

Chapter 33-21-01 is repealed.

Chapter 33-21-02 is created as follows:

**CHAPTER 33-21-02
SERVICING OF SEPTIC OR HOLDING TANKS, PRIVIES, OR PORTABLE RESTROOMS**

Section

33-21-02-01	Authority
33-21-02-02	Scope and Purpose
33-21-02-03	Definitions
33-21-02-04	Septic Pumper Classification
33-21-02-05	Permit Application and Renewal
33-21-02-06	Training Requirements
33-21-02-07	Vehicles and Equipment
33-21-02-08	Septage Disposal
33-21-02-09	Spill Reporting and Clean-Up
33-21-02-10	Record Keeping and Reporting Requirements

33-21-02-01. Authority. The state department of health has been authorized to provide and administer this chapter relating to septic system servicing under the provisions of North Dakota Century Code section 61-28-04.1.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-02. Scope and Purpose. This chapter establishes procedures governing the servicing of septic systems including portable restrooms, holding tanks, and similar devices that receive domestic wastewater and to establish standards for the use and disposal of wastewaters from these sources while protecting the general public and waters of the state from contamination by septage.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-03. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 61-28, except:

1. "Frozen ground" means the topsoil temperature is less than 0 degrees Celsius at a depth four inches or greater.
2. "Incorporation" means the mixing of septage with topsoil to a minimum depth of four inches within forty-eight hours.
3. "Injection" means the subsurface placement of septage to a depth of four to twelve inches.

4. "Land application" means the spraying or spreading of septage onto the land surface, the injection of septage below the land surface, or the incorporation of septage into the soil.
5. "Litter" means nonbiodegradable material such as plastics or glass.
6. "Nonpublic contact site" means land not frequently visited or used by the public. Examples include agricultural land, forests, and reclamation sites.
7. "Portable restroom" means a self-contained portable enclosure containing a holding tank designed to directly receive human excrement.
8. "Privy" means a self enclosure over a watertight structure located in a pit designed to directly receive human excrement.
9. "Public contact site" means land with a high potential for contact by the public. Examples include public parks, ball fields, golf courses, and cemeteries.
10. "Rural single-family residence" means a dwelling occupied by a single family or household situated on land greater than five acres and used primarily for agricultural or horticultural purpose. Examples include growing and harvesting crops and raising livestock.
11. "Snow-covered ground" means ground upon which the snow is at a depth greater than eight inches.
12. "Spill" means to cause or allow to fall, flow, or run out so as to be lost or wasted.
13. "Wastewater treatment facility" means an industrial structure designed to remove biological or chemical waste products from water, thereby permitting the treated water to be used for other purposes.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-04. Septic pumper classification.

1. Class I classification is defined as a septic system servicer that operates three or more permitted servicing vehicles or at least one portable toilet servicing vehicle.
2. Class II classification is defined as all septic system servicers not classified as Class I.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-05. Permit application and renewal.

1. **Permit required.** A person wishing to engage in the business of servicing septic systems, portable restrooms, holding tanks and similar devices that receive domestic wastewater shall submit an application for a permit to the department on a form provided by the department.
2. **Applicant information.** All applicants shall provide the following information to the department:
 - a. The full name and physical business address of the applicant;
 - b. The mailing address of the applicant, if different from the physical address;
 - c. Septic system servicers that have held a permit in North Dakota within the past five years must submit records in accordance with subsection 4;
 - d. A copy of a North Dakota state training certificate or other acceptable training course as pre-approved by the department;
 - e. A list of all counties in which business is conducted;
 - f. A list of all disposal methods and land application sites, not exempted under North Dakota Century Code section 61-28-04.1, that the applicant proposes to use, if applicable; and
 - g. The signature of the land owner, facility operator, or designated representative of the owner or operator, on a designated form granting permission to use the site for land application, disposal, or treatment.
3. **Land application.** Class I septic system servicers shall obtain the department's approval of all land application sites under section 33-21-02-08(2). In addition, Class I applicants shall include the following information on all land application sites - even sites that have already been approved - that they propose to use for the permit period:
 - a. The name of the property owner;
 - b. The street address or directions to the site;
 - c. The location of the property by township, range, section, and quarter section(s) or the latitude and longitude of the property in degrees decimal;
 - d. The type of vegetation on the land application site (fallow land, pasture, range, forest, other) and the nitrogen requirements for the vegetation;
 - e. The estimated depth (feet) to seasonally high groundwater at the site and the basis for the estimates;
 - f. A statement of the specific soil type (clay, gravel, sandy loam, other) at each site;

- d. A permit replacement fee of twenty-five dollars shall apply. Examples include lost or damaged plates.
7. **Application review.** The department shall review each submitted application for a new or renewed permit. If additional information is required, the department shall notify the applicant within thirty days after the department receives the application and processing shall be postponed until the application is complete. If the department does not receive the requested information within ninety days of the request, a new application may be required. The department shall review the completed application and either issue, deny, or renew a permit within thirty days after the completed application is received.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-06. Training requirements.

1. Septic system servicers and their employees engaged in the servicing of septic systems are required to pass an annual exam provided by the department.
2. Septic system servicers are required to attend a training course provided by the department once every five years.
3. Other exams or training courses taken may be substituted for the requirements in subsections 1 and 2 with the department's prior approval.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-07. Vehicles and equipment.

1. Septic system servicers shall allow the department to inspect the equipment used in servicing at any reasonable time and place designated by the department.
2. Vehicles used in servicing shall meet the following identification requirements:
 - a. A valid septic pumper plate, as provided by the department, shall be prominently displayed on the rear of the servicing unit.
 - b. The septic system servicer's name shall be displayed on the side of the vehicle in writing no less than three inches tall with one-half inch minimum thickness and in a color distinct from its background.
3. All servicing vehicles shall conform to the following:
 - a. Be maintained in operational condition.

- b. Expressly used for the hauling or servicing of septage or municipal wastewater treatment sludge and for no other purpose. However, the use of the vehicle for fire protection service, oil recovery, and industrial wastes not regulated under this chapter, is permissible if the tank is flushed or cleaned as necessary prior to and after use.
 - c. Stored in a manner which will not cause a public nuisance.
 4. All approvable holding tanks or containers shall be attached to the vehicle by welding or bolts on a truck chassis.
 - a. Holding tanks shall be constructed of suitable metal or materials approved by the department.
 - b. Each tank shall be strong enough for all conditions of operation, leak proof, contain inertia baffles, and be designed to be kept tightly closed to prevent spillage or escape of odors while in transit or storage.
 - c. Discharge valves on tanks shall be watertight, capped when not in use, and constructed and located so as to permit unobstructed discharge.
 5. Pumps shall be adequate for the required service. The installation shall be designed to prevent backflow or leakage. Connections shall be provided with caps or seals.
 6. Hoses and piping, when not in use, shall be stored in a manner to prevent leakage or dripping of septage in transit.
 7. All servicing equipment used for land application of septage shall have a splash plate or some other department approved method or device to facilitate uniform septage application in land spreading.
 8. Starting July 1, 2014, all servicing equipment used for land application of septage shall have a vehicle cab-controlled discharge valve. Equipment in service prior to January 1, 2014 shall have until July 1, 2014 to equip service units with a vehicle cab-controlled discharge valve. New servicing equipment put into operation after January 1, 2014 shall be in conformance with these regulations.
 9. Screens required for land application must be sized to prevent litter from passing through.
 10. Facilities used for washing the vehicles, tanks, implements, and tools shall be designed to prevent a public nuisance and shall comply with North Dakota Century Code chapter 61-28.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-08. Septage disposal.

1. Septage must be disposed of at a department permitted wastewater treatment facility to be treated, except disposal to acceptable sites for land application is allowed if no other reasonable method of disposal is available. All septic system servicers shall submit disposal site information to the department with their permit applications under section 33-21-02-05(2).
2. Class I septic system servicers shall obtain the department's written pre-approval for land application sites. Approval requests may be submitted with a permit application or during the term of the permit. Approval requests not included in the permit application shall include the information on the proposed land application site listed in section 33-21-02-05(3). If the approval request contains all the required information the land application sites may be given conditional approval within thirty days of submission. Full approval is contingent on a site assessment conducted by the department and will be granted automatically unless otherwise notified by the department. The department may not approve sites that may cause harm to the environment or threaten the public. Once given full approval by the department, land application sites shall retain approval for a period of not less than five years, unless additional future information indicates a change in the environmental status of the property. Examples for cause of termination of approval include excessive runoff, odor complaints, illegal disposal, etc.
3. A septic system servicer land applying septage from a rural single family residence on property owned or leased by the owner or lessee of the rural single family residence is exempt from obtaining the department's written approval for the land application site. General land application site requirements still apply and must be followed.
4. General land application site requirements shall be followed by all septic pumper classifications, including rural single family exemptions, and are as follows:
 - a. All septage must be screened prior to application.
 - b. Application of septage is not allowed on a designated one hundred year floodplain as defined by FEMA flood maps nor below the ordinary high water mark
 - c. Application of septage is not allowed on areas of a site ponded with water or septage.
 - d. Septage cannot be applied when soils are saturated.
 - e. Septage cannot be applied by spraying from public roads or across road right of ways.
 - f. All septage that is land applied must be uniformly distributed over the area by use of a distribution device (such as a splash plate or spreader).
 - g. Measures must be taken to ensure that the ponding of septage and runoff does not occur.
 - h. Slope restrictions are as follows:

- (1) Surface application, injection, or immediate incorporation of septage is allowed on slopes six percent and less.
 - (2) Injection of septage is required on slopes greater than six percent up to twelve percent.
 - (3) Land application of septage is not allowed on slopes greater than twelve percent.
- i. Separation distances are as follows:
- (1) Private drinking water wells must have two hundred feet of separation from land application of septage.
 - (2) Public drinking water supply wells must have one thousand feet of separation from land application of septage.
 - (3) Irrigation wells must have fifty feet of separation from land application of septage.
 - (4) Residences must have one thousand feet of separation from land application of septage, unless permission is obtained by the owner and resident to reduce this distance.
 - (5) Surface water features must have two hundred feet of separation distance from land application of septage.
 - (6) Public contact sites, including roads, must have a separation distance of two hundred feet from surface-applied and incorporated septage. A separation distance of fifty feet is required for injection of septage.
- j. Public contact sites shall be posted with no trespassing signs for thirty days after application.
- k. Septage shall be applied at a rate of less than twenty thousand gallons per acre per day and less than one hundred pounds of nitrogen per acre per year. The department may waive these rates upon a site by site review basis.
5. Pathogen reduction measures shall be taken by all classes in accordance with one of the following alternatives:
- a. Alternative 1. Septic system servicers shall pump domestic septage from a septic tank or holding tank and land apply it without treatment. Crop, grazing, and site restrictions apply.
 - (1) Crop Restrictions:

- (a) Food crops with harvested parts that touch the septage/soil mixture and are totally above ground shall not be harvested for 14 months after application of domestic septage.
- (b) Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of domestic septage.
- (c) Animal feed, fiber, and those food crops that do not touch the soil surface shall not be harvested for 30 days after application of the domestic septage.
- (d) Turf grown on land where domestic septage is applied shall not be harvested for one year after application of the domestic septage when the harvested turf is placed on either a lawn or land with a high potential for public exposure, unless otherwise specified by the permitting authority.

(2) Grazing Restrictions:

- (a) Animals shall not be allowed to graze on the land for 30 days after application of domestic septage.

(3) Site Restrictions:

- (a) Public access to land with a low potential for public exposure shall be restricted for 30 days after application of domestic septage. Examples of restricted access include remoteness of site, posting with no trespassing signs, and/or simple fencing.

- b. Alternative 2. Septic system servicers shall pump domestic septage from a septic tank or holding tank that has had its pH raised to twelve or higher by the addition of alkaline material and, without addition of more alkaline material, the septage must remain at a pH level of twelve or higher for at least thirty minutes prior to being land applied. Crop restrictions apply.

(1) Crop Restrictions

- (a) Food crops with harvested parts that touch the septage/soil mixture and are totally above ground shall not be harvested for 14 months after application of domestic septage.
- (b) Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of domestic septage when the domestic septage remains on the land surface for four months or longer prior to incorporation into the soil.
- (c) Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of domestic septage when the domestic septage remains on the land surface for less than four months prior to incorporation into the soil.

- (d) Animal feed, fiber, and those food crops that do not touch the soil surface shall not be harvested for 30 days after application of the domestic
 - (e) Turf grown on land where domestic septage is applied shall not be harvested for one year after application of the domestic septage when the harvested turf is placed on either a lawn or land with a high potential for public exposure, unless otherwise specified by the permitting authority.
 - c. Other equivalent alternatives may be acceptable with prior department approval.
- 6. Vector attraction reduction measures shall be taken by all classes in accordance with one of the following alternatives:
 - a. Alternative 1. Septic system servicers shall inject domestic septage below the surface of the land, and no significant amount of the septage shall be present on the land surface within one hour after the septage is injected.
 - b. Alternative 2. Septic system servicers shall incorporate domestic septage applied to the land surface into the soil surface plow layer within forty-eight hours after application.
 - c. Alternative 3. Septic system servicers shall raise the pH of domestic septage to twelve or higher by addition of alkaline material and, without addition of more alkaline material, the septage must remain at a pH level of twelve or higher for thirty minutes prior to being land applied.
 - d. Other equivalent alternatives may be acceptable with prior department approval.
- 7. Frozen and snow-covered ground application is as follows:
 - a. Class I. Septic system servicers shall not land apply septage to frozen or snow-covered ground between the dates of November 15 and April 1, unless department's prior approval is obtained. Septage shall be taken to a department pre-approved wastewater treatment facility.
 - b. Class II. Septic system servicers may land apply septage with less than eight inches of snow and less than six percent slope on site and following general land application requirements.
- 8. Storage of septage greater than twenty-five thousand gallons requires department approval. All storage sites shall be designed and maintained to prevent a public nuisance and shall be in compliance with North Dakota Century Code chapter 61-28.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-09. Spill reporting and clean-up.

1. Septic system servicers and their employees shall report all spills to the department as soon as possible, but within twenty-four hours. The septic system servicers shall keep a copy of the spill report for five years. The report shall include:
 - a. Spill location;
 - b. Spill volume;
 - c. Type of material spilled; and
 - d. Steps taken to clean up the spill.
2. Septage shall be transported in a manner where it will not leak or spill onto public roads or into areas where it could enter surface or ground water. A written procedure for spill and accident cleanup must be developed by each permit holder, and a copy of the procedure must be kept in each permitted septic vehicle. When a spill occurs, a septic system servicer and any responsible employees shall:
 - a. Contain the spill to minimize the impact to the environment and general public;
 - b. Notify the department of all spills;
 - c. Clean the spill area to render it harmless to humans and the environment; and
 - d. Properly dispose of spilled material.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

33-21-02-10. Record keeping and reporting requirements.

1. Septic system servicers must keep records of all their servicing and disposal activities. Each septic system servicer shall maintain records for not less than five years. Records must be available to the department for review upon request.
2. The records must contain:
 - a. The origin of the septage;
 - b. The location of the site where septage is applied or taken;
 - c. The number of acres to which septage is applied at each site;
 - d. The date and time of each septage application;

- e. Crop or vegetation on each site during the year;
- f. The gallons of septage which are applied to the site during the specified three hundred and sixty-five day period;
- g. A description of how the pathogen requirements are met for each land application of septage; and
- h. A description of how the vector attraction reduction requirements are met for each land application of septage.

History:

General Authority: NDCC 61-28-04, 61-28-04.1

Law Implemented: NDCC 61-28-04.1

Rule Revision Analysis and Assessment

1. Background

The Department of Health has had rules in place regulating the servicing of cesspools, septic tanks, privies(commonly known as septic pumpers) since approximately 1955. Senate Bill (SB) 2308 enacted in the 2013 legislative session moved authority from North Dakota Century Code (NDCC) 23-19 to NDCC 61-28 in order to standardize the rules governing disposal of wastewater. Wastewater from point sources, such as municipalities, industries, Concentrated Animal Feeding Operation and others is regulated under NDCC 61-28. Septic servicers will now also be regulated under that chapter. These rules implement the 2013 legislation and specify the requirements septic services must follow to protect public health and the environment. The significant changes made by the proposed rule include:

- Separating servicers into two classes, with which the larger companies and those hauling the most concentrated waste e.g. portable restroom waste, having additional reporting requirements for the land application of waste.
- Increases the licensing fee, but removes the requirement for a surety bond
- Requires continuing education for owners, operators and employees
- Describes the equipment needed for proper land application, including
 - in cab control for the discharge value,
 - method for evenly spreading septage
 - screen to catch trash and debris
- Details appropriate for land application
 - Prohibited in areas where it could enter water
 - Maximum slope
 - Setback distances from residences, wells and public areas
 - Restrictions on snow covered or frozen ground
- Practices to reduce pathogens and vectors in land applied septage
- Requires records be kept on the source and the disposal of septage
- Requires spills to be reported

The vector and pathogen reduction methods in the proposed rules are equivalent to federal requirements, reducing confusion and preventing a potential conflict where a septic servicer could be in compliance with state rules, but in violation of federal rules.

2. Regulatory Analysis

a. Classes or persons likely to be affected by the proposed rules

The proposed rule will affect primarily septic system servicers. The department currently licenses 177 separate companies that operate 391 units. This rule will also affect the general public by protecting their health and water resources. A small subset of master plumbers that also service septic systems will be

affected, since they currently are exempted from the current rules, but will now need a license.

b. Probable impact, including economic impact, of the proposed rules

i. Recordkeeping and reporting

There will be little additional economic impact as businesses already track the source for billing purposes, they will need to add an additional data set to their existing records. The reporting requirements will be conducted at the same time as the license renewal, reducing the need for a separate report.

ii. Land application requirements

The restrictions on land application may require a longer haul to reach acceptable land application sites or wastewater treatment facilities.

iii. Equipment modifications

Some servicers that land apply may need to upgrade their servicing units to provide a splash plate, an in cab controlled discharge valve and the ability to screen the material before mixing with the soil. The cost will vary depending on the unit, but many servicers may be able to make the required modifications themselves. This is a one-time cost that may be spread out over the life of the servicing unit.

iv. Application and License fee

There will be an application fee of \$100 and a \$50 fee for each vehicle licensed. The renewal fee will increase to \$50 per unit from \$15 but the servicer will no longer be required to hold a surety bond. There will no longer be a distinction between in and out-of-state license fees.

c. Cost of implementation and enforcement

The increased cost of implementation and enforcement is expected to equal the increased revenue from the application and license fee.

d. Alternative methods of achieving the purpose of the proposed rule

i. The department considered less reporting, however the contacts and communication between the licensee and the department encourage compliance with the rule and allow the department to note small problems before they become large issues with environmental damage.

ii. The department considered continuing the performance based standards for land application, but felt that the regulated community would prefer the certainty provided by more specific requirements rather than the existing "shall not endanger the purity of any water" requirement.

iii. The department also considered a performance standard instead of the equipment requirement, but chose to regulate the equipment to provide

certainty, as performance can be affected by other factors, such as weather conditions and the source of the septage.

- iv. The department considered keeping the surety bond requirement, but felt that the utility of the bond was not worth the extra expense and effort.

3. Takings Assessment

- a. Likelihood that the proposed rule may result in a taking

The rule is not likely to result in a taking as it does not preclude the use of land for septage application, but regulates how that application is conducted.

- b. Purpose of the proposed rule

The purpose of the proposed rule is to protect water and land resources from the impacts of improper septage disposal and protect the public from health impacts of improperly disposed septage.

- c. Why the rule is necessary and why no alternative is available

The rule is necessary due to increased volume of septage being generated and recent incidents of improper land application that endangered our water resources.

- d. Potential cost

There is no potential cost as there will be no regulatory taking

- e. Source of payment

There is no source identified as there will be no regulatory taking

- f. Benefits exceed costs

The benefits to the public exceed any potential compensation costs, as there is no regulatory taking.

4. Small Entity Regulatory Analysis

- a. Ways to minimize adverse impacts

- i. Less stringent compliance or reporting requirements

The department separated septic system servicers into two classifications, with reduced reporting requirements for the smaller servicers

- ii. Less stringent schedules or deadlines

The department proposes a compliance deadline for the in cab control valves later than the effective date of the rule. Less stringent deadlines were considered, however with the increase in wastewater production and the increase in the number of licensed units, the department felt extending the deadlines for compliance with requirements to protect public health and the environment was not prudent.

- iii. Consolidating or simplifying compliance or reporting requirements

The reporting requirements were simplified to require reporting on the same schedule as the annual license renewal.

- iv. Establishing performance standards that replace design or operational standards

Refer to sections 2.d.ii and 2.d.iii

v. Exempting small entities from all or part of the rules' requirements

The department divided septic system servicers into two classes, with the smaller of the two classes being exempt from some reporting requirements and pre approval for land application sites.

5. Small Entity Economic Impact Statement

a. Small entities that may be subject to the rule

Most septic servicers would be considered small entities.

b. Administrative or other costs

The costs to small entities would consistent with the costs identified in 2.b.

c. Cost and benefit to private persons and consumers

The costs of compliance with this rule would likely be borne by the septic servicers themselves. The benefits to the consumers and private persons are largely intangible, such as protection of health and water resources.

d. Probable effect on state revenues

The increased application and license fee will likely increase state revenues by \$29,290.00

e. Less intrusive or less costly methods

The department strives to balance the protection of our public resources with the costs on individual entities. The propose rule balances the oversight and restrictions needed to protect our water and the public health, while trying to provide regulatory certainty and a minimum cost of compliance. The department has and will use a common sense approach to the regulation of septic servicers.

6. Fiscal Note

a. Affect on revenue

Revenue will increase by \$29,290.00

b. Affect on expenditures

The department will use the additional revenue to implement the program.