jurisdiction.
- (7) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
- (8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization.
- (9) Any other matters deemed relevant by the commissioner.

c. A list of qualified jurisdictions shall be published through the national association of insurance commissioners committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraphs 1 through 9 of subdivision b.

d. United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

4. Recognition of certification issued by a national association of insurance commissioners accredited jurisdiction.

a. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form CR-1 and the additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

c. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 1 of subdivision g of subsection 2.

d. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with paragraph 2 of subdivision g of subsection 2, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

5. Mandatory funding clause. In addition to the clauses required under section 45-03-07.1-10, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

6. The commissioner shall comply with all reporting and notification requirements that may be established by the national association of insurance commissioners with respect to certified reinsurers and qualified jurisdictions.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

**45-03-07.1-05. Credit for reinsurance required by law.**

Pursuant to subsection 6 of North Dakota Century Code section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsections 1, 2, 3, ~~and 4,~~ and 5 of North Dakota Century Code section 26.1-31.2-01, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the

applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

**History:** Effective October 1, 1995; amended effective October 1, 2002; [January 1, 2016](#).

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

**45-03-07.1-06. Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of sections 45-03-07.1-01 through 45-03-07.1-05.**

1. Pursuant to North Dakota Century Code section 26.1-31.2-02, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of North Dakota Century Code section 26.1-31.2-01 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with ~~such~~the assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in [subsection 2 of](#) North Dakota Century Code section 26.1-31.2-03. This security may be in the form of any of the following:
  - a. Cash~~;~~
  - b. Securities listed by the securities valuation office of the national association of insurance commissioners, [including those deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office](#), and qualifying as admitted assets~~;~~
  - c. Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in [subsection 1 of](#) North Dakota Century Code section 26.1-31.2-03, effective no later than December thirty-first of the year for which filing is being made, and in the possession of, or in trust for, the ceding ~~company~~insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first~~;~~ or
  - d. Any other form of security acceptable to the commissioner.
2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of section 45-03-07.1-10 and the applicable portions of sections 45-03-07.1-07, 45-03-07.1-08, ~~and~~or 45-03-07.1-09 have been satisfied.

**History:** Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; [January 1, 2016](#).

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

**45-03-07.1-07. Trust agreements qualified under section 45-03-07.1-06.**

1. As used in this section:

- a. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, ~~including~~ conservator, rehabilitator, or liquidator.
  - b. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
  - c. "Obligations", as used in subdivision k of subsection 2 means:
    - (1) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
    - (2) Reserves for reinsured losses reported and outstanding;
    - (3) Reserves for reinsured losses incurred but not reported; and
    - (4) Reserves for allocated reinsured loss expenses and unearned premiums.
2. Required conditions:
- a. The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in [subsection 2 of](#) North Dakota Century Code section 26.1-31.2-03.
  - b. The trust agreement must create a trust account into which assets must be deposited.
  - c. All assets in the trust account must be held by the trustee at the trustee's office in the United States.
  - d. The trust agreement must provide that:
    - (1) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
    - (2) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
    - (3) It is not subject to any conditions or qualifications outside of the trust agreement; and
    - (4) It shall not contain references to any other agreements or documents except as provided for ~~under subdivision~~ [in subdivisions k and l](#).
  - e. The trust agreement must be established for the sole benefit of the beneficiary.
  - f. The trust agreement must require the trustee to:
    - (1) Receive assets and hold all assets in a safe place;
    - (2) Determine that all assets are in ~~such~~[a](#) form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any ~~such~~ assets, without consent or signature from the grantor or any other person or entity;

- (3) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
  - (4) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;
  - (5) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
  - (6) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw ~~such~~the asset upon condition that the proceeds are paid into the trust account.
- g. The trust agreement must provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.
  - h. The trust agreement must be made subject to and governed by the laws of the state in which the trust is domiciled.
  - i. The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
  - j. The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which ~~such~~the draw would be required shall be deemed to be negligence or willful misconduct.
  - k. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, when it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
    - (1) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
    - (2) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

- (3) If the ceding insurer has received notification of termination of the trust account and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in [subsection 2 of North Dakota Century Code section 26.1-31.2-03](#) apart from its general assets, in trust for ~~such~~the uses and purposes specified in paragraphs 1 and 2 as may remain executory after ~~such~~the withdrawal and for any period after the termination date.
- I. Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of section 45-03-07.1-06 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, if it is customary practice to provide a trust agreement for a specific purpose, ~~such~~the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
    - (1) To pay or reimburse the ceding insurer for:
      - (a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
      - (b) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;
    - (2) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or
    - (3) If the ceding insurer has received notification of termination of the trust and the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs 1 and 2 as may remain executory after withdrawal and for any period after the termination date.
- m. ~~Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the United States beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.~~

~~n. The reinsurance agreement may, but need not, contain the provisions required by paragraph 2 of subdivision a of subsection 4, so long as these required conditions are included in the trust agreement.~~ Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the insurance code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this subdivision must be included in the reinsurance agreement.

3. Permitted conditions:

- a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
- b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any ~~such~~ interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
- c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in paragraph 2 of subdivision a of subsection 4.
- d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. ~~Such~~The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
- e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary, with written approval by the beneficiary, must be delivered over to the grantor.

4. Additional conditions applicable to reinsurance agreements:

- a. A reinsurance agreement may contain provisions that:
  - (1) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

~~(2) Stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of cash, United States legal tender, certificates of deposit issued by a United States bank and payable in United States legal tender, and investments permitted by North Dakota Century Code title 26.1 or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The reinsurance agreement may further specify the types of investments to be deposited. If a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;~~

~~(3)~~ (3) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or a signature from the assuming insurer or any other entity;

~~(4)~~(3) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

~~(5)~~(4) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of ~~such~~the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(a) To pay or reimburse the ceding insurer for:

[1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of ~~such~~the policies;

[2] The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

[3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(b) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

b. The reinsurance agreement may also contain provisions that:

(1) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

- (a) At the time of withdrawal, the assuming insurer shall replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
  - (b) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two percent of the required amount.
- (2) Provide for the return of any amount withdrawn in excess of the actual amounts required for paragraph 5 of subdivision a and interest payments, at a rate not in excess of the prime rate of interest, on ~~the~~those amounts ~~held pursuant to paragraph 5 of subdivision a.~~
- (3) Permit the award by any arbitration panel or court of competent jurisdiction of:
- (a) Interest at a rate different from that provided in paragraph 2;
  - (b) Court or arbitration costs;
  - (c) Attorney's fees; and
  - (d) Any other reasonable expenses.
- c. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department in compliance with this chapter when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but ~~such~~the reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
- d. Existing agreements. Any trust agreement or underlying reinsurance agreement in existence prior to October 1, 1995, will continue to be acceptable until January 1, 1996, at which time the agreements will have to fully comply with this chapter for the trust agreement to be acceptable.
- e. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection 1 may not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

**History:** Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

**45-03-07.1-08. Letters of credit qualified under section 45-03-07.1-06.**

1. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration date and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has

been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.

2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that ~~such~~the information is for internal identification purposes only.
3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.
5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication ~~500~~600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce, publication 500, then the letter of credit must specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article 17 of publication 500 occur.
7. ~~The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to North Dakota Century Code section 26.1-31.2-03.~~

~~8.~~ If the letter of credit is issued by a ~~qualified United States~~ financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection ~~7~~1, then the following additional requirements must be met:

- a. The issuing ~~qualified United States~~ financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
- b. The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.

~~9.8.~~ Reinsurance agreement provisions.

- a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
  - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
  - (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance

agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

- (a) To pay or reimburse the ceding insurer for:
    - [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of ~~such~~the policies;
    - [2] The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
    - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
  - (b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for ~~such~~the uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.
- (3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:
- (1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or
  - (2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

**History:** Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

#### **45-03-07.1-10. Reinsurance contract.**

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of ~~sections~~section 45-03-07.1-01, 45-03-07.1-02, 45-03-07.1-03, 45-03-07.1-04, ~~and 45-03-07.1-06~~45-03-07.1-04.1, or 45-03-07.1-05 or otherwise in compliance with North Dakota Century Code section 26.1-31.2-01 after October 1, 1995, unless the reinsurance agreement:

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to North Dakota Century Code section 26.1-06.1-31; and
2. Includes a provision pursuant to North Dakota Century Code section 26.1-31.2-01 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give ~~such~~the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of ~~such~~the court or panel; and
3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**History:** Effective October 1, 1995; amended effective October 1, 2002; January 1, 2016.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

**45-03-07.1-11. Contracts affected.**

All new and renewal reinsurance transactions entered into after October 1, 1995, must conform to the requirements of the Act and this chapter if credit is to be given to the ceding insurer for such reinsurance.

**History:** Effective October 1, 1995.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2





BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)















## CHAPTER 45-03-15

### 45-03-15-01. Accounting practices and procedures.

Every insurance company doing business in this state shall file with the commissioner, pursuant to North Dakota Century Code section 26.1-03-07, the appropriate national association of insurance commissioners annual statement blank, prepared in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2013~~2015 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance.

**History:** Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; April 1, 2014; [January 1, 2016](#).

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

### 45-03-15-02. Reporting of financial information.

Every insurance company licensed to do business in this state shall transmit to the commissioner and to the national association of insurance commissioners its most recent financial statements compiled on a quarterly basis, within forty-five days following the calendar quarters ending March thirty-first, June thirtieth, and September thirtieth. The financial statements must be prepared and filed in the form prescribed by the commissioner and in accordance with the national association of insurance commissioners instructions handbook and following the accounting procedures and practices prescribed by the March ~~2013~~2015 version of the national association of insurance commissioners accounting practices and procedures manual for property and casualty and life and health insurance. The commissioner may exempt any company or category or class of companies from the filing requirement.

**History:** Effective January 1, 1992; amended effective January 1, 2000; December 1, 2001; March 1, 2004; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; April 1, 2014; [January 1, 2016](#).

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02-03, 26.1-03-07, 26.1-03-11.1

## CHAPTER 45-04-10

### 45-04-10-02. Applicability.

1. This chapter applies to any advertisement of life insurance or an annuity product intended for dissemination in this state and which advertisement is disseminated in any manner by or on behalf of an insurance company, agency, agent, or broker.
2. ~~Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, are the responsibility of the insurer. However, this does not in any way prohibit enforcement of this chapter against individual agents, brokers, and agencies.~~ All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer, as well as the agent or agency who created, requested, or presented the advertisement. Insurers shall establish and at all times maintain a system of control over the content, form, and methods of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to agents, brokers, and others authorized by the insurer to disseminate advertisements, of the requirement and procedures for insurance company approval prior to the use of any advertisements that are not furnished by the insurer and that clearly set forth within the notice the most serious consequences of not obtaining the required prior approval.

**History:** Effective March 1, 1988; amended effective January 1, 2016.

**General Authority:** NDCC 26.1-04-08, 28-32-02

**Law Implemented:** NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

### 45-04-10-03. Disclosure requirements.

1. The information required to be disclosed by this chapter may not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
2. No advertisement may omit material information or use words, phrases, statements, references, or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements. Whether an advertisement has the capacity or tendency to mislead or deceive must be determined by the insurance commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
3. In the event an advertisement uses "Non-Medical", "No Medical Examination Required", or similar terms where issue is not guaranteed, such terms must be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.
4. An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.
5. An advertisement must prominently describe the type of policy advertised.

6. An advertisement of an insurance policy marketed by direct response techniques may not state or imply that because there is no agent or commission involved there will be a cost-savings to prospective purchasers unless such is the fact. No such cost-savings may be stated or implied without justification satisfactory to the insurance commissioner prior to use.
7. An advertisement for a policy containing graded or modified benefits must prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact must be prominently disclosed.
8. An advertisement for a policy with nonlevel premiums must prominently describe the premium changes.
9. Dividends.
  - a. An advertisement may not utilize or describe dividends in a manner which is misleading or has the capacity or tendency to mislead.
  - b. An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.
  - c. An advertisement may not state or imply that illustrated dividends under a participating policy or pure endowments, or both, will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains (1) what benefits or coverage would be provided at such time and (2) under what conditions this would occur.
10. An advertisement may not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earning on the general account assets of the company.
11. Testimonials or endorsements by third parties.
  - a. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer makes as its own all of the statements contained therein, and such statements are subject to all the provisions of these rules.
  - b. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact must be disclosed in the advertisement.
  - c. An advertisement may not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact must be disclosed in the advertisement.
12. An advertisement may not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement must be identified therein.
13. Introductory, initial, or special offers and enrollment periods.

- a. An advertisement of an individual policy or combination of such policies may not state or imply that such policy or combination of such policies is an introductory, initial, or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement may not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.
  - b. An advertisement may not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.
  - c. An advertisement may not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium must be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.
  - d. An enrollment period during which a particular insurance policy may be purchased on an individual basis may not be offered within this state unless there has been a lapse of not less than twelve months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement must specify the date by which the applicant must mail the application, which must be not less than ten days and not more than forty days from the date on which such enrollment period is advertised for the first time. This rule applies to all advertising media - i.e., mail, newspapers, radio, television, magazines, and periodicals - by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to the applicant's request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket, or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this section must be applied separately to each sponsoring organization.
14. An advertisement of a particular policy may not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends, or underwriting privileges, unless such is the fact.
  15. An advertisement may not make unfair or incomplete comparisons of policies, benefits, dividends, or rates of other insurers. An advertisement may not falsely or unfairly describe other insurers, their policies, services, or methods of marketing.
  16. For individual deferred annuity products or deposit funds, the following shall apply:
    - a. Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. Such higher interest rates may not be greater than those currently being credited by the company unless such higher rates have been publicly

declared by the company with an effective date for new issues not more than three months subsequent to the date of declaration.

- b. If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it must also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and net premiums.
- c. If any contract does not provide a cash surrender benefit prior to commencement of payment of any annuity benefits, any illustrations or statements concerning such contract must prominently state that cash surrender benefits are not provided.

**History:** Effective March 1, 1988; [amended effective January 1, 2016](#).

**General Authority:** NDCC 26.1-04-08, 28-32-02

**Law Implemented:** NDCC 26.1-04-03(1), 26.1-04-03(2), 26.1-04-07

## CHAPTER 45-12-02

### 45-12-02-01. Inspection reports to be submitted.

1. **Power boilers.** Each authorized inspection agency or owner/user inspection organization, to which a special inspector commission has been issued, shall submit to the chief boiler inspector complete data of each high pressure boiler insured or inspected by it or covered by a written inspection agreement ~~in North Dakota on form SFN 10706. Each certificate inspection must be reported to the chief boiler inspector within fifteen days after inspection on form SFN 10706.~~ A complete report of each boiler inspection must be filed electronically with the chief boiler inspector on form SFN 10706 within fifteen days of inspection.
2. **Low pressure, hot water heating, and hot water supply boilers.** Within one year from effective date of this article, each authorized inspection agency or owner/user inspection organization shall submit to the chief boiler inspector complete data of each boiler insured or inspected by it or covered by a written inspection agreement ~~in North Dakota on form SFN 10706. All required inspections must be reported on form SFN 10706.~~ A complete report of each boiler inspection must be filed electronically with the chief boiler inspector on form SFN 10706 within fifteen days of inspection.

**History:** Effective June 1, 1994; amended effective January 1, 2006; April 1, 2010; January 1, 2016.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

### 45-12-02-04. Owner/user inspection organizations making own inspections.

The chief inspector will not be required to inspect boilers in any establishment owned and operated by an owner/user inspection organization provided an annual boiler inspection program is established and maintained by such organization and all boilers and appurtenances are constructed, installed, operated, and repaired in accordance with the provisions of this article. When boilers are inspected by an employee of an owner/user inspection organization, such inspector must hold a certificate of competency or a commission issued by North Dakota or a state that has adopted the American Society of Mechanical Engineers Code. A complete report of each boiler inspection must be filed electronically with the chief inspector on form SFN 10706 within fifteen days of inspection.

**History:** Effective June 1, 1994; amended effective January 1, 2006; January 1, 2016.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

### 45-12-02-08. Validity of inspection certificate for boilers.

A certificate of inspection, issued in accordance with this article, is valid until expiration unless some defect or condition affecting the safety of the boiler is disclosed and if all inspection fees have been paid. A certificate of inspection is valid for the following time periods:

1. Thirty-six months for power boilers over one hundred thousand pounds [45359.24 kilograms] of steam per hour as allowed by North Dakota Century Code section 26.1-22.1-07.
2. Twelve months for steam traction engines.
3. Twelve months for all other power boilers.
4. Thirty-six months for hot water heating and hot water supply boilers ~~located in apartments and condominiums.~~
5. Twenty-four months for ~~all other hot water heating, hot water supply, and~~ low pressure steam boilers.

A certificate issued for a boiler inspected by a special inspector is valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company, covered by a written inspection agreement with an authorized inspection agency, or inspected by an accredited owner/user inspection organization. A two-month grace period must be extended for any certificate.

**History:** Effective June 1, 1994; amended effective January 1, 2000; January 1, 2006; [January 1, 2016](#).

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-03

### 45-12-03-26. Inspection of boilers.

1. Each boiler used or proposed to be used within this state, except boilers exempt in North Dakota Century Code section 26.1-22.1-06, must be thoroughly inspected as to their construction, installation, condition, and operation as follows:
  - a. Power boilers must be inspected annually both internally while not under pressure and externally while under pressure. However, any power boiler or steam generator, the operation of which is an integral part of or a necessary adjunct to other continuous processing operations, must be inspected internally at such intervals as are permitted by the shutting down of the processing operation. The chief boiler inspector may provide for extension of time between internal inspections, but an external inspection must be made, and report submitted, for purposes of issuing a certificate. In all other instances the certificate inspection must be an internal inspection when construction permits.
  - b. Power boilers of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, which comply with subsection 2 of North Dakota Century Code section 26.1-22.1-07, must be inspected at least once every thirty-six months internally while not under pressure and at least once every twelve months externally while under pressure.
  - c. Steam traction engines must be inspected at least once every twelve months. Inspections must alternate between internal inspections, external inspections, and hydrostatic tests.
  - d. Low pressure steam boilers must be inspected annually. Low pressure steam boilers of steel construction must be inspected alternately internally and externally. The issuance of a certificate must normally be based on the internal inspection.
  - e. Hot water heating and hot water supply boilers must be inspected ~~biennially~~triennially unless they are located in a nursing home, school, hospital, nursery school, or kindergarten, in which case they must be inspected annually. ~~Hot water heating and hot water supply boilers located in apartments and condominiums must be inspected triennially.~~ Internal inspections will be required when deemed necessary by the inspector.
  - f. A grace period of two months beyond the period specified in the above subdivisions may elapse between inspections.
2. Certificate inspections must be made during the period of thirty days prior to and thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be made between certificate inspections. The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.
3. The inspections required under this section must be made by the chief boiler inspector, or by a deputy inspector, or by a special inspector provided for in this article.
4. If at any time a hydrostatic test is deemed necessary by the inspector, it must be made by the owner or user in the presence of, and under the supervision of the inspector, and must be approved by the inspector.
5. Cast iron boilers must be considered as boilers that do not lend themselves to internal inspections. Internal inspections of electric boilers must be made when deemed necessary by the inspector.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; January 1, 2006; April 1, 2010; [January 1, 2016](#).

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-05

### 45-12-05-20. Water columns, gauge glasses, and gauge cocks.

1. Outlet connections (except for damper regulator, feedwater regulator, low water fuel cutoff, drains, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom) may not be placed on the piping that connects the water column to the boiler. The water column must be placed on the piping that connects the water column to the boiler. The water column must be provided with a valved drain of at least three-fourths-inch [19.05-millimeter] pipe size, the drain to be piped to a safe location.
2. Each boiler [constructed prior to 1999](#) must have three or more gauge cocks located within the visible length of the water glass, except when the boiler has two water glasses located on the same horizontal lines. Boilers not over thirty-six inches [.914 meters] in diameter, in which the heating surface does not exceed one hundred square feet [9.29 square meters] need have but two gauge cocks.
3. For all installations where the water gauge glass or glasses are more than thirty feet [9.14 meters] from the boiler operating floor, it is recommended that water level indicating or recording gauges be installed at eye height from the operating floor.

**History:** Effective June 1, 1994; [amended effective January 1, 2016](#).

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-09

### 45-12-09-15. Provisions for thermal expansion in hot water systems.

1. All hot water heating systems incorporating hot water tanks or fluid relief columns must be so installed as to prevent freezing under normal operating conditions.
2. Systems with open expansion tank. If the system is equipped with an open expansion tank, an indoor overflow from the upper portion of the expansion tank must be provided in addition to an open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture or to the basement.
3. Closed-type systems. If the system is of the closed type, an airtight tank or other suitable air cushion must be installed that will be consistent with the volume and capacity of the system, and must be suitably designed for a hydrostatic test pressure of two and one-half times the allowable working pressure of the system. Expansion tanks for systems designed to operate above thirty pounds per square inch [206.85 kilopascals] must be constructed in accordance with the American Society of Mechanical Engineers Code, section VIII, division 1. Except for prepressurized tanks, provisions must be made for draining the tank without emptying the system. Provisions must also be made for changing of all tanks without emptying the system.
4. Expansion tank capacities for gravity hot water systems. Based on two-pipe system with average operating water temperature one hundred seventy degrees Fahrenheit [76.7 degrees Celsius], using cast iron column radiation with heat emission rate one hundred fifty British thermal units per hour per square foot [158.25 x 10 to the 3rd power joules per .0929 square meter] equivalent direct radiation.

	Square Feet of Installed Equivalent Direct Radiation		Tank Capacity, Gallons
Up	to	350	18
Up	to	450	21
Up	to	650	24
Up	to	900	30
Up	to	1,100	35
Up	to	1,400	40
Up	to	1,600	2-30
Up	to	1,800	2-30
Up	to	2,000	2-35
Up	to	2,400	2-40

5. Expansion tank capacities for forced hot water systems. Based on average operating water temperature one hundred ninety-five degrees Fahrenheit [90 degrees Celsius], a fill pressure twelve pounds per square inch gauge [82.74 kilopascals] and a maximum operating pressure thirty pounds per square inch gauge [206.84 kilopascals].

System Volume, Gallons	Nonpressurized Tank Capacity Gallons	Prepressurized Tank Capacity Gallons
100	15	9
200	30	17
300	45	25
400	60	33
500	75	42
1,000	150	83
2,000	300	165

Note: System volume includes volume of water in boiler, radiation, and piping, not including the expansion tank.

6. Expansion tanks for hot water supply systems must be constructed in accordance with the American society of mechanical engineers code, section VIII, division 1 if over five gallons in size of water and air.

**History:** Effective June 1, 1994; amended effective January 1, 2016.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

## CHAPTER 45-12-10 UNFIRED PRESSURE VESSELS

### Section

45-12-10-01	Construction and Installation Standards - Exceptions
45-12-10-02	Application of Standards - Repairs
45-12-10-03	Allowance for State Specials
<u>45-12-10-04</u>	<u>Change of Service From Anhydrous Ammonia to Propane</u>

### **45-12-10-01. Construction and installation standards - Exceptions.**

Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, ~~2013 edition~~, and bear the "~~U~~" ~~stamp~~ American society of mechanical engineers stamping as proof of such construction.

Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.

The requirements of this section apply to all pressure vessels within the scope of the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, ~~2013 edition~~, with these exceptions:

1. Pressure vessels under federal control.
2. Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.
3. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.
4. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines. Unfired pressure vessels referenced by this section must be protected with the American society of mechanical engineers stamped pressure relief devices as defined in section VIII of the American society of mechanical engineers boiler and pressure vessel code, ~~2013 edition~~. Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; April 1, 2010; July 1, 2012; January 1, 2014; January 1, 2016.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

### **45-12-10-04. Change of service from anhydrous ammonia to propane.**

Unfired pressure vessels that have been previously used in anhydrous ammonia service may be converted to liquid petroleum service only with all of the following conditions being met:

1. The pressure vessel is American society of mechanical engineers code constructed and national board registered.
2. The pressure vessel has a manhole opening for access or a manhole opening is provided as an alteration.

3. The pressure vessel is in satisfactory condition internally and externally using the national board inspection code to determine acceptable condition.
4. The pressure vessel has passed a wet fluorescent magnetic particle test made by an individual possessing a valid American society for nondestructive testing level II or III certificate issued in accordance with the requirements of the American society for nondestructive testing, incorporated.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**ARTICLE 45-17**  
**BAIL BONDSMEN**

Chapter  
45-17-01            Duty of Bail Bondsmen

**CHAPTER 45-17-01**  
**DUTY OF BAIL BONDSMEN**

Section  
45-17-01-01       Definitions  
45-17-01-02       Duty to Monitor Status of Bail Bonds Written

**45-17-01-01. Definitions.**

Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meaning as given them under North Dakota Century Code chapter 26.1-26.6.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 26.1-26.6-10

**Law Implemented:** NDCC 26.1-26.6-01

**45-17-01-02. Duty to monitor status of bail bonds written.**

In order to comply with subsection 2 of North Dakota Century Code section 26.1-26.6-05 a bail bond agent shall check the status of all issued bail bonds at least once every seven days.

**History:** Effective January 1, 2016.

**General Authority:** NDCC 26.1-26.6-10

**Law Implemented:** NDCC 26.1-26.6-05

**TITLE 61.5**  
**NORTH DAKOTA BOARD OF PHYSICAL THERAPY**



## JANUARY 2016

### CHAPTER 61.5-01-01

#### 61.5-01-01-01. Organization of the North Dakota board of physical therapy.

1. **History.** The state examining committee for physical therapists was created in 1959 to assist the state board of medical examiners in the examination and registration of physical therapists in North Dakota. While it operated as a separate committee, it was by law an advisory committee to the state board of medical examiners. The forty-sixth legislative assembly in 1979 revamped most of North Dakota Century Code chapter 43-26 on physical therapists, and in the process made the committee a separate entity with complete jurisdiction over the examination and registration of physical therapists. In 1989, the legislative assembly allowed physical therapists to practice without a physician referral and in 2005 the fifty-ninth legislative assembly completely revised the physical therapy practice act and renamed the committee the North Dakota board of physical therapy.
2. **Meetings.** Any board member who fails to attend two consecutive annual meetings shall have been deemed to have resigned unless the member has reasons satisfactory to the board for being unable to attend.
3. **Compensation.** Board members shall receive expenses from board funds for each day or a portion thereof spent in board work as provided for other state officers in North Dakota Century Code chapter 44-08.
4. **Executive officer.** The board shall designate an executive officer and shall compensate any person it hires to administer the board's duties.

~~The executive officer is:~~

~~Ms. Lynn G. Kubousek  
P.O. Box 69  
Grafton, ND 58237  
(701) 352-0125~~

Contact information is available on the North Dakota board of physical therapy website at [www.ndbpt.org](http://www.ndbpt.org).

**History:** Effective December 1, 1980; amended effective August 1, 1983; April 1, 1988; April 1, 1992; February 1, 1993; July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC 28-32-02.1

**Law Implemented:** NDCC 28-32-02.1, 43-26.1-02, 43-26.1-03

## CHAPTER 61.5-01-02

### 61.5-01-02-01. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training" is a nationally accredited program approved by the board.
2. "Board" means the North Dakota board of physical therapy.
3. "Consultation by means of telecommunications" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer of data or exchange of educational or related information by means of audio, video, or data communications. The physical therapist may use telehealth technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject to applicable confidentiality requirements.
4. "Continuing competence" means the lifelong process of maintaining and documenting competence through ongoing self-assessment, development and implementation of a personal learning plan, and subsequent reassessment.
5. "Direct supervision" means the physical therapist is physically present on the premises and immediately available for direction and supervision. The physical therapist will have direct contact with the patient during each visit. Telecommunications does not meet the requirement for direct supervision.
- ~~5-6.~~ "Examination" means a national examination approved by the board for the licensure of a physical therapist or a physical therapist assistant.
- ~~6-7.~~ "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.
- ~~7-8.~~ "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which supportive personnel are involved in components of care.
- ~~8-9.~~ "Physical therapist" means a person licensed under North Dakota Century Code chapter 43-26.1 to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" for purposes of these rules.
- ~~9-10.~~ "Physical therapist assistant" means a person licensed under North Dakota Century Code chapter 43-26.1 who assists a physical therapist in selected components of physical therapy intervention. The physical therapist assistant must be a graduate of a physical therapist assistant program approved by the board.
- ~~10-11.~~ "Physical therapy" means the care and services by or under the direction of a physical therapist.
- ~~11-12.~~ "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
- ~~12-13.~~ "Practice of physical therapy" means:

- a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health-related and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.
- b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing, and modifying therapeutic interventions that may include therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.
- c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
- d. Engaging as a physical therapist in administration, consultation, education, and research.

~~43.14.~~ "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.

~~44.15.~~ "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the board.

~~45.16.~~ "Supportive personnel" are persons other than licensed physical therapists who function in a physical therapy setting and assist with physical therapy care.

17. "Telehealth" is the use of electronic communications to provide and deliver a host of health-related information and healthcare services, including, but not limited to physical therapy related information and services, over large and small distance. Telehealth encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions.

~~46.18.~~ "Testing" means standard methods and techniques used to gather data about the patient.

**History:** Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-01, 43-26.1-04

## CHAPTER 61.5-02-01

### 61.5-02-01-01. Frequency of examinations.

Computer-based examinations are available by appointment at designated sites in North Dakota. Other testing sites are available in the United States, United States territories, and Canada.

**History:** Effective December 1, 1980; amended effective July 1, 2004; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03, 43-26.1-05

### 61.5-02-01-03. Repeating examinations

An applicant who fails an examination may repeat the examination, but must pay another examination fee each time the examination is repeated. After the second failed attempt, an applicant must ~~reapply for licensure, complete a remediation plan approved by the board, and wait at least sixty days before repeating the examination.~~ An applicant ~~may not write the examination more than three times within a calendar year~~ is limited to three examination attempts within any twelve month period.

**History:** Effective December 1, 1980; amended effective April 1, 1992; July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03, 43-26.1-05

### 61.5-02-01-04. Eligibility to take examination.

An applicant must have graduated from an approved program or demonstrate good standing in the final semester of an approved program prior to writing the examination. The earliest date the examination for licensure may be taken by the applicant is the examination nearest to and before the applicant's expected graduation date.

**History:** Effective April 1, 1992; amended effective July 1, 2004; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03, 43-26.1-05

## CHAPTER 61.5-02-02

### 61.5-02-02-01. General licensure requirements for graduates of approved curricula.

The following requirements apply to all applicants for licensure who are graduates of physical therapy or physical therapist assistant curricula approved by the board:

1. United States-educated applicants:
  - a. A completed application form.
  - b. Payment of the fees set by the board.
  - c. An official transcript giving evidence of graduation from a curricula approved by the board.
  - d. Passing scores on the national examination [approved by the board](#).
  - e. Completion of the juris prudence examination.
  - f. Completion of other educational requirements as set by the board.
  - g. At the board's discretion, an interview with the board or its designees.
2. Foreign-educated applicants:
  - a. A completed application form.
  - b. Payment of the appropriate fees set by the board.
  - c. Verification of documents by an agency recognized by the board.
  - d. Satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in a physical therapy education program approved by the board. Substantially equivalent means an applicant for licensure educated outside of the United States shall have:
    - (1) Graduated from a physical therapist education program that prepares the applicant to engage without restrictions in the practice of physical therapy.
    - (2) Proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
    - (3) Pass the board-approved English proficiency examination if the applicant's native language is not English.
    - (4) [For initial licensure, satisfactory completion of the federation of state boards of physical therapy coursework tool in effect in 2015, and for licensure by endorsement, satisfactory completion of the federation of state boards of physical therapy 2015 coursework tool, or a prior version in effect at the time of graduation from the physical therapy education program.](#)
  - e. Passing scores on the national examination [approved by the board](#).
  - f. Completion of juris prudence examination.
  - g. At the board's discretion, an interview with the board or its designees.

- h. CompletionAt the board's discretion, successful completion of a supervised clinical practice, including one thousand hours of a ~~six-month~~preceptorship under the ~~direct~~onsite supervision of a physical therapist licensed and actively practicing in North Dakota.

**History:** Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03, 43-26.1-04

#### **61.5-02-02-02. Types of licensure.**

1. For licensure by examination, all general licensure requirements must be met.
2. For licensure by endorsement from another United States jurisdiction:
  - a. All general licensure requirements must be met.
  - b. Verification of licensure in good standing from all jurisdictions in which the applicant has been licensed.
  - c. Copy of scores on the examination transmitted by a score transfer service approved by the board.
  - d. At the board's discretion, an interview with the board or its designees.
  - e. If the applicant has not practiced physical therapy for three or more years, the applicant shall demonstrate to the board's satisfaction competence to practice physical therapy by one or more of the following as determined by the board:
    - (1) Practice for a specified time under a restricted license.
    - (2) Complete prescribed remedial courses.
    - (3) Complete continuing education or similar requirements for the period of the expired license.
    - (4) Pass an examination approved by the board.
  - f. If the applicant is foreign trained, satisfactory completion of the 2015 federation of state boards of physical therapy coursework tool, or a prior version in effect at the time of graduation from the physical therapy education program.

**History:** Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-04, 43-26.1-05

#### **61.5-02-02-05. Renewal of licensure.**

1. Licenses not renewed annually by January thirty-first will expire.
2. If a licensee fails to receive the renewal notice, it is the licensee's responsibility to contact the board before the January thirty-first deadline.
3. A licensee who fails to renew the license on or before the expiration date shall not practice as a physical therapist or physical therapist assistant in this state, and may be subject to a late renewal fee.
4. Complete other educational requirements as prescribed by the board.

5. Each licensee is responsible for reporting to the board a name change and changes in business, [email](#), and home addresses within thirty days of the change.
6. All licensed physical therapists may be required to file with the board a notarized statement indicating they have read these administrative rules.

**History:** Effective December 1, 1980; amended effective April 1, 1992; December 1, 1994; July 1, 2004; April 1, 2006; [January 1, 2016](#).

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-08, 43-26.1-09

#### **61.5-02-02-05.1. Reinstatement of licenses.**

1. The board may reinstate an expired license upon payment of a renewal fee and reinstatement fee.
2. If a license has expired for more than one year, the licensee is not eligible for renewal, but must submit application for licensure.
3. Licensees whose licenses have lapsed and who have been unlicensed for more than one year but less than three years from the last renewal must reapply for licensure and provide evidence that the cumulative continuing education requirements have been met for the unlicensed period.
4. Licensees whose licenses have lapsed for more than three consecutive years must reapply for licensure and shall demonstrate to the board's satisfaction competence to practice physical therapy, by one or more of the following as determined by the board:
  - a. Practice for a specified time under a restricted license.
  - b. Complete prescribed remedial courses.
  - c. Complete continuing education or similar requirements for the period of the expired license.
  - d. Pass an examination [approved by the board](#).

**History:** Effective April 1, 2006; [amended effective January 1, 2016](#).

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-09

#### **61.5-02-02-06. Exceptions to licensure.**

1. The following persons are exempt from North Dakota physical therapy licensure requirements when engaged in the following activities:
  - a. A person in a professional education program approved by the board who is pursuing a course of study leading to a degree as a physical therapist and who is satisfying supervised clinical education requirements related to the person's physical therapy education while under onsite supervision of a licensed physical therapist.
  - b. A physical therapist who is practicing in the United States armed services, United States public health service, or veterans administration pursuant to federal regulation for state licensure of health care providers.
  - c. A physical therapist who is licensed in another United States jurisdiction or a foreign-educated physical therapist credentialed in another country if that person is

performing physical therapy in connection with teaching or participating in an educational seminar of no more than sixty days in a calendar year.

d. A physical therapist who is licensed in another United States jurisdiction if that person is providing consultation by means of telecommunication to a physical therapist licensed in North Dakota.

2. If aides ~~or students~~ provide physical therapy services other than under direct supervision of a licensed physical therapist, or if students provide physical therapy services other than under onsite supervision of a licensed physical therapist, they are in violation of North Dakota Century Code chapter 43-26.1.

~~3. Upon application to the board, a physical therapist currently licensed in good standing in another state or jurisdiction, and who is not subject to any pending disciplinary proceeding, may practice physical therapy in North Dakota without obtaining licensure from the board provided the practice is limited to no more than thirty full or partial days per year. The one-year period starts on the date the board approves the written application. Prior to this limited practice, the physical therapist must apply to the board, using forms provided by the board, and pay a twenty-five dollar application fee. The application must include:~~

~~a. Verified documentation from the appropriate registration authority identifying the requirements for registration in that jurisdiction, confirming that the physical therapist is registered and in good standing in that jurisdiction, and confirming that the physical therapist is not subject to any pending disciplinary proceedings.~~

~~b. The dates, locations, purpose, employer, and scope of limited practice the physical therapist intends to perform in North Dakota.~~

~~c. Other information required by the board.~~

**History:** Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC ~~43-26.1-03(5)~~43-51

**Law Implemented:** NDCC 43-26.1-07

#### **61.5-02-02-07. Grounds for disciplinary actions.**

The board may refuse to license any physical therapist or physical therapist assistant, may discipline, or may suspend or revoke the license of any physical therapist or physical therapist assistant for any of the following grounds:

1. Violating any provision of this chapter, board rules, or a written order of the board.
2. Practicing or offering to practice beyond the scope of the practice of physical therapy.
3. Failing to refer a patient or client to an appropriate practitioner if the diagnostic process reveals findings that are outside the scope of athe physical therapist's knowledge, experience, or expertise.
4. Obtaining or attempting to obtain a license by fraud or misrepresentation.
5. Engaging in the performance of substandard physical therapy care due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established.
6. Engaging in the performance of substandard care by a physical therapist assistant, including exceeding the authority to perform components of intervention selected by the supervising physical therapist regardless of whether actual injury to the patient is established.

7. Failing to supervise physical therapist assistants or physical therapy aides in accordance with this chapter and board rules.
8. A determination by the board that a licensee's conviction of an offense has a direct bearing on the licensee's ability to serve the public as a physical therapist or physical therapist assistant or that, following conviction of any offense, the holder is not sufficiently rehabilitated as provided under North Dakota Century Code section 12.1-33-02.1.
9. Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other habit-forming drugs, chemicals, alcohol, or by other causes.
10. Having had a license revoked or suspended, other disciplinary action taken, or an application for licensure refused, revoked, or suspended by the proper authorities of another state, territory, or country.
11. Engaging in sexual misconduct. For the purpose of this subsection, sexual misconduct includes:
  - a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant-patient relationship exists, except with a spouse.
  - b. Making sexual advances, requesting sexual favors, or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.
  - c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
12. Failing to adhere to the standards of ethics of the physical therapy profession adopted by rule by the board.
13. Charging unreasonable or fraudulent fees for services performed or not performed.
14. Making misleading, deceptive, untrue, or fraudulent representations in violation of this chapter or in the practice of the profession.
15. Having been adjudged mentally incompetent by a court.
16. Aiding and abetting a person who is not licensed in this state in the performance of activities requiring a license.
17. Failing to report to the board, when there is direct knowledge, any unprofessional, incompetent, or illegal acts that appear to be in violation of this chapter or any rules established by the board.
18. Interfering with an investigation or disciplinary proceeding by failure to cooperate, by willful misrepresentation of facts, or by the use of threats or harassment against any patient or witness to prevent that patient or witness from providing evidence in a disciplinary proceeding or any legal action.
19. Failing to maintain adequate patient records. For the purposes of this subsection, "adequate patient records" means legible records that contain at a minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record, and a discharge plan.

20. Failing to maintain patient confidentiality without the written authorization of the patient or unless otherwise permitted by law. All records used or resulting from a consultation under North Dakota Century Code section 43-51-03 are part of a patient's records and are subject to applicable confidentiality requirements.
21. Promoting any unnecessary device, treatment intervention, or service resulting in the financial gain of the practitioner or of a third party.
22. Providing treatment intervention unwarranted by the condition of the patient or continuing treatment beyond the point of reasonable benefit.
23. Participating in underutilization or overutilization of physical therapy services for personal or institutional financial gain.

**History:** Effective December 1, 1980; amended effective July 1, 2004; April 1, 2006; [January 1, 2016](#).

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-13

**ARTICLE 61.5-03**  
**CONTINUING ~~EDUCATION~~COMPETENCE**

Chapter	
61.5-03-01	Continuing <del>Education</del> Competence Requirement
61.5-03-02	<del>Courses and Credit</del> Continuing Competence Activities and Unit Standards
61.5-03-03	Verification of Compliance
61.5-03-04	Competence

**CHAPTER 61.5-03-01**  
**CONTINUING ~~EDUCATION~~COMPETENCE REQUIREMENT**

Section	
61.5-03-01-01	Continuing <del>Education</del> Competence Requirement
61.5-03-01-02	<del>Hours, Units</del> Effective Date, and Requirements

**61.5-03-01-01. Continuing ~~education~~competence requirement.**

The board shall establish, and revise as it deems necessary, rules and regulations to require ~~some form or system~~completion of continuing ~~education~~competence activities as a requirement for licensure or relicensure as a physical therapist or a physical therapist assistant.

**History:** Effective December 1, 1980; amended effective April 1, 1992; April 1, 2006; January 1, 2016.  
**General Authority:** NDCC 43-26.1-03(5)  
**Law Implemented:** NDCC 43-26.1-03(7)

**61.5-03-01-02. ~~Hours~~Units, effective date, and requirements.**

~~Effective January 31, 1992, all~~All physical therapists and physical therapist assistants must obtain twenty-five ~~contact hours~~units of continuing ~~education~~competence every two years to be eligible for licensure or relicensure. ~~One contact hour equals sixty minutes of instruction. Unit values are determined by the board based on the complexity and educational value of the activity.~~ There ~~may~~shall be no carryover of ~~credit hours~~continuing competence units to the next reporting period. The ~~committee~~board shall determine reporting groups, methods, and deadlines.

**History:** Effective April 1, 1992; amended effective April 1, 2006; January 1, 2016.  
**General Authority:** NDCC 43-26.1-03(5)  
**Law Implemented:** NDCC 43-26.1-03(7)

**CHAPTER 61.5-03-02**  
**~~COURSES AND CREDIT~~ CONTINUING COMPETENCE ACTIVITIES AND UNIT**  
**STANDARDS**

Section

61.5-03-02-01 ~~Course~~**Activity** Content

61.5-03-02-02 ~~Credit~~**Unit** Standards

**61.5-03-02-01. ~~Course~~**Activity** content.**

Twenty-five ~~contact hours~~**units** are required every two years. At least fifteen of the required ~~hours~~**must**~~units shall~~ be clinically related, ~~five of which may be cardiopulmonary resuscitation and certified activities~~. Nonclinical ~~courses must~~**and approved activities shall** relate to a therapist's job responsibilities. ~~All Certified activities have completed a certification process to determine if the activity meets a minimal threshold of required criteria. Certified activities include all continuing education courses~~**competence activities** related to physical therapy sponsored by the American physical therapy association, state physical therapy associations, medical institutions, ~~or educational institutions, or certified by the federation of state boards of physical therapy and~~ are automatically ~~approved~~**certified activities**. Any continuing ~~education courses~~**competence activities** planned, sponsored, or cosponsored by ~~the arthritis foundation, the American heart association, or other similar~~ national or state health organizations, which meet the credit standards of section 61.5-03-02-02, are automatically approved ~~as certified activities~~. Any postsecondary coursework taken at an accredited educational institution will be automatically approved ~~as certified activities~~, provided the coursework meets the credit standards. ~~Approved activities do not go through a formal certification process because these activities would be difficult to certify. Approved activities are assigned a set value as a group versus each individual activity being assigned a value.~~

**History:** Effective April 1, 1992; ~~amended effective January 1, 2016.~~

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03(7)

**61.5-03-02-02. ~~Credit~~**Unit** standards.**

The following ~~credit~~**unit** standards apply to any continuing ~~education course~~**competence activity** that is intended to meet the continuing ~~education~~**competence** requirements for physical therapists or physical therapist assistants:

1. The educational activities ~~must~~**shall** have significant intellectual or practical content dealing primarily with matters directly related to the practice of physical therapy or to the professional responsibility or ethical obligations of the participants.
2. Each person making a presentation at a continuing ~~education course~~**must**~~competence activity~~**shall** be qualified by practical or academic experience to teach the subject the person covers.
3. Participants shall attend educational activities in a classroom or other setting suitable for the activity. Video, motion picture, or sound presentations may be used.
4. Credit may not be given for entertainment or recreational activities or programs, employment orientation sessions, holding an office or serving as an organizational delegate, meeting for the purpose of making policy, or noneducational association meetings.
5. Credit may not be given for meals, keynote speeches, introductory or preliminary sessions, postsession activities, and similar events associated with continuing ~~education~~**competence** programs.

6. A person teaching an approved continuing ~~education course must~~competence activity shall be awarded additional credit for preparation time not to exceed a ratio of five to one between preparation time and presentation time respectively. ~~Presentation time counts as contact hours for continuing education purposes.~~ This credit may be taken for only one course annually.

~~7. Coursework may be acquired through self-study, provided that the coursework is accompanied by appropriate written materials.~~

**History:** Effective April 1, 1992; amended effective July 1, 2004; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03(7)

## CHAPTER 61.5-03-03

### 61.5-03-03-01. Verification of compliance.

1. At the January license renewal deadline immediately following their two-year continuing ~~education~~competence cycle, registrants shall provide ~~a signed and notarized statement provided by the board listing~~attestation to completing the continuing ~~education~~competence activities taken and indicating compliance with the required twenty-five ~~hours~~units of continuing ~~education~~competence. The board, in its discretion, may require additional evidence necessary from a licensee to verify compliance.
2. The board shall periodically select a sample of ~~the licensed physical therapists and may request~~ten percent of licensees each year for evidence of ~~the~~ continuing ~~education~~competence to which they have attested. Documentation may come directly from the licensee or from state or national organizations that maintain those types of records.
3. A person who claims extenuating circumstances in not being able to meet the continuing ~~education~~competence requirements shall petition the board for consideration of those special conditions.
4. ~~As of January 31, 1992, licensees~~Licensees applying for licensure in North Dakota for the first time from other states or countries who do not have twenty-five ~~hours~~units of continuing ~~education~~creditscompetence within the last two years will be required to complete thirteen ~~hours~~units of continuing ~~education~~competence within a year of their initial licensure in North Dakota, and will thereafter be on the two-year continuing ~~education~~competence cycle provided in these rules.

**History:** Effective April 1, 1992; amended effective July 1, 2004; April 1, 2006; January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03(7)

## CHAPTER 61.5-03-04

### 61.5-03-04-01. Evidence of competence.

1. Qualification for manual therapy as defined in subsection 3 of North Dakota Century Code section 43-26.1-01 and subsection 6 of North Dakota Administrative Code section 61.5-01-02-01, other than high velocity, low amplitude thrust manual therapy, include:
  - a. Graduate of a United States accredited, entry-level physical ~~therapy~~therapist program.
  - b. Foreign-educated licensees would have to show evidence of entry-level training in manual therapy techniques as part of their curriculum.
  - c. Physical therapist assistants may perform soft tissue mobilization when the physical therapist has determined that the physical therapist assistant has the necessary degree of education, training, and skill for safe patient care.
2. Qualification for high velocity, low amplitude thrust manual therapy must include one or more of the following:
  - a. Graduate from entry-level, commission on accreditation of physical therapy education accredited doctor of physical therapy ~~program from the university of North Dakota or university of Mary~~programs within the state of North Dakota.
  - b. Graduates from other physical therapy programs would have to submit evidence showing that high velocity, low amplitude thrust techniques were included in their entry-level educational program.
  - c. Hold the orthopedic clinical specialist (OCS) or sports clinical specialist (SCS) certification from the American physical therapy association with documentation that high velocity, low amplitude thrust techniques were included in the study program.
  - d. Complete a formal, credentialed manual therapy fellowship or other certification.
  - e. Successful completion of post entry-level education in high velocity, low amplitude thrust techniques.
3. In addition to the above criteria, licensees are also bound by the regulations listed in North Dakota Century Code section 43-26.1-13 regarding practicing beyond their scope of practice or performing substandard physical therapy care as being grounds for disciplinary actions and North Dakota Century Code section 43-26.1-11 concerning patient care management. Physical therapists are mandated by North Dakota Administrative Code section 61.5-03-01-02 to obtain twenty-five ~~contact hours~~units of continuing ~~education~~competence every two years.

**History:** Effective April 1, 2006; amended effective January 1, 2016.

**General Authority:** NDCC 43-26.1-03(5)

**Law Implemented:** NDCC 43-26.1-03(7), 43-26.1-14(1)



**TITLE 67**  
**PUBLIC INSTRUCTION, SUPERINTENDENT OF**



**JANUARY 2016**

**ARTICLE 67-09**  
**APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN**  
**~~FORTY~~ONE HUNDRED FIFTY THOUSAND DOLLARS**

Chapter  
67-09-01 Approval for School Construction Estimated to Cost More Than ~~Forty~~One Hundred  
Fifty Thousand Dollars

**CHAPTER 67-09-01**  
**APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN**  
**~~FORTY~~ONE HUNDRED FIFTY THOUSAND DOLLARS**

Section  
67-09-01-01 Definitions  
67-09-01-02 Construction Must Be Approved by the Superintendent of Public Instruction -  
Exception  
67-09-01-02.1 General Requirements for Approval  
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Hundred Fifty Thousand Dollars or More  
67-09-01-06 Submission of Application  
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67-09-01-08 Application Acted on Within ~~Sixty~~Forty-five Days  
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67-09-01-10 Approval Effective for Three Years - Change in Approved Plan  
67-09-01-11 Submission of Architectural Plans [~~Repealed~~]

**67-09-01-01. Definitions.**

For purposes of this article:

1. "Application" means the appropriate construction approval application provided by the department, including all required supporting documentation.
2. "Board" means the North Dakota state board of public school education.

3. "Construction" means construction, purchase, repair, improvement, renovation, or modernization of any school building or facility which is estimated by the school board to cost more than ~~forty~~one hundred fifty thousand dollars.
4. "Consult" means to meet with, discuss data and plans, and seek advice and counsel.
5. "Department" means the North Dakota department of public instruction.
6. "District" means a North Dakota public school district.
7. "Emergency construction" means any new construction or remodeling construction that is requested because of damage or destruction of buildings or facilities as a result of fire, tornado, flood, or other act of God.
8. "Facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the district.
9. "Facility plan" means the school district's facility plan required for new construction, or remodeling construction estimated to cost ~~two~~three hundred fifty thousand dollars or more, completed on forms provided or sanctioned by the department.
10. "New construction" means any construction that provides additional area to the current buildings or facilities and is estimated to cost more than ~~forty~~one hundred fifty thousand dollars.
11. "Project" means the building, facility, or improvement that would result from the construction.
12. "Remodeling construction" means any construction that improves current buildings or facilities and is estimated to cost more than ~~forty~~one hundred fifty thousand dollars.
13. "Superintendent" means the North Dakota superintendent of public instruction.
14. "Technical assistance" means counsel, advice, and involvement in the completion of the application and facility plan.

**History:** Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010; January 1, 2016.

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-06-09, 15.1-36-01

**67-09-01-02. Construction must be approved by the superintendent of public instruction - Exception.**

A district may not undertake construction of any school building or facility estimated to cost more than ~~forty~~one hundred fifty thousand dollars unless:

1. The construction is approved by the superintendent; or
2. The construction is required as part of a plan to correct deficiencies required under North Dakota Century Code section 15.1-06-09, approved by the state fire marshal, and the estimated cost does not exceed ~~seventy-five~~one hundred fifty thousand dollars.

**History:** Effective April 1, 1994; amended effective May 1, 1999; November 1, 2002; January 1, 2010; January 1, 2016.

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-06-09, 15.1-36-01

### 67-09-01-02.1. General requirements for approval.

The superintendent may not approve any new construction or remodeling construction unless the school district demonstrates:

1. The need for the project;
2. The educational utility of the project;
3. Potential use of the project by a future reorganized school district; ~~and~~
4. The capacity to pay for the project; and
5. a. Demonstrates student population has been stable or increased during the past five years and projects that student population will be stable or will increase during the ensuing five years, or  
b. Demonstrates by clear and convincing evidence that despite declining enrollment, there are no feasible alternatives to the proposed project.

**History:** Effective November 1, 2002; amended effective January 1, 2010; January 1, 2016.

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-06-09, 15.1-36-01

### 67-09-01-03. Consultation with the department required.

1. The district shall consult with the department at least:

~~1. Sixty forty-five days prior to the submission of an application if the construction is new construction, or remodeling construction estimated to cost twothree hundred fifty thousand dollars or more; ~~or~~~~

~~2. Thirty days prior to the submission of an application if the construction is remodeling construction estimated to cost less than two hundred fifty thousand dollars.~~

2. The department may waive the timelines in this section for emergency construction.

**History:** Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010; January 1, 2016.

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-36-01

### 67-09-01-04. Preparing the application.

The district shall obtain the appropriate application from the department. The district may request and shall receive and consider technical assistance provided by the department in preparing the application.

**History:** Effective April 1, 1994; amended effective January 1, 2016.

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-36-01

### 67-09-01-05.1. Approval of remodeling construction costing less than twothree hundred fifty thousand dollars.

The superintendent may approve remodeling construction estimated to cost less than twothree hundred fifty thousand dollars if the district demonstrates:

1. The need for the remodeling construction by showing that the remodeling is required to address any of the following criteria:
  - a. Implementation of the life safety code;
  - b. Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];
  - c. Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];
  - d. Asbestos abatement or removal;
  - e. ~~The school's total enrollment, or the enrollment in a particular grade range that will be affected by the remodeling, has increased;~~
  - f. The part of the building or facility that is to be remodeled has exceeded its useful life;
  - g.f. The building or facility has been damaged as a result of fire, tornado, flood, or other act of God; or
  - h.g. Violations of fire, health, safety, and any other required state or federal standards will be corrected by the construction;
2. The remodeling construction will enhance or facilitate delivery of educational services in the district; and

~~3. The ability to pay for the project.~~

**History:** Effective November 1, 2002; amended effective January 1, 2010; January 1, 2016.

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-36-01

**67-09-01-05.2. Approval of new construction or remodeling construction costing ~~two~~three hundred fifty thousand dollars or more.**

The superintendent may approve new construction or remodeling construction estimated to cost ~~two~~three hundred fifty thousand dollars or more, if the district meets the following requirements:

1. The district must submit a completed facility plan with the application for construction approval.
2. At the time of consultation with the department, the district shall complete and review its facility plan with the department. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan. If the district submitted an acceptable facility plan within the preceding three years, ~~the district may submit a copy of that plan but the~~ The superintendent may require the district to update or revise the plan.
3. The facility plan must include:
  - a. A description and preliminary diagrams of the proposed construction;
  - b. A description of programs to reduce energy costs and waste disposal costs;
  - c. Trend data on school or facility maintenance;
  - d. The estimated difference in operation costs as a result of construction completion; and
  - e. Any other information deemed advisable by the superintendent.

4. The facility plan must address the following factors, which relate to the need for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
  - a. A description of district schools and facilities;
  - b. Alternatives considered by the district and reasons for rejecting alternatives;
  - c. Evidence that demonstrates that, despite attempted cooperation or collaboration with area schools, ~~health and human service agencies~~ and other education agencies and political subdivisions, no form of cooperation with another entity will result in buildings or facilities that meet the needs of the students;
  - d. The need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities;
  - e. Description of district programs and services and an assessment of improvements that will occur as a result of construction completion;
  - f. Violations of fire, health, safety, and any other required state or federal standards, which will be corrected by the construction;
  - g. The new construction or remodeling is required to address any of the following criteria:
    - (1) Implementation of the life safety code;
    - (2) Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];
    - (3) Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];
    - (4) Asbestos abatement or removal;
    - (5) ~~The school's total enrollment or the enrollment in a particular grade range that will be affected by the construction has increased;~~school:
      - (a) Demonstrates student population has been stable or increased during the past five years and projects that student population will be stable or will increase during the ensuing five years; or
      - (b) Demonstrates by clear and convincing evidence that despite declining enrollment, there are no feasible alternatives to the proposed project.
    - (6) The building or facility, or part of the building or facility, has exceeded its useful life; or
    - (7) The building or facility has been damaged or destroyed as a result of fire, tornado, flood, or other act of God; and
  - h. Any other information deemed advisable by the superintendent.
5. The facility plan must address the following factors, which relate to the educational utility of the project construction, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
  - a. The building or facility will enhance or facilitate delivery of educational services in the district;

- b. The building or facility meets or exceeds the size standards recommended by the department;
  - c. The proposed building or facility is comparable in size, cost, and quality to buildings or facilities recently constructed in other districts that have similar enrollment; and
  - d. Any other information deemed advisable by the superintendent.
6. The facility plan must address the following factors, which relate to the general requirements for approval as indicated in section 67-09-01-02.1:
  - a. Past, present, and projected enrollment data;
  - b. The economic and population bases of the communities to be served are likely to grow or to remain stable;
  - c. The building or facility will be in use for the life of the building or facility; and
  - d. Any other information deemed advisable by the superintendent.
7. The facility plan must address the following factors, which relate to the potential utilization of the project by a future reorganized school district, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
  - a. The location of school sites in each surrounding school district, including surrounding districts' attendance numbers in elementary and high school, capacity of buildings, and distances from the applicant's district;
  - b. Geographic information regarding the area proposed to be served;
  - c. Appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made;
  - d. Information regarding the potential utilization of the project by a future reorganized school district; and
  - e. Any other information deemed advisable by the superintendent.
8. The facility plan must address the following factors, which relate to the district's capacity to pay for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:
  - a. The availability and manner of financing the construction has been thoroughly evaluated;
  - b. Trend data on general fund revenues, expenditures, and fund balances;
  - c. Trend data on tax levies;
  - d. Trend data on taxable valuation per student;
  - e. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;
  - f. Current sources of district revenue;
  - g. The operating budget of the district can satisfactorily meet the projected operating cost of the proposed building or facility; and
  - h. Any other information deemed advisable by the superintendent.

**History:** Effective November 1, 2002; amended effective January 1, 2010; [January 1, 2016](#).

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-36-01

**67-09-01-08. Application acted on within ~~sixty~~[forty-five](#) days.**

Within ~~sixty~~[forty-five](#) days of receipt of the completed application, the superintendent shall issue a written decision either approving or disapproving the application and shall provide a written rationale for the decision. However, if the application seeks approval of emergency construction, the superintendent shall approve or disapprove the application within seven days of receipt, or as soon thereafter as is reasonably possible.

**History:** Effective April 1, 1994; amended effective November 1, 2002; [January 1, 2016](#).

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-36-01

**67-09-01-10. Approval effective for three years - Change in approved plan.**

Construction approval received under this chapter is effective for three years from the date of approval. If the district has not commenced construction within the three-year period, the district must apply again for construction approval. If a district modifies an approved plan and the modification results in a cost of more than ~~forty~~[one hundred fifty](#) thousand dollars in excess of the cost of the approved plan, or if the modification changes the purpose or stated function of the approved plan, the district shall again obtain the approval of the superintendent as provided by this chapter.

**History:** Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010; [January 1, 2016](#).

**General Authority:** NDCC 15.1-36-01

**Law Implemented:** NDCC 15.1-36-01

**67-09-01-11. Submission of architectural plans.**

~~\_\_\_\_\_~~ [Repealed effective January 1, 2016.](#)

~~— Prior to commencement of approved construction, the district shall submit architectural plans required by law to the department.~~

~~**History:** Effective April 1, 1994.~~

~~**General Authority:** NDCC 15.1-36-01~~

~~**Law Implemented:** NDCC 15.1-36-01~~

**ARTICLE 67-17**  
**ADULT EDUCATION ~~AND LITERACY~~ PROGRAMS**

Chapter  
67-17-01      Adult Education ~~and Literacy~~ Programs

**CHAPTER 67-17-01**  
**ADULT EDUCATION ~~AND LITERACY~~ PROGRAMS**

Section  
67-17-01-01      Purpose  
67-17-01-02      Plan  
67-17-01-03      Federal Approval and Funding  
67-17-01-04      Local Applicants  
67-17-01-05      Review of Applications  
67-17-01-06      Funding  
67-17-01-07      Charge for Services  
67-17-01-08      Reporting

**67-17-01-01. Purpose.**

~~The adult education and literacy education program is established and promoted to improve education opportunities for adults who are lacking literacy skills. The department of public instruction provides funding for the local applicants described in section 67-17-01-04 to establish and maintain local adult education and family literacy programs. The activities include:~~ The purpose of adult education is to provide academic instruction and education services below the postsecondary level that increases an individual's ability to:

1. ~~Assisting adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency~~ Read, write, and speak English and perform mathematics necessary to attain a secondary school diploma or its equivalent;
2. ~~Assisting adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children~~ Transition to postsecondary education and training; and
3. ~~Assisting adults in the completion of a secondary school education~~ Obtain employment.

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~ 15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2, 15-21-04.3, 15-21-04.4~~ 15.1-26

**67-17-01-02. Plan.**

The program is conducted under a detailed plan prepared and administered by the department of public instruction, job service north dakota, and vocational rehabilitation. The plan is identified as the North Dakota state plan for adult education ~~and literacy, April 1999,~~ and it is incorporated by reference into these rules. The state plan is developed by the department of public instruction, job service north dakota, and vocational rehabilitation under the guidance provided by ~~the United States department of education~~ and is approved by the United States department of education. The state plan outlines how the state partners will administer the ~~Workforce Investment Act of 1998 (P.L. 105-220) Title II~~ Workforce Innovation and Opportunity Act HR 803; (Pub. L. 113-128). Copies of the state plan are available from the department of public instruction. The local programs will also submit student data and other required reports by the state and the United States department of education.

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2~~15.1-26

### **67-17-01-03. Federal approval and funding.**

Unless otherwise specified in these rules, the eligibility to participate in the adult education ~~and literacy~~ program is governed by the ~~Workforce Investment Act of 1998 (P.L. 105-220) Title II (section 231)~~Workforce Innovation and Opportunity Act (Pub. L. 113-128) and other procedures embodied in relevant federal notices and policy memos. The local programs must conform to other federal lawfully issued regulations and policies relating to the federal program. Terms used in this chapter have the same meaning as the same terms when used in federal adult education regulations and policies. The department of public instruction will announce ~~annually~~ its intent to provide funding for adult education ~~and literacy~~ programs. The announcement will be made through newspapers, the internet, direct mailings to existing programs, and other means that may be available.

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2, 15-21-04.3~~15.1-26

### **67-17-01-04. Local applicants.**

The local education agencies, public agencies, community-based organizations, agencies responsible for corrections education, postsecondary education institutions, and institutions that serve educationally disadvantaged adults which wish to develop and implement an adult education ~~and literacy~~ program may apply. The applications must be prepared according to the criteria prepared by the department of public instruction. The criteria for application development are contained in the North Dakota state plan for adult education ~~and literacy~~ under section 67-17-01-02.

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2~~15.1-26

### **67-17-01-05. Review of applications.**

A review committee of not less than three individuals will be selected by ~~the department of public instruction. The committee may be selected from within the department of public instruction staff or outside personnel.~~the North Dakota workforce development council (who may delegate to the department of public instruction). The review committee will use the application review criteria developed by the department of public instruction. The review criteria are part of the state plan for adult education ~~and literacy~~ under section 67-17-01-02. Upon completion of its review, the committee will forward its recommendations for approval and funding to the superintendent of public instruction who will publicly announce the approved applications and grants through direct communication with the applicants and newspapers.

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2~~15.1-26

### **67-17-01-06. Funding.**

Grants may be awarded for single or multiple years. The funding cycle begins July first and ends June thirtieth. The amount of funding to be awarded to the applicants will be based on a review of their application and their ability to meet specific criteria outlined in the ~~Workforce Investment Act of 1998 (P.L. 105-220) Title II (section 231)~~Workforce Innovation and Opportunity Act (Pub. L. 113-128).

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2, 15-21-04.3~~15.1-26

**67-17-01-07. Charge for services.**

Local agencies may charge adults enrolled in adult education ~~and literacy~~ programs ~~tuition, fees, or any other charges or require the purchase of any books or any other materials that are needed for participation in the program.~~

**History:** Effective January 1, 2000; amended effective January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2~~15.1-26

**67-17-01-08. Reporting.**

Each grantee must submit student data and other required federal and state reports to the department of public instruction as required by the ~~Workforce Investment Act of 1998 (P.L. 105-220) Title II (sections 212, 221, and 224)~~Workforce Innovation and Opportunity Act (Pub. L. 113-128) and outlined in the North Dakota state plan for adult education ~~and literacy~~ under section 67-17-01-02.

**History:** Effective January 1, 2000; amended January 1, 2016.

**General Authority:** NDCC ~~15-21-04.2, 15-21-22~~15.1-26-02, 28-32-02

**Law Implemented:** NDCC ~~15-21-04.2~~15.1-26

**TITLE 70**  
**REAL ESTATE COMMISSION**



## JANUARY 2016

### CHAPTER 70-02-01

#### **70-02-01-15. Trust account requirements - Handling of funds - Records.**

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in an authorized financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.
  - a. Definitions. The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.
  - b. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".
  - c. Notification. Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of depository, change of account number, change of business name, or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.
  - d. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.
  - e. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.

- f. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.
  - g. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.
  - h. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.
  - i. Interest-bearing accounts. All trust accounts must be interest-bearing and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have otherwise agreed in writing and a copy of the agreement is maintained by the broker for inspection by the commission.
2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.
- a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.
  - b. Withdrawals. Money held in the separate account which is due and payable to the broker should be withdrawn promptly.
  - c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a separate written provision, approved by all parties including the broker, for any division of moneys taken in earnest, when the transaction is not consummated and such moneys are retained as forfeiture payment.
  - d. Abandoned deposits. Any deposits in a broker's trust account that remain unclaimed for three years and are deemed abandoned by North Dakota Century Code chapter 47-30.1 shall be reported and delivered by the broker to the administrator of the state abandoned property office as required by North Dakota Century Code chapter 47-30.1.
3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:
- a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.
  - b. Bank statements. Monthly bank statements are to be retained and kept on file.
  - c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".
  - d. Journal. A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:

- (1) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.
  - (2) For disbursements, the journal must include the date, the payee, and the amount.
  - (3) For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.
  - (4) A running balance must be shown after each entry (receipt or disbursement).
- e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and amount must be shown.
  - f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.
  - g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from the date of receipt of any such funds or property.

**History:** Amended effective August 1, 1981; January 1, 1992; April 1, 1992; December 1, 1999; July 1, 2010; [January 1, 2015](#).

**General Authority:** NDCC 43-23-14.1, 43-23.4-06(2)

**Law Implemented:** NDCC 43-23-11.1(1)



**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



JANUARY 2016

**CHAPTER 75-01-04**  
**HUMAN SERVICES GRANT PROGRAM**

Section

75-01-04-01 Human Services Grant Program

75-01-04-02 Application

75-01-04-03 Verification - Approval

**75-01-04-01. Human Services Grant Program.**

For the purposes of this chapter:

1. "Adjacent to an Indian reservation in this state" means a border of the county is within ten miles of a border an an Indian reservation in this state.
2. "Eligible county" means a county that has historically used the emergency expenditures process set forth in North Dakota Century Code chapter 50-03 and which:
  - a. Is adjacent to an Indian reservation in this state;
  - b. Is a part of an Indian reservation in this state;
  - c. Contains Indian trust lands within the service area of a federally recognized Indian tribe which are occupied by enrolled members of that tribe; or
  - d. Includes the North Dakota state hospital.
3. "Grant" means funding available through the human services grant program established under North Dakota Century Code section 50-06-20.1.
4. "Historically has utilized the emergency expenditures process set forth in chapter 50-03" means has a 2012, a 2013, or a 2014 county levy authorized in North Dakota Century Code chapter 50-03.

**History:** Effective June 19, 2015.

**General Authority:** NDCC 50-06-20.1

**Law Implemented:** NDCC 50-06-20.1

**75-01-04-02. Application.**

An eligible county interested in applying for a grant shall return a completed application to the department by July 15 of the year before the year for which the grant is to be paid.

**History:** Effective June 19, 2015.

**General Authority:** NDCC 50-06-20.1

**Law Implemented:** NDCC 50-06-20.1

**75-01-04-03. Verification - Approval.**

Upon review of a county's completed application, the department shall verify whether the county is an eligible county. Within the appropriation provided to the department for grants, the department shall notify each eligible county of the amount of the grant approved for that county. If the funding requests from eligible counties exceed the appropriation provided to the department for grants under this chapter, the department shall adjust the grants awarded to remain within the limits of the appropriation, and may seek additional information from an eligible county to determine the grant adjustments.

**History:** Effective June 19, 2015.

**General Authority:** NDCC 50-06-20.1

**Law Implemented:** NDCC 50-06-20.1