

**ARTICLE 33-15
AIR POLLUTION CONTROL**

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**CHAPTER 33-15-01
GENERAL PROVISIONS**

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33-15-01-01. Purpose. It is the purpose of these air quality standards and emission regulations to state such requirements as shall be required to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience for the people, and to facilitate the enjoyment of the natural attractions of this state.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-01.1

33-15-01-02. Scope. These air quality standards and emission regulations apply to any source or emission existing partially or wholly within North Dakota.

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

33-15-01-03. Authority. The North Dakota state department of health has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23-25.

History: Amended effective September 1, 1997.
General Authority: NDCC 23-25-02
Law Implemented: NDCC 23-25-02

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23-25.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.
6. "Coal conversion facility" means any of the following:
 - a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.
 - b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.
 - c. A coal beneficiation plant, and all additions thereto, which improves the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.
7. "Control equipment" means any device or contrivance which prevents or reduces emissions.
8. "Department" means the North Dakota state department of health.
9. "Emission" means a release of air contaminants into the ambient air.

10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.
11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
14. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
15. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.
16. "Hazardous waste" has the same meaning as given by chapter 33-24-02.
17. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

18. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.
19. "Industrial waste" means solid waste which is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
20. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
21. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.
22. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
23. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
24. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.
25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
26. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.
27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.
29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.
30. "Pesticide" includes:
 - a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;
 - b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
 - c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscicides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.
31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.
32. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five tenths micrometers.
33. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
34. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.
35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].
36. "Premises" means any property, piece of land or real estate, or building.

37. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
38. "Process weight rate" means the rate established as follows:
- a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.
39. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
40. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste and infectious waste.
41. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).
42. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
43. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.
44. "Source" means any property, real or personal, or person contributing to air pollution.
45. "Source operation" means the last operation preceding emission which operation:

- a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and
 - b. Is not an air pollution abatement operation.
46. “Special waste” means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
47. “Stack or chimney” means any flue, conduit, or duct arranged to conduct emissions.
48. “Standard conditions” means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
49. “Submerged fill pipe” means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
50. “Trade waste” means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including, but not limited to, wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.
51. “Trash” means refuse commonly generated by food warehouses, wholesalers and retailers which is comprised only of non-recyclable paper, paper products, cartons, cardboard, wood, wood scraps and floor sweepings and other similar materials. Trash shall not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash shall be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste and similar substances.
52. “Volatile organic compounds” means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on July 1, ~~2013~~ 2015, which is incorporated by reference.

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

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-05. Abbreviations. The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	Code of federal regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO ₂	-	carbon dioxide
dcf	-	dry cubic feet
dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents
°F	-	degree Fahrenheit
ft	-	feet
g	-	gram
gal	-	gallon
g eq	-	gram equivalents
gr	-	grain
hr	-	hour
HCl	-	hydrochloric acid
Hg	-	mercury
H ₂ O	-	water
H ₂ S	-	hydrogen sulfide
H ₂ SO ₄	-	sulfuric acid
Hz	-	hertz
in.	-	inch
j	-	joule
°K	-	degree Kelvin
k	-	1,000

kg	-	kilogram
l	-	liter
lpm	-	liter per minute
lb	-	pound
m	-	meter
m ³	-	cubic meter
meq	-	milliequivalent
min	-	minute
mg	-	milligram - 10 ⁻³ gram
Mg	-	megagram - 10 ⁶ gram
ml	-	milliliter - 10 ⁻³ liter
mm	-	millimeter - 10 ⁻³ meter
mol	-	mole
mol.wt.	-	molecular weight
mV	-	millivolt
N ₂	-	nitrogen
N	-	newton
ng	-	nanogram - 10 ⁻⁹ gram
nm	-	nanometer - 10 ⁻⁹ meter
NO	-	nitric oxide
NO ₂	-	nitrogen dioxide
NO _x	-	nitrogen oxides
O ₂	-	oxygen
Pa	-	pascal
PM	-	particulate matter
PM _{2.5}	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PM ₁₀	-	particulate matter with an aerodynamic diameter less than or equal to 10 micrometers
ppb	-	parts per billion
ppm	-	parts per million
psia	-	pounds per square inch absolute
psig	-	pounds per square inch gauge
°R	-	degree Rankine
s-sec	-	second
scf	-	cubic feet at standard conditions
scfh	-	cubic feet per hour at standard conditions
scm	-	cubic meters at standard conditions
scmh	-	cubic meters per hour at standard conditions
SO ₂	-	sulfur dioxide
SO ₃	-	sulfur trioxide
SO _x	-	sulfur oxides
sq ft	-	square feet
std	-	at standard conditions
TSP	-	total suspended particulate

μg	-	microgram - 10 ⁻⁶ gram
V	-	volt
W	-	watt
Ω	-	ohm

History: Amended effective January 1, 1989; January 1, 2007; April 1, 2009; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-06. Entry onto premises - authority. Entry onto premises and onsite inspection shall be made pursuant to North Dakota Century Code section 23-25-05.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-05

33-15-01-07. Variances.

1. Where upon written application of the responsible person or persons the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship, would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe for prevention, control, or abatement of air pollution in harmony with the intent of the state and any applicable federal laws.
2. No variance may permit or authorize the creation or continuation of a public nuisance, or a danger to public health or safety.

History: Amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-08. Circumvention. No person shall cause or permit the installation or use of any device or any means which conceals or dilutes an emission of air contaminant which would otherwise violate this article.

History: Amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-09. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article and the various applications thereof are declared to be severable.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-10. Land use plans and zoning regulations.

1. Planning agency land use plans.

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

- (1) Air quality.
- (2) Air pollutant emissions.
- (3) Air pollutant meteorology.
- (4) Air quality goals.
- (5) Air pollution effects.

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

2. Zoning agency regulations.

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

- (1) Air quality.
- (2) Air pollutant emissions.
- (3) Air pollution meteorology.
- (4) Air quality goals.
- (5) Air pollution effects.

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

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-11. (RESERVED)

33-15-01-12. Measurement of emissions of air contaminants.

1. **Sampling and testing.** The department may reasonably require any person responsible for emission of air contaminants to make or have made tests, at a reasonable time or interval, to determine the emission of air contaminants from any source, for the purpose of determining whether the person is in violation of any standard under this article or to satisfy other requirements under the North Dakota Century Code chapter 23-25. All tests shall be made and the results calculated in accordance with test procedures approved or specified by the department. All tests shall be conducted by reputable, qualified personnel. The department shall be given a copy of the test results in writing and signed by the person responsible for the tests.

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

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

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

History: Amended effective June 1, 2001.

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

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

33-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such

equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:

- a. Identification of the specific facility to be taken out of service as well as its location and permit number.
- b. The expected length of time that the air pollution control equipment will be out of service.
- c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.
- d. Measures, such as the use of off-shift labor and equipment, that will be taken to minimize the length of the shutdown period and emissions during the shutdown.
- e. The reasons that it would be impossible or impractical to shutdown the source operation during the maintenance period.
- f. Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.

2. Malfunctions.

- a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the estimated duration of the breakdown. The department shall be notified when the condition causing the malfunction has been corrected.
- b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is 701-328-9921.

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

- (1) The excess emissions were caused by a sudden, unavoidable breakdown of technology that was beyond the reasonable control of the owner or operator.
- (2) The excess emissions could not have been avoided by better operation and maintenance, did not stem from an activity or event that could have been foreseen and avoided, or planned for.
- (3) To the extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions.
- (4) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible.
- (5) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality.
- (6) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning equipment.

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

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

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method for measuring or estimating emissions must be undertaken as soon as possible. The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the method is accurate. Timely repair of the emission

monitoring system must be made. The provisions of this subsection do not apply to sources that are subject to monitoring requirements in chapter 33-15-21.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997; January 1, 2007; April 1, 2009; January 1, 2013.

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

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

33-15-01-14. Time schedule for compliance. Except as otherwise specified, compliance with the provisions of this article shall be according to the following time schedule:

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

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

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

33-15-01-15. Prohibition of air pollution.

1. No person shall permit or cause air pollution, as defined in section 33-15-01-04.
2. Nothing in any other part of this article concerning emission of air contaminants or any other regulation relating to air pollution shall in any manner be construed as authorizing or legalizing the creation or maintenance of air pollution.

History: Amended effective June 1, 1990; September 1, 1997; June 1, 2001.

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

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

33-15-01-16. Confidentiality of records.

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

certifying, or mailing public information must tender, in advance, the reasonable cost of those services.

2. **Information submitted as trade secrets.** The department may certify records, reports, or information, or particular part thereof, other than emission data, as confidential upon a showing that the information would, if made public, divulge methods or processes entitled to protection as trade secrets. Any person submitting trade secret information must present the information to the department in a sealed envelope marked "CONFIDENTIAL". Each page of any document claimed confidential must be clearly marked with the word "CONFIDENTIAL". The submission must contain two parts:
 - a. The material claimed to contain trade secret information; and
 - b. A request for confidential treatment including:
 - (1) All information for which no claim is being made;
 - (2) An affidavit stating how and why the information fulfills the conditions of confidentiality under this subsection; and
 - (3) An index to and summary of the information submitted which is suitable for release to the public.
3. **Accepted trade secret claims.** All information which meets the test of subsection 2 must be marked by the department as "ACCEPTED" and protected as confidential information.
4. **Rejected trade secret claims.** If the department determines that information submitted pursuant to subsection 2 does not meet the criteria of that subsection for confidential treatment, the department shall promptly notify the person submitting the information of that determination. The department shall in that event give that person at least twenty days in which to:
 - a. Accept the determination of the department;
 - b. Request that the information be returned to the person;
 - c. Further justify the contention that the information deserves protection as a trade secret; or
 - d. Further limit the scope of information for which a claim of confidentiality is made.

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

5. **Appeal of nondisclosure claims.** Any person who identifies and tenders the reasonable cost of collecting, copying, certifying, and mailing particular information held by the department under subsection 2 may file with the department a petition for reconsideration stating how and why the public's interest would be better served by the release of the requested information than by its retention as confidential by the department. The department shall then reconsider the confidential status of the information. The department action on a petition for reconsideration constitutes final agency action for purposes of judicial review. Appeal of the department's action must be to an appropriate district court.
6. **Retention of confidential information.** All information which is accepted by the department as confidential must be stored in locked filing cabinets. Only those personnel of the department specifically designated by the department shall have access to the information contained therein. The department may not designate any person to have access to confidential information unless that person requires such access in order to carry out that person's responsibilities and duties. No person may disclose any confidential information except in accordance with the provisions of this section. No copies may be made except as strictly necessary for internal department use or as specified in subsection 8.
7. **Maintenance of log.** Persons designated by the department to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the date of such access.
8. **Transmittals of confidential information.** As necessary, confidential information acquired by the department under the provisions of the act, or this article, may be transmitted to such federal, state, or local agencies, when necessary for purposes of administration of any federal, state, or local air pollution control laws, which make an adequate showing of need to the department, provided that such transmittal is made under a continuing assurance of confidentiality.
9. **Relationship to issuance of permits.** The department may not process any application for a permit to construct or operate pursuant to chapter 33-15-14 or 33-15-15 until final agency action on confidential trade secret claims has been completed.

History: Effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-06

33-15-01-17. Enforcement.

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.
2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.
 - a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
 - (1) A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.
 - (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated in a federally enforceable title V permit to operate.
 - (3) Compliance test methods specified in this article.
 - b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
 - (1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 50, 51, 60, 61, 63, and 75.
 - (2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a.
3.
 - a. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.
 - b. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.

History: Effective June 1, 1990; amended effective December 1, 1994; September 1, 1997; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-18. Compliance certifications. Notwithstanding any other provision in this article, for the purpose of submission of compliance certifications the owner or operator is not prohibited from using the following in addition to any specified compliance methods:

1. A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.
2. Any other monitoring method approved for the source under paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated into a federally enforceable title V permit to operate.

History: Effective December 1, 1994; amended effective March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-03
RESTRICTION OF EMISSION OF VISIBLE AIR CONTAMINANTS

Section	
33-15-03-01	Restrictions Applicable to Existing Installations
33-15-03-02	Restrictions of Applicable to New Installations and all Incinerators
33-15-03-03	Restrictions Applicable to Fugitive Emissions
33-15-03-03.1	Restrictions Applicable to Flares
33-15-03-04	Exceptions
33-15-03-05	Method of Measurement

33-15-03-01. Restrictions applicable to existing installations. No person may discharge into the ambient air from any single source of emission whatsoever, with the exception of existing incinerators, any air contaminant which exhibits an opacity greater than forty percent except that a maximum of sixty percent opacity shall be permissible for not more than one six-minute period per hour. Provided, however:

1. In consideration of public health and welfare, when it becomes both technically and economically feasible, the source shall comply with visible air contaminant restrictions as outlined in section 33-15-03-02 when directed by the department.
2. Any existing source which has installed control technology capable of complying with the visible air contaminant restrictions applicable to new installations shall comply with section 33-15-03-02 when directed by the department.
3. If any party is aggrieved by the department's decision as referenced in subsections 1 and 2, that party may request a hearing before the department to review such decision. Such hearing must be conducted according to article 33-22 and North Dakota Century Code chapter 28-32. If a hearing is requested, the requirements of section 33-15-03-02 are not effective until ordered by the department at the conclusion of the hearing process.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-02. Restrictions applicable to new installations and all incinerators. No person may discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits an opacity greater than twenty percent except that a maximum of forty percent opacity is permissible for not more than one six-minute period per hour.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-03. Restrictions application to fugitive emissions. No person may discharge into the ambient air from any source of fugitive emissions, as determined or identified by the department, any air contaminant which exhibits an opacity greater than forty percent for more than one six-minute period per hour. Such visible emissions shall have been visibly transported off the property of emission origination and remains visible to an observer positioned off said property when sighting along a line which does not cross the property of emission origination.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-03.1. Restrictions applicable to flares. No person may discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits an opacity greater than twenty percent except that a maximum of sixty percent opacity is permissible for not more than one six-minute period per hour.

History: Effective February 1, 1982; amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-04. Exceptions. The provisions of sections 33-15-03-01, 33-15-03-02, 33-15-03-03, and 33-15-03-03.1 shall not apply in the following circumstances:

1. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements.
2. When smoke is emitted for the purpose of training or research when approved by the department, including training schools for firefighting personnel.
3. ~~Where an applicable opacity standard is established for a specific source.~~
[Reserved]
4. [Reserved]
5. Where fugitive emissions are caused by agricultural activities related to the normal operations of a farm. However, agricultural practices such as tilling of land, application of fertilizers, harvesting of crops, and other activities shall be managed in such a manner as to minimize dust from becoming airborne.

History: Amended effective February 1, 1982; January 1, 2013.

General Authority: NDCC 23-25-03, 28-32-01

Law Implemented: NDCC 23-25-03

33-15-03-05. Method of measurement.

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

2. Method 22. When a visible emissions limit is specified in a permit issued in accordance with this article as zero percent opacity except for a certain frequency, compliance shall be determined using Reference Method 22 of Appendix A to chapter 33-15-12.

History: Amended effective October 1, 1987; April 1, 2014.

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

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-12
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Section

- 33-15-12-01 General Provisions [Repealed]
- 33-15-12-01.1 Scope
- 33-15-12-02 Standards of Performance
- 33-15-12-03 [Reserved]
- 33-15-12-04 Standards of Performance [Repealed]

33-15-12-01. General provisions. Repealed effective June 1, 1992.

33-15-12-01.1. Scope. Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60 (40 CFR 60) as they exist on July 1, ~~2013~~ 2015, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-02. Standards of Performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

Subpart Cc - Emissions guidelines and compliance times for municipal solid waste landfills.

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR parts 60.33c, 60.34c and 60.35c. except that quarterly surface monitoring for methane under part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.
2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.
3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.
4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.
5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.
6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

Subpart Ce - Emission guidelines and compliance times for hospital/medical/infectious waste incinerators.

Except as noted below, designated facilities to which this rule applies shall comply with the minimum requirements for state plan approval listed in subpart Ce.

*60.39e(a) is deleted in its entirety.

*60.39e(b) is deleted in its entirety and replaced with the following:

- (b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of the United States environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the state plan. Owners or operators of designated facilities who will cease operation of their

incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

*60.39e(c) is deleted in its entirety and replaced with the following:

- (c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002 for the emission guidelines promulgated on September 15, 1997, and not later than October 6, 2014 for the emission guidelines promulgated on October 6, 2009, provided the facility owner or operator complies with the following:
1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.
 2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device(s) within nine months of state plan approval.
 3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.
 4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.
 5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.
 6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.
 7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.
 8. Starts up the air pollution control device within twenty-eight months after state plan approval.

9. Notifies the department of the performance test thirty days prior to the test.
10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.
11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

*60.39e(d) is deleted in its entirety and replaced with the following:

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall, within six months after the United States environmental protection agency's approval of the state plan, submit:
 - i. Documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after United States environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and
 - ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.
2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.
3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the applicable requirements on or before the date three years after United States environmental protection agency approval of the state plan but not later than September 16, 2002 for the emission guidelines promulgated on September 15, 1997. For the amended emission guidelines published on October 6, 2009, compliance with the applicable requirements shall be attained on or before the date three years after United States environmental protection agency approval of the amended state plan but not later than October 6, 2014.

*60.39e(f) is deleted in its entirety.

After the compliance dates specified in this subpart, an owner or operator of a facility to which this subpart applies shall not operate any such unit in violation of this subpart.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

*The limits and other requirements for mercury are deleted.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors for which construction is commenced after December 20, 1989, and on or before September 20, 1994.

Subpart Ec - Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

Subpart F - Standard of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for hot mix asphalt facilities.

Subpart J - Standards of performance for petroleum refineries.

Subpart Ja – Standards of performance for petroleum refineries for which construction, reconstruction, or modification commenced after May 14, 2007.

Those portions of the subpart that have been stayed are not adopted.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

- (c) Any facility under part 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

Subpart O - Standards of performance for sewage treatment plants.

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in the synthetic organic chemicals manufacturing industry.

Subpart VVa – Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in petroleum refineries.

Subpart GGGa – Standards of performance for equipment leaks of VOC in petroleum refineries for which construction, reconstruction, or modification commenced after November 7, 2006.

Those portions of the subpart that are stayed are not adopted.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum drycleaners.

Subpart KKK - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO₂ emissions.

Subpart MMM – [Reserved]

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart OOO - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standards of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for volatile organic compound (VOC) emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymeric coating of supporting substrates facilities.

Subpart WWW - Standards of performance for municipal solid waste landfills.

Subpart AAAA - Standards of performance for small municipal waste combustion units for which construction is commenced after August 30, 1999, or for which modification or reconstruction is commenced after June 6, 2001.

Subpart CCCC - Standards of performance for commercial and industrial solid waste incineration units.

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste incineration units.

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through 9.

In the rule, you means the owner or operator of a commercial or industrial solid waste incineration unit.

Table 1 of the rule is deleted and replaced with the following:

Table 1 to Subpart DDDD - Model Rule
Increments of Progress and Compliance Schedules

CISWI Units That Commenced Construction On or Before November 30, 1999	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

Incinerator CISWI units that commenced construction after November 30, 1999

but no later than June 4, 2010 or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013. CISWI units other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan	One year after EPA approval of the state plan or February 7, 2017, whichever comes first.
Increment 2 - Final compliance	Three years after EPA approval of the state plan or February 7, 2018, whichever comes first.

Subpart GGGG – [Reserved]

Subpart IIII – Standards of performance for stationary compression ignition internal combustion engines.

Subpart JJJJ – Standards of performance for stationary sparks ignition internal combustion engines.

Subpart KKKK - Standards of performance for stationary combustion turbines.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate change.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner’s manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-03. [Reserved]

33-15-12-04. Standards of performance. Repealed effective June 1, 1992.

CHAPTER 33-15-14
DESIGNATED AIR CONTAMINANT SOURCES,
PERMIT TO CONSTRUCT, MINOR SOURCE PERMIT TO OPERATE,
TITLE V PERMIT TO OPERATE

Section

- 33-15-14-01 Designated Air Contaminant Sources
- 33-15-14-01.1 Definitions
- 33-15-14-02 Permit to Construct
- 33-15-14-03 Minor Source Permit to Operate
- 33-15-14-04 Permit Fees [Repealed]
- 33-15-14-05 Common Provisions Applicable to Both Permit
to Construct and Permit to Operate [Repealed]
- 33-15-14-06 Title V Permit to Operate
- 33-15-14-07 Source Exclusions from Title V Permit to Operate
Requirements

33-15-14-01. Designated air contaminant sources. Pursuant to subsection 1 of North Dakota Century Code section 23-25-04, stationary sources within the following source categories are designated as air contaminant sources capable of causing or contributing to air pollution, either directly or indirectly.

1. The following chemical process facilities:
 - a. Adipic acid.
 - b. Ammonia.
 - c. Ammonium nitrate.
 - d. Carbon black.
 - e. Charcoal.
 - f. Chlorine.
 - g. Chlor-alkali manufacturing.
 - h. Detergent and soap.
 - i. Explosives (trinitrotoluene and nitrocellulose).
 - j. Hydrochloric acid.

- k. Hydrofluoric acid.
- l. Nitric acid.
- m. Paint and varnish manufacturing.
- n. Phosphoric acid.
- o. Phthalic anhydride.
- p. Plastics manufacturing.
- q. Printing ink manufacturing.
- r. Sodium carbonate.
- s. Sulfur production and recovery.
- t. Sulfuric acid.
- u. Synthetic fibers.
- v. Synthetic rubber.
- w. Terephthalic acid.
- x. Alcohol.
- y. Cresylic acids.
- z. Phenol
- aa. Polymer manufacturing and coating operations.

2. The following food and agricultural facilities:

- a. Agricultural drying and dehydrating operations.
- b. Ammonium nitrate.
- c. Cheese whey drying and processing.
- d. Coffee roasting.
- e. Cotton ginning.

- f. Feed, grain, and seed handling and processing.
- g. Fermentation processes.
- h. Fertilizers.
- i. Fishmeal processing.
- j. Meat smokehouses.
- k. Orchard heaters.
- l. Potato processing.
- m. Rendering plants.
- n. Starch manufacturing.
- o. Sugarbeet processing.

3. The following metallurgical facilities:

- a. Primary metals facilities:
 - (1) Aluminum ore reduction.
 - (2) Copper smelters.
 - (3) Ferroalloy production.
 - (4) Iron and steel mills.
 - (5) Lead smelters.
 - (6) Metallurgical coke manufacturing.
 - (7) Zinc.
- b. Secondary metals facilities:
 - (1) Aluminum operations.
 - (2) Brass and bronze smelting.
 - (3) Ferroalloys.

- (4) Ferrous foundries.
 - (5) Gray iron foundries.
 - (6) Lead smelting.
 - (7) Magnesium smelting.
 - (8) Nonferrous foundries.
 - (9) Steel foundries.
 - (10) Zinc processes.
- c. Electrolytic plating operations.

4. The following mineral products facilities:

- a. Asphalt roofing.
- b. Asphaltic concrete plants.
- c. Bricks and related clay refractories.
- d. Calcium carbide.
- e. Ceramic and clay processes.
- f. Clay and fly ash sintering.
- g. Coal cleaning.
- h. Coal drying.
- i. Coal mining.
- j. Coal handling and processing.
- k. Concrete batching.
- l. Fiberglass manufacturing.
- m. Frit manufacturing.
- n. Glass manufacturing.

- o. Gypsum manufacturing.
 - p. Leonardite mining, drying, and processing.
 - q. Lime manufacturing.
 - r. Mineral wool manufacturing.
 - s. Paperboard manufacturing.
 - t. Perlite manufacturing.
 - u. Phosphate rock preparation.
 - v. Portland cement manufacturing, bulk handling, and storage.
 - w. Rock, stone, gravel, and sand quarrying and processing.
 - x. Uranium mining, milling, and enrichment.
 - y. Calciners and dryers.
5. The following energy and fuel facilities:
- a. Coal gasification.
 - b. Coal liquefaction
 - c. Crude oil and natural gas production.
 - d. Fossil fuel steam electric plants.
 - e. Fuel conversion plants.
 - f. Natural gas processing.
 - g. Petroleum refining and petrochemical operations.
 - h. Petroleum storage (storage tanks and bulk terminals).
6. The following wood processing facilities:
- a. Plywood veneer and layout operations.
 - b. Pulpboard manufacturing.

- c. Wood pulping.
 - d. Sawmills.
 - e. Wood products manufacturing.
7. The following waste management units or facilities:
- a. Afterburners.
 - b. Automobile body incinerators.
 - c. Conical burners.
 - d. Flares.
 - e. Gaseous and liquid organic compounds incinerators.
 - f. Industrial waste incinerators.
 - g. Open burning.
 - h. Open pit incinerators.
 - i. Infectious waste incinerators.
 - j. Refuse incinerators.
 - k. Salvage incinerators.
 - l. Sewage sludge incinerators.
 - m. Wood waste incinerators.
 - n. Municipal waste combustors.
8. The following miscellaneous facilities:
- a. Dry cleaning and laundry operations.
 - b. Fuel burning equipment.
 - c. Internal combustion engines.
 - d. Surface coating operations.

- e. Wastewater treatment plants.
 - f. Water cooling towers and water cooling ponds.
 - g. Stationary gas turbines.
 - h. Lead acid battery manufacturing.
 - i. Hydrocarbon contaminated soil remediation projects.
9. Any source for which an applicable federal standard of performance [40 CFR 60] as been adopted in chapter 33-15-12.
 10. Any source for which an applicable national emission standard for hazardous air pollutants [40 CFR 61] has been adopted in chapter 33-15-13.
 11. Any source which is subject to review under federal prevention of significant deterioration of air quality regulations [40 CFR 51.166].
 12. Any source which is determined by the department to cause or contribute to a violation of any state ambient air quality standard or violates the other provisions of chapter 33-15-02.
 13. Any source subject to title V permitting requirements in section 33-15-14-06.
 14. Any major source to which a national emission standard for hazardous air pollutants for source categories [40 CFR 63] would apply.
 15. Other stationary sources subject to a standard or requirement under the Federal Clean Air Act as amended.

History: Amended effective October 1, 1987; March 1, 1994; August 1, 1995; April 1, 2009; April 1, 2011.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1

Law Implemented: NDCC 23-25-04, 23-25-04.1

33-15-14-01.1 Definitions. For the purposes of this chapter:

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

- a. For sources subject to a standard or requirement under chapters 33-15-13, 33-15-15 (excluding increment consumption by nonmajor sources), and 33-15-22, it shall have the meaning given for construction in each of the respective chapters.
 - b. For all other sources it means the placement or erection, including fabrication, demolition or modification, of an air contaminant emissions unit and any equipment, process, or structure that will be used to reduce, physically or chemically change, or transmit to the atmosphere any air contaminant. This does not include the building that houses the source, site work, foundations, or other equipment which does not affect the amount, ambient concentration or type of air contaminants that are emitted. With respect to a physical change or a change in the method of operation it means those on-site activities which will affect an existing emissions unit or establishment of a new unit that emits to the atmosphere.
3. "Emissions unit" has the meaning given to it in section 33-15-14-06.
 4. "Minor source" means any designated air contaminant source under section 33-15-14-01 which is not required to obtain a title V permit to operate under section 33-15-14-06.
 5. "Potential to emit" has the meaning given to it in section 33-15-14-06.
 6. "Stationary source" has the meaning given to it in section 33-15-14-06.

History: Effective March 1, 1994; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. **Permit to construct required.**
 - a. No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter.
 - b. The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33-15-14-01.1, prior to obtaining a permit to construct, are at the owner or operator's own risk. These activities shall have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities shall convey no rights to a permit to construct under this section.

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

2. Application for permit to construct.

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

3. Alterations to source.

- a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.
- b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an amount greater than that specified in subdivision a of subsection 5 of section 33-15-02 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such

pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:

- (1) Routine maintenance, repair, and replacement may not be considered a physical change.
 - (2) The following may not be considered a change in the method of operation:
 - (a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.
 - (b) An increase in the hours of operation if it is not limited by a permit condition.
 - (c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.
 - (d) Trading of emissions within a facility provided:
 - [1] These trades have been identified and approved in a permit to operate; and
 - [2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.
 - (e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.
- c. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission rate for the source pursuant to 33-15-02-07.3 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 33-15-14-02.6.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifi-

cations, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.

- a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of air quality). These documents are incorporated by reference.
 - b. When an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:
 - (1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.
 - (2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27709).
 - (3) Written approval from the department must be obtained for any modification or substitution.
 - (4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.
5. **Review of application - Standard for granting permits to construct.** The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within ninety days of the receipt of the completed application, make the following preliminary determinations:

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

<u>Contaminant</u>	<u>Averaging Time (hours)</u>				
	Annual ($\mu\text{g}/\text{m}^3$)	24 ($\mu\text{g}/\text{m}^3$)	8 ($\mu\text{g}/\text{m}^3$)	3 ($\mu\text{g}/\text{m}^3$)	1 ($\mu\text{g}/\text{m}^3$)
SO ₂	1.0	5		25	7.8
PM ₁₀		5			
NO ₂	1.0				7.5
CO			500		2000
PM _{2.5}	0.3	1.2			

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

6. **Public participation - Final action on application.**

- a. The following source categories are subject to the public participation procedures under this subsection:
- (1) Those affected facilities designated under chapter 33-15-13.
 - (2) New sources that will be required to obtain a permit to operate under section 33-15-14-06.
 - (3) Modifications to an existing facility which will increase the potential to emit from the facility by the following amounts:
 - (a) One hundred tons [90.72 metric tons] per year or more of particulate matter, sulfur dioxide, nitrogen oxides, hydrogen sulfide, carbon monoxide, or volatile organic compounds; or
 - (b) Ten tons [9.07 metric tons] per year or more of any contaminant listed under section 112(b) of the Federal Clean Air Act; or

- (c) Twenty-five tons [22.68 metric tons] per year or more of any combination of contaminants listed under section 112(b) of the Federal Clean Air Act.
 - (4) Sources which the department has determined to have a major impact on air quality.
 - (5) Those for which a request for a public comment period has been received from the public.
 - (6) Sources for which a significant degree of public interest exists regarding air quality issues.
 - (7) Those sources which request a federally enforceable permit which limits their potential to emit.
- b. With respect to the permit to construct application, the department shall:
- (1) Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.
 - (2) Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located or on the department's website, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.
 - (3) Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice must include the proposed location of the source.
 - (4) Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.
 - (5) Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the

development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

- (6) Allow thirty days for public comment.
- (7) Consider all public comments properly received, in making the final decision on the application.
- (8) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.
- (9) Take final action on the application within thirty days of the applicant's response to the public comments.
- (10) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.

c. For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under section 33-15-15-01.2 shall be followed.

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

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

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

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

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

- b. Trial operation and performance testing.
- c. Prevention and abatement of nuisance conditions caused by operation of the facility.
- d. Recordkeeping and reporting.
- e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
- f. Limitation on hours of operation, production rate, processing rate or fuel usage when necessary to assure compliance with this article.

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

10. **Scope.**

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

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

12. **[Reserved]**

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

- a. Maintenance, structural changes, or minor repair of process equipment, fuelburning equipment, control equipment, or incinerators which do not change capacity of such process equipment, fuelburning equipment, control equipment, or incinerators and which do not involve any change in the quality, nature, or quantity of emissions therefrom.
- b. Fossil fuelburning equipment, other than smokehouse generators, which meet all of the following criteria:
 - (1) The heat input per unit does not exceed ten million British thermal units per hour.
 - (2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.
 - (3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.
- c.
 - (1) Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.
 - (2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a total of five hundred hours or less in a rolling twelve-month period.
 - (3) Any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of five tons [4.54 metric tons] per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33-15-02-04.
 - (4) The exemptions listed in paragraphs 1, 2, 3 do not apply to engines that are a utility unit as defined in section 33-15-21-08.1.
- d. Bench scale laboratory equipment used exclusively for chemical or physical analysis or experimentation.
- e. Portable brazing, soldering, or welding equipment.

- f. The following equipment:
- (1) Comfort air conditioners or comfort ventilating systems which are not designed and not intended to be used to remove emissions generated by or released from specific units or equipment.
 - (2) Water cooling towers and water cooling ponds unless used for evaporative cooling of process water, or for evaporative cooling of water from barometric jets or barometric condensers or used in conjunction with an installation requiring a permit.
 - (3) Equipment used exclusively for steam cleaning.
 - (4) Porcelain enameling furnaces or porcelain enameling drying ovens.
 - (5) Unheated solvent dispensing containers or unheated solvent rinsing containers of sixty gallons [227.12 liters] capacity or less.
 - (6) Equipment used for hydraulic or hydrostatic testing.
- g. The following equipment or any exhaust system or collector serving exclusively such equipment:
- (1) Blast cleaning equipment using a suspension of abrasive in water.
 - (2) Bakery ovens if the products are edible and intended for human consumption.
 - (3) Kilns for firing ceramic ware, heated exclusively by gaseous fuels, singly or in combinations, and electricity.
 - (4) Confection cookers if the products are edible and intended for human consumption.
 - (5) Drop hammers or hydraulic presses for forging or metal working.
 - (6) Die casting machines.
 - (7) Photographic process equipment through which an image is reproduced upon material through the use of sensitized radiant energy.
 - (8) Equipment for drilling, carving, cutting, routing, turning, sawing, planing, spindle sanding, or disc sanding of wood or wood products, which is located within a facility that does not vent to the outside air.

- (9) Equipment for surface preparation of metals by use of aqueous solutions, except for acid solutions.
 - (10) Equipment for washing or drying products fabricated from metal or glass; provided, that no volatile organic materials are used in the process and that no oil or solid fuel is burned.
 - (11) Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.
- h. Natural draft hoods or natural draft ventilators.
 - i. Containers, reservoirs, or tanks used exclusively for:
 - (1) Dipping operations for coating objects with oils, waxes, or greases, if no organic solvents are used.
 - (2) Dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents.
 - (3) Storage of butane, propane, or liquefied petroleum or natural gas.
 - (4) Storage of lubricating oils.
 - (5) Storage of petroleum liquids except those containers, reservoirs, or tanks subject to the requirements of chapter 33-15-12.
 - j. Gaseous fuel-fired or electrically heated furnaces for heat treating glass or metals, the use of which does not involve molten materials.
 - k. Crucible furnaces, pot furnaces, or induction furnaces, with a capacity of one thousand pounds [453.59 kilograms] or less each, unless otherwise noted, in which no sweating or distilling is conducted, nor any fluxing conducted utilizing chloride, fluoride, or ammonium compounds, and from which only the following metals are poured or in which only the following metals are held in a molten state:
 - (1) Aluminum or any alloy containing over fifty percent aluminum; provided, that no gaseous chlorine compounds, chlorine, aluminum chloride, or aluminum fluoride are used.
 - (2) Magnesium or any alloy containing over fifty percent magnesium.
 - (3) Lead or any alloy containing over fifty percent lead, in a furnace with a capacity of five hundred fifty pounds [249.48 kilograms] or less.

- (4) Tin or any alloy containing over fifty percent tin.
 - (5) Zinc or any alloy containing over fifty percent zinc.
 - (6) Copper.
 - (7) Precious metals.
- l. Open burning activities within the scope of section 33-15-04-02.
 - m. Flares used to indicate some danger to the public.
 - n. Sources or alterations to a source which are of minor significance as determined by the department.
 - o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in section 33-15-14-06.

14. Performance and emission testing.

- a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.
- b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.
- c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.
- d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.

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

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this

subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective March 1, 1980; February 1, 1982; October 1, 1987; June 1, 1990; March 1, 1994; August 1, 1995; September 1, 1997; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2

Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

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

1. Permit to operate required.

- a. Except as provided in subdivisions c and d, no person may operate or cause the routine operation of an installation or source designated in section 33-15-14-01 without applying for and obtaining, in accordance with this section, a permit to operate. Application for a permit to operate a new installation or source must be made at least thirty days prior to startup of routine operation. Those sources that received a permit to construct under section 33-15-14-02, need only submit a thirty-day prior notice of proposed startup to satisfy the requirement to apply for a permit to operate under this subdivision.
- b. No person may operate or cause the operation of an installation or source in violation of any permit to operate or any condition imposed upon a permit to operate or in violation of this article.
- c. Sources that are subject to the title V permitting requirements of section 33-15-14-06 are exempt from the requirements of this section.
- d. Sources that are exempt from the requirement to obtain a permit to construct under subsection 33-15-14-02-13 are exempt from this section.
- e. Sources which are subject to the title V permitting requirements in section 33-15-14-06 based solely on their potential to emit may apply for a federally enforceable minor source permit to operate which would limit their potential to emit to a level below the title V permit to operate applicability threshold.
- f. Permits which are issued under this section which do not conform to the requirements of this section, including public participation under subdivision 33-15-14-03-5.a, and the requirements of any United States environmental protection agency regulations may be deemed not federally enforceable by the United States environmental protection agency.

- g. General permits: The department may issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other minor source permits to operate and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual minor source permit to operate. Without repeating the public participation procedures under subsection 33-15-14-03.5, the department may grant a source's request for authorization to operate under a general permit.

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

- a. Application for a permit to operate must be made by the owner or operator thereof on forms furnished by the department.
- b. Each application for a permit to operate must be accompanied by such performance tests results, information, and records as may be required by the department to determine whether the requirements of this article will be met. Such information may also be required by the department at any time when the source is being operated to determine compliance with this article.
- c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the operation of the installation or source in accordance with this article.

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

4. **Performance testing.**

- a. Before a permit to operate is granted, the applicant, if required by the department, shall conduct performance tests in accordance with methods and procedures required by this article or methods and procedures approved by the department. Such tests must be made at the expense of the applicant. The department may monitor such tests and may also conduct performance tests.
- b. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Issuance of a minor source permit to operate is subject to the faithful completion of the test in accordance with this article.

- c. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to operate must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.
- d. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.
- e. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative or from requiring the owner or operator to conduct any test at such time as the department may determine.

5. **Action on applications.**

- a. Public participation: This subdivision is applicable to only those sources which apply for a federally enforceable minor source permit to operate which limits their potential to emit an air contaminant. The Department shall:
 - (1) Within ninety days of receipt of a complete application:
 - (a) Make a preliminary determination concerning issuance of the permit to operate.
 - (b) Make available in at least one location in the county or counties in which the source is located or on the department's website, a copy of the proposed permit and copies of or a summary of the information considered in developing the permit.
 - (c) Publish notice to the public by prominent advertisement, in the region affected, of the opportunity for written comment on the proposed permit. The public notice must include the proposed location of the source.
 - (d) ~~Deliver a copy~~ Provide notice of the proposed permit and public notice to any state or federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions. For purposes of this subparagraph, lands will be considered to be significantly

affected if the source is located within thirty-one and seven hundredths miles (50 kilometers) of such land.

- (e) Provide a copy of the proposed permit, all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.
 - (2) Allow thirty days for public comment.
 - (3) Consider all public comments properly received, in making the final decision on the application.
 - (4) Allow the applicant to submit written responses to public comments received by the department. The applicants responses must be submitted to the department within twenty days of the close of the public comment period.
 - (5) Take final action on the application within thirty days of the applicant's response to the public comments.
 - (6) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.
- b. For those sources not subject to public participation under subdivision a, the department shall act within thirty days after receipt of an application for a permit to operate a new installation or source, and within thirty days after receipt of an application to operate an existing installation or source, and shall notify the applicant, in writing, of the approval, conditional approval, or denial of the application.
 - c. The department shall set forth in any notice of denial the reasons for denial. A denial must be without prejudice to the applicant's right to a hearing before the department or for filing a further application after revisions are made to meet objections specified as reasons for the denial.
6. **Permit to operate - Conditions.** The department may impose any reasonable conditions upon a permit to operate. All emission limitations, controls, and other requirements imposed by conditions on the permit to operate must be at least as stringent as any applicable limitation or requirement contained in this article. Permit to operate conditions may include:
- a. Sampling, testing, and monitoring of the facilities or ambient air or both.
 - b. Trial operation and performance testing.

- c. Prevention and abatement of nuisance conditions caused by operation of the facility.
- d. Recordkeeping and reporting.
- e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
- f. Limits on the hours of operation of a source or its processing rate, fuel usage or production rate when necessary to assure compliance with this article.

7. **Suspension or revocation of permit to operate.**

- a. The department may suspend or revoke a permit to operate for violation of this article, violations of a permit condition or failure to respond to a notice of violation or any order issued pursuant to this article.
- b. Suspension or revocation of a permit to operate shall become final ten days after serving notice on the holder of the permit.
- c. A permit to operate which has been revoked pursuant to this article must be surrendered forthwith to the department.
- d. No person may operate or cause the operation of an installation or source if the department denies or revokes a permit to operate.

8. **Transfer of permit to operate.** The holder of a permit to operate may not transfer it without the prior approval of the department.

9. **Renewal of permit to operate.**

- a. Every permit to operate issued by the department after February 9, 1976, shall ~~become void upon the fifth anniversary of its issuance~~ have a maximum term of five years. Applications for renewal of such permits must be submitted ninety days prior to ~~such anniversary date~~ the expiration date stated in the permit. The department shall approve or disapprove such application within ninety days. If a source submits a complete application for a permit renewal at least ninety days prior to the expiration date, the source's failure to have a minor source permit to operate is not a violation of this section until the department takes final action on the renewal application.
- b. ~~The department may amend permits issued prior to February 9, 1976, so as to provide for voidance upon the fifth anniversary of its issuance.~~

10. **[Reserved]**
11. **[Reserved]**
12. **Responsibility to comply.**
 - a. Possession of a minor source permit to operate does not relieve any person of the responsibility to comply with this article.
 - b. The exemption of any stationary source from the requirements to obtain a minor source permit to operate does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.
13. **Portable sources.** Sources which are designed to be portable and which are operated at temporary jobsites across the state may not be considered a new source by virtue of location changes. One application for a permit to operate any portable source may be filed in accordance with this chapter, and subsequent applications are not required for each temporary jobsite. The permit to operate issued by the department shall be conditioned by such specific requirements as the department deems appropriate to carry out the provisions of sections 33-15-01-07 and 33-15-01-15.
14. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted from the requirement to obtain a minor source permit to operate to register the source with the department within such time limits and on such forms as the department may prescribe.
15. **Extensions of time.** The department may extend any of the time periods specified in this section upon notification of the applicant by the department.
16. **Amendment of permits.** When the public interest requires or when necessary to ensure the accuracy of the permit, the department may modify any condition or information contained in a minor source permit to operate. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, or modify a condition which limits the potential to emit of a source which possesses a federally enforceable permit, the department will provide:
 - a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification and the opportunity for a public hearing, upon request, as well as written public comment.

- b. A minimum of a thirty-day period for written public comment with the opportunity for a public hearing during that thirty-day period, upon request.
- c. Consideration by the department of all comments received.

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective February 1, 1982; October 1, 1987; March 1, 1994; August 1, 1995; June 1, 2001; March 1, 2003; April 1, 2011.

General Authority: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

33-15-14-04. Permit fees. Repealed effective March 1, 1994

33-15-14-05. Common provisions applicable to both permit to construct and permit to operate. Repealed effective March 1, 1994

33-15-14-06. Title V Permit to Operate.

1. **Definitions.** For purposes of this section:
 - a. "Affected source" means any source that includes one or more affected units.
 - b. "Affected state" means any state that is contiguous to North Dakota whose air quality may be affected by a source subject to a proposed title V permit, permit modification or permit renewal or which is within fifty miles [80.47 kilometers] of the permitted source.
 - c. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under title IV of the Federal Clean Air Act.
 - d. "Alternative operating scenario (AOS)" means a scenario authorized in a title V permit that involves a change at the title V source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

- e. “Applicable requirement” means all of the following as they apply to emissions units at a source that is subject to requirements of this section (including requirements that have been promulgated or approved by the United States environmental protection agency through rulemaking at the time of issuance but have future-effective compliance dates):
- (1) Any standard or other requirement provided for in the North Dakota state implementation plan approved or promulgated by the United State environmental protection agency through rulemaking under title I of the Federal Clean Air Act that implements the relevant requirements of the Federal Clean Air Act, including any revisions to that plan.
 - (2) Any term or condition of any permit to construct issued pursuant to this chapter.
 - (3) Any standard or other requirement under section 111 including section 111(d) of the Federal Clean Air Act.
 - (4) Any standard or other requirement under section 112 of the Federal Clean Air Act including any requirement concerning accident prevention under section 112(r)(7) of the Federal Clean Air Act.
 - (5) Any standard or other requirement of the acid rain program under title IV of the Federal Clean Air Act.
 - (6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Federal Clean Air Act.
 - (7) Any standard or other requirement governing solid waste incineration, under section 129 of the Federal Clean Air Act.
 - (8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Federal Clean Air Act.
 - (9) Any standard or other requirement for tank vessels under section 183(f) of the Federal Clean Air Act.
 - (10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Federal Clean Air Act.
 - (11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Clean Air Act, unless the administrator of the United States environmental

protection agency has determined that such requirements need not be contained in a title V permit.

- (12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Federal Clean Air Act.
- f. “Approved replicable methodology (ARM)” means title V permit terms that:
- (1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this section, such that the protocol is based on sound scientific or mathematical principles, or both, and provides reproducible results using the same inputs; and
 - (2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the approved replicable methodology, or requirement of this section, including where an approved replicable methodology is used for determining applicability of a specific requirement to a particular change.
- g. “Designated representative” means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 Code of Federal Regulations 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in this section, or in any other regulations implementing title V of the Federal Clean Air Act, it shall be deemed to refer to the “designated representative” with regard to all matters under the acid rain program.
- h. “Draft permit” means the version of a permit for which the department offers public participation or affected state review.
- i. “Emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed

equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- j. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
- k. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act. This term does not alter or affect the definition of unit for purposes of title IV of the Federal Clean Air Act.
- l. "Environmental protection agency" or the "administrator" means the administrator of the United States environmental protection agency or the administrators designee.
- m. "Federal Clean Air Act" means the Federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.].
- n. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.
- o. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- p. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.
- q. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph 1 or 2. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the contaminant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the standard industrial classification manual, 1987.

- (1) A major source under section 112 of the Federal Clean Air Act, which is defined as:
 - (a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of any hazardous air contaminant which has been listed pursuant to section 112(b) of the Federal Clean Air Act, twenty-five tons [22.67 metric tons] per year or more of any combination of such hazardous air contaminants, or such lesser quantity as the administrator of the United States environmental protection agency may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.
 - (b) For radionuclides, "major source" shall have the meaning specified by the administrator of the United States environmental protection agency by rule.
- (2) A major stationary source of air contaminants, that directly emits or has the potential to emit, one hundred tons [90.68 metric tons] per year or more of any air contaminant subject to regulation (including any major source of fugitive emissions of any such contaminant, as determined by rule by the administrator of the United States environmental protection agency). For purposes of this definition, air contaminant subject to regulation does not include greenhouse gases as defined in 40 Code of Federal Regulations 86.1818-12(a). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:
 - (a) Coal cleaning plants (with thermal dryers).
 - (b) Kraft pulp mills.
 - (c) Portland cement plants.
 - (d) Primary zinc smelters.

- (e) Iron and steel mills.
- (f) Primary aluminum ore reduction plants.
- (g) Primary copper smelters.
- (h) Municipal incinerators capable of charging more than two hundred fifty tons [226.80 metric tons] of refuse per day.
- (i) Hydrofluoric, sulfuric, or nitric acid plants.
- (j) Petroleum refineries.
- (k) Lime plants.
- (l) Phosphate rock processing plants.
- (m) Coke oven batteries.
- (n) Sulfur recovery plants.
- (o) Carbon black plants (furnace process).
- (p) Primary lead smelters.
- (q) Fuel conversion plants.
- (r) Sintering plants.
- (s) Secondary metal production plants.
- (t) Chemical process plants.
- (u) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input.
- (v) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels.
- (w) Taconite ore processing plants.
- (x) Glass fiber processing plants.
- (y) Charcoal production plants.

- (z) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input.
 - (aa) Any other stationary source category which as of August 7, 1980 is being regulated under section 111 or 112 of the Federal Clean Air Act.
- r. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.
- s. "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, under this section (whether such costs are incurred by the department or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).
- t. "Permit revision" means any permit modification or administrative permit amendment.
- u. "Potential to emit" means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator of the United States environmental protection agency and the department.
- v. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator of the United States environmental protection agency for review.
- w. "Regulated air contaminant" means the following:
- (1) Nitrogen oxides or any volatile organic compounds.
 - (2) Any contaminant for which a national ambient air quality standard has been promulgated.
 - (3) Any contaminant that is subject to any standard promulgated under section 111 of the Federal Clean Air Act.
 - (4) Any class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

- (5) Any contaminant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Clean Air Act, including sections 112(g), (j), and (r) of the Federal Clean Air Act, including the following:
 - (a) Any contaminant subject to requirements under section 112(j) of the Federal Clean Air Act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Federal Clean Air Act, any contaminant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the Federal Clean Air Act; and
 - (b) Any contaminant for which the requirements of section 112(g)(2) of the Federal Clean Air Act have been met, but only with respect to the individual source subject to section 112(g)(2) of the Federal Clean Air Act requirement.
- x. “Regulated contaminant” for fee calculation, which is used only for chapter 33-15-23, means any “regulated air contaminant” except the following:
 - (1) Carbon monoxide.
 - (2) Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - (3) Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.
 - (4) Greenhouse gases.
- y. “Renewal” means the process by which a permit is reissued at the end of its term.
- z. “Responsible official” means one of the following:
 - (1) For a corporation: 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 decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall

operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- (a) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars).
 - (b) The delegation of authority to such representatives is approved in advance by the department.
- (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
 - (3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the United States environmental protection agency).
 - (4) For affected sources:
 - (a) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Federal Clean Air Act or the regulations promulgated thereunder are concerned.
 - (b) The designated representative for any other purposes under this section.
- aa. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.
 - bb. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act.
 - cc. "Subject to regulation" means, for any air contaminant, that the air contaminant is subject to either a provision in the Federal Clean Air Act, or a nationally applicable regulation codified by the administrator of the United State environmental protection agency in title 40, Code of Federal Regulations, chapter I, subchapter C, that requires actual control of the

quantity of emissions of that air contaminant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that air contaminant released from the regulated activity. Except that:

~~(1) Greenhouse gases, the air contaminant defined in 40 Code of Federal Regulations 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the greenhouse gases emissions are at a stationary source emitting or having the potential to emit one hundred thousand tons per year carbon dioxide equivalent emissions.~~

~~(2) The term tons per year carbon dioxide equivalent emissions shall represent an amount of greenhouse gases emitted, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the contaminant greenhouse gases, by the gas's associated global warming potential published at 40 Code of Federal Regulations, part 98, subpart A, table A-1 global warming potentials, and summing the resultant value for each to compute a tons per year carbon dioxide equivalent. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, byproducts, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).~~

dd. "Title V permit to operate or permit" (unless the context suggests otherwise) means any permit or group of permits covering a source that is subject to this section that is issued, renewed, amended, or revised pursuant to this section.

ee. "Title V source" means any source subject to the permitting requirements of this section, as provided in subsection 2.

2. **Applicability.**

a. This section is applicable to the following sources:

(1) Any major source.

- (2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Federal Clean Air Act.
 - (3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Clean Air Act.
 - (4) Any affected source.
 - (5) Any source in a source category designated by the administrator of the United States environmental protection agency.
- b. The following source categories are exempt from the requirements of this section:
- (1) All sources listed in subdivision a that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Federal Clean Air Act, are exempt from the obligation to obtain a title V permit until such time as the administrator of the United States environmental protection agency completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions.
 - (2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Federal Clean Air Act after July 21, 1992, those the administrator of the United States environmental protection agency determines to be exempt from the requirement to obtain a title V permit at the time that the new standard is promulgated.
 - (3) Any source listed as exempt from the requirement to obtain a permit under this section may opt to apply for a title V permit. Sources that are exempted by paragraphs 1 and 2 of this subdivision and which do not opt to apply for a title V permit to operate are subject to the requirements of section 33-15-14-03.
 - (4) The following source categories are exempted from the obligation to obtain a permit under this section.
 - (a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR

60, subpart AAA - standards of performance for new residential wood heaters.

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61, subpart M - national emission standard for hazardous air pollutants for asbestos, section 61.145, standard for demolition and renovation.

c. For major sources, the department will include in the permit all applicable requirements for all relevant emissions units in the major source.

For any nonmajor source subject to the requirements of this section, the department will include in the permit all applicable requirements applicable to the emissions units that cause the source to be subject to this section.

d. Fugitive emissions from a source subject to the requirements of this section shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33-15-14-02 or to comply with any other applicable standard or requirement of this article.

4. **Permit applications.**

a. **Duty to apply.** For each title V source, the owner or operator shall submit a timely and complete permit application in accordance with this subdivision.

(1) **Timely application.**

(a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the source becoming subject to this section.

(b) Title V sources required to meet the requirements under section 112(g) of the Federal Clean Air Act, or to have a permit to construct under section 33-15-14-02, shall file a complete application to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

- (c) For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than eighteen months, prior to the date of permit expiration.
- (2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.
 - (3) Confidential information. If a source has submitted to the department under a claim of confidentiality, the source must also submit a copy of such information directly to the administrator of the United States environmental protection agency when directed to do so by the department.
- b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.
 - c. Standard application form and required information. All applications for a title V permit to operate shall be made on forms supplied by the department. Information as described below for each emissions unit at a title V source shall be included in the application. Detailed information for emissions

units or activities that have the potential to emit less than the following quantities of air contaminants (insignificant units or activities) need not be included in permit applications:

Particulate: 2 tons [1.81 metric tons] per year
Inhalable particulate: 2 tons [1.81 metric tons] per year
Sulfur dioxide: 2 tons [1.81 metric tons] per year
Hydrogen sulfide: 2 tons [1.81 metric tons] per year
Carbon monoxide: 2 tons [1.81 metric tons] per year
Nitrogen oxides: 2 tons [1.81 metric tons] per year
Ozone: 2 tons [1.81 metric tons] per year
Reduced sulfur compounds: 2 tons [1.81 metric tons] per year
Volatile organic compounds: 2 tons [1.81 metric tons] per year
All other regulated contaminants
including those in section 112(b)
of the Federal Clean Air Act: 0.5 tons [0.45
metric tons] per year

Where a contaminant could be placed in more than one category, the smallest emission level applies.

However, for insignificant activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under section 33-15-23-04.

The application, shall, as a minimum, include the elements specified below:

- (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.
- (2) A description of the source's processes and products (by Standard Industrial Classification Code) including those associated with any proposed alternative operating scenario identified by the source.
- (3) The following emissions-related information:
 - (a) All emissions of contaminants for which the source is major, and all emissions of regulated air contaminants. A permit application shall describe all emissions of regulated air contaminants emitted from any emissions unit, except when such units are exempted under this subdivision.

- (b) Identification and description of all points of emissions described in subparagraph a in sufficient detail to establish the basis for fees and applicability of requirements of the Federal Clean Air Act and this article.
 - (c) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tons per year can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine or assure compliance, or both, with an applicable requirement.
 - (d) Fuels, fuel use, raw materials, production rates, and operating schedules.
 - (e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - (f) Limitations on source operation affecting emissions or any work practice standards, when applicable, for all regulated contaminants.
 - (g) Other information required by any applicable requirement including information related to stack height limitations developed pursuant to chapter 33-15-18.
 - (h) Calculations on which the information in subparagraphs a through g is based.
- (4) The following air pollution control requirements:
 - (a) Citation and description of all applicable requirements; and
 - (b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
 - (5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Federal Clean Air Act or of this article or to determine the applicability of such requirements.
 - (6) An explanation of any proposed exemptions from otherwise applicable requirements.

- (7) Additional information as determined to be necessary by the department to define proposed alternative operating scenarios identified by the source pursuant to paragraph 33-15-14-06.5.a(9) or to define permit terms and conditions implementing any alternative operating scenario under paragraph 9 of subdivision a of subsection 5 of section 33-15-14-06 or implementing paragraph 2 of subdivision b of subsection 6 of section 33-15-14-06, paragraph 3 of subdivision b of subsection 6 of 33-15-14-06, paragraph 8 of subdivision a of subsection 5 of section 33-15-14-06 or paragraph 10 of subdivision a of subsection 5 of section 33-15-14-06. The permit application shall include documentation demonstrating that the source has obtained all authorization(s) required under the applicable requirements relevant to any proposed alternative operating scenarios, or a certification that the source has submitted all relevant materials to the department for obtaining such authorizations.
- (8) A compliance plan for all title V sources that contains all the following:
- (a) A description of the compliance status of the source with respect to all applicable requirements.
 - (b) A description as follows:
 - [1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - [2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - [3] For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
 - [4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the

source will meet such requirements on a timely basis.

(c) A compliance schedule as follows:

- [1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
- [2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
- [3] A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- [4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this

provision, unless a more detailed schedule is expressly required by the applicable requirement.

- (d) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.
 - (e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.
- (9) Requirements for compliance certification, including the following:
- (a) A certification of compliance with all applicable requirements by a responsible official consistent with subdivision d and section 114(a)(3) of the Federal Clean Air Act;
 - (b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and
 - (d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Federal Clean Air Act.
- (10) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Federal Clean Air Act.
- d. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5. **Permit content.**

a. Standard permit requirements. Each permit issued under this section shall include, as a minimum, the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include approved replicable methodologies identified by the source in its title V permit application as approved by the department, provided that no approved replicable methodology shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this section or circumvent any applicable requirement that would apply as a result of implementing the approved replicable methodology.

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit must state that, if an applicable requirement of the Federal Clean Air Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Federal Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator of the United States environmental protection agency and the department.

(c) If the state implementation plan allows a determination of an alternative emission limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the department elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. ~~Each title V permit to operate shall expire upon the fifth anniversary of its issuance.~~ For all sources, the term of the permit shall not exceed five years. The permit shall expire on the date listed on the permit.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

[1] All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including subsection 10 of this section and any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

[2] If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subparagraph c. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this item; and

[3] As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, if applicable, the following:

[1] Records of required monitoring information that include the following:

[a] The date, place as defined in the permit, and time of sampling or measurements;

- [b] The date(s) analyses were performed;
 - [c] The company or entity that performed the analyses;
 - [d] The analytical techniques or methods used;
 - [e] The results of such analyses; and
 - [f] The operating conditions as existing at the time of sampling or measurement;
- [2] Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
- (c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:
- [1] Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subdivision d of subsection 4.
 - [2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33-15-01 and the applicable requirements.
- (4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Clean Air Act or the regulations promulgated thereunder.
- (a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the Federal Clean Air Act, or the

regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.

- (b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - (c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Federal Clean Air Act.
- (5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (6) Provisions stating the following:
- (a) The permittee must comply with all conditions of the title V permit. Any permit noncompliance constitutes a violation of the Federal Clean Air Act and this article and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
 - (b) It shall not be 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.
 - (c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - (d) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (e) The permittee must furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request,

the permittee must also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee must also furnish such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

- (7) A provision to ensure that the source pays fees to the department consistent with the fee schedule in chapter 33-15-23.
- (8) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan.
- (9) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:
 - (a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the alternative operating scenario under which it is operating;
 - (b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such alternative operating scenario; and
 - (c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this section. The department shall not approve a proposed alternative operating scenario into the title V permit until the source has obtained all authorizations required under any applicable requirement relevant to that alternative operating scenario.
- (10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements, including the state implementation plan, provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
 - (a) Shall include all terms required under subdivisions a and c to determine compliance;

- (b) Shall extend the permit shield described in subdivision f to all terms and conditions that allow such increases and decreases in emissions; and
 - (c) Must meet all applicable requirements and requirements of this section.
- (11) If a permit applicant requests it, the department shall issue permits that contain terms and conditions, including all terms required under subdivisions a and c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements provided the changes in emissions are not modifications under title I of the Federal Clean Air Act and the changes do not exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. The permittee shall supply written notification at least seven days prior to the change to the department and the administrator of the United States environmental protection agency and shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. The permit shield described in subdivision f shall extend to terms and conditions that allow such increases and decreases in emissions.

b. Federally enforceable requirements.

- (1) All terms and conditions in a title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator of the United States environmental protection agency and citizens under the Federal Clean Air Act.
- (2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the Federal Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are

not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.

- c. Compliance requirements. All title V permits shall contain the following elements with respect to compliance:
- (1) Consistent with paragraph 3 of subdivision a, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a title V permit shall contain a certification by a responsible official that meets the requirements of subdivision d of subsection 4.
 - (2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to perform the following:
 - (a) Enter upon the permittee's premises where a title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
 - (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (d) As authorized by the Federal Clean Air Act and this article, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
 - (3) A schedule of compliance consistent with paragraph 8 of subdivision c of subsection 4.
 - (4) Progress reports consistent with an applicable schedule of compliance and paragraph 8 of subdivision c of subsection 4 to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

- (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
 - (b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
- (a) The frequency, which is annually or such more frequent periods as specified in the applicable requirement or by the department, of submissions of compliance certifications;
 - (b) In accordance with paragraph 3 of subdivision a, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices. The means for monitoring shall be contained in applicable requirements or United States environmental protection agency guidance;
 - (c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):
 - [1] The identification of each term or condition of the permit that is the basis of the certification;
 - [2] The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph 3 of subdivision a. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information;
 - [3] The status of compliance with the terms and conditions of the permit for the period covered by the

certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in item 2 of this subparagraph. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subsection 10 of this section occurred; and

[4] Such other facts as the department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the administrator of the United States environmental protection agency as well as to the department; and

(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Federal Clean Air Act.

(6) Such other provisions as the department may require.

d. General permits.

(1) The department may, after notice and opportunity for public participation provided under subdivision h of subsection 6, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other title V permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of subdivision f, the source shall be subject to enforcement action for operation without a title V permit to operate if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Federal Clean Air Act. The department is not required to issue a general permit in lieu of individual title V permits.

- (2) Title V sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or must apply for a title V permit to operate consistent with subsection 4. The department may, in the general permit, provide for applications which deviate from the requirements of subsection 4, provided that such applications meet the requirements of title V of the Federal Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under subdivision h of subsection 6, the department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.
- e. Temporary sources. The department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:
- (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
 - (2) Requirements that the owner or operator notify the department at least ten days in advance of each change in location; and
 - (3) Conditions that assure compliance with all other provisions of this section.
- f. Permit shield.
- (1) Except as provided in this section, upon written request by the applicant, the department shall include in a title V permit to operate a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that:
 - (a) Such applicable requirements are included and are specifically identified in the permit; or
 - (b) The department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

- (2) A title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (3) Nothing in this subdivision or in any title V permit shall alter or affect the following:
 - (a) The provisions of section 303 of the Federal Clean Air Act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section;
 - (b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - (c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Federal Clean Air Act; or
 - (d) The ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the Federal Clean Air Act.

g. Emergency provision.

- (1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 3 are met.
- (3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (a) An emergency occurred and that the permittee can identify the causes of the emergency;
 - (b) The permitted facility was at the time being properly operated;
 - (c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (d) The permittee submitted notice of the emergency to the department within one working day of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of item 2 of subparagraph c of paragraph 3 of subdivision a of subsection 5. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
 - (5) This provision is in addition to any emergency or upset provision contained in any applicable requirement and the malfunction notification required under subdivision b of subsection 2 of section 33-15-01-13 when a threat to health and welfare would exist.

6. Permit issuance, renewal, reopenings, and revisions.

a. Action on application.

- (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:
 - (a) The department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subdivision d of subsection 5;
 - (b) Except for modifications qualifying for minor permit modification procedures under paragraphs 1 and 2 of subdivision e, the department has complied with the requirements for public participation under subdivision h;

- (c) The department has complied with the requirements for notifying and responding to affected states under subdivision b of subsection 7;
 - (d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this section; and
 - (e) The administrator of the United States environmental protection agency has received a copy of the proposed permit and any notices required under subdivisions a and b of subsection 7, and has not objected to issuance of the permit under subdivision c of subsection 7 within the time period specified therein.
- (2) Except for applications received during the initial transitional period described in 40 CFR 70.4(b)(11) or under regulations promulgated under title IV or title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.
 - (3) The department shall provide notice to the applicant of whether the application is complete. Unless the department requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through the minor permit modification procedures, in paragraphs 1 and 2 of subdivision e, a completeness determination is not required.
 - (4) The department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The department shall send this statement to United States environmental protection agency and to any other person who requests it.
 - (5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33-15-14-02.

b. Requirement for a permit.

- (1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after

the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

- (2) A permit revision is not required for section 502(b)(10) changes provided:
 - (a) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or title I of the Federal Clean Air Act.
 - (b) The changes do not exceed the emissions allowable under the title V permit whether expressed therein as a rate of emissions or in terms of total emissions.
 - (c) A permit to construct under section 33-15-14-02 has been issued, if required.
 - (d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the change will occur, any change in emissions and any permit term or condition that is no longer applicable as a result of the change.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

- (3) A permit revision is not required for changes that are not addressed or prohibited by the permit provided:
- (a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.
 - (b) The source must provide contemporaneous written notice to the department and the administrator of the United States environmental protection agency of each such change, except for changes that qualify as insignificant under the provisions of subdivision c of subsection 4. Such written notice shall describe each such change, including the date, any change in emissions, contaminants emitted, and any applicable requirement that would apply as a result of the change.
 - (c) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air contaminant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.
 - (d) The changes are not subject to any requirements under title IV of the Federal Clean Air Act.
 - (e) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 of this article or any provision of title I of the Federal Clean Air Act.
 - (f) A permit to construct under section 33-15-14-02 has been issued, if required.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

c. Permit renewal and expiration.

- (1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the United States environmental protection agency review, that apply to initial permit issuance; and
- (2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

- (1) An "administrative permit amendment" is a permit revision that:
 - (a) Corrects typographical errors;
 - (b) Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (c) Requires more frequent monitoring or reporting by the permittee;
 - (d) Allows for a change in ownership or operational control of a source if the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department;
 - (e) Incorporates into the title V permit the requirements from a permit to construct, provided that the permit to construct review procedure is substantially equivalent to the requirements of subsections 6 and 7 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in subsection 5; or
 - (f) Incorporates any other type of change which the administrator of the United States environmental protection agency has approved as being an administrative permit amendment as part of the approved title V operating permit program.
- (2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.
- (3) Administrative permit amendment procedures. An administrative permit amendment may be made by the department consistent with the following:
 - (a) The department shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate

such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this subdivision.

- (b) The department shall submit a copy of the revised permit to the administrator of the United States environmental protection agency.
 - (c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33-15-14-02 has been issued, if required.
- (4) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subdivision f of subsection 5 for administrative permit amendments made pursuant to subparagraph e of paragraph 1 of subdivision d which meet the relevant requirements of subsections 5, 6 and 7 of section 33-15-14-06 for significant permit modifications.
- e. Permit modification. A permit modification is any revision to a title V permit that cannot be accomplished under the provisions for administrative permit amendments under subdivision d of this subsection. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.
- (1) Minor permit modification procedures.
 - (a) Criteria.
 - [1] Minor permit modification procedures may be used only for those permit modifications that:
 - [a] Do not violate any applicable requirement;
 - [b] Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 - [c] Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of

ambient impacts, or a visibility or increment analysis;

[d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act;

[e] Are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act; and

[f] Are not required to be processed as a significant modification.

[2] Notwithstanding item 1 of this subparagraph and subparagraph a of paragraph 2 of subdivision e, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan, or in applicable requirements promulgated by the United States environmental protection agency.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

- [2] The source's suggested draft permit;
 - [3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
 - [4] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.
- (c) United States environmental protection agency and affected state notification. Within five working days of receipt of a complete permit modification application, the department shall notify the administrator of the United States environmental protection agency and affected states of the requested permit modification. The department shall promptly send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.
- (d) Timetable for issuance. The department may not issue a final permit modification until after the United States environmental protection agency forty-five day review period or until the United States environmental protection agency has notified the department that the United States environmental protection agency will not object to issuance of the permit modification, whichever is first, although the department can approve the permit modification prior to that time. Within ninety days of the department's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five day review period under subdivision c of subsection 7, whichever is later, the department shall:
- [1] Issue the permit modification as proposed;
 - [2] Deny the permit modification application;
 - [3] Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

- [4] Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by subdivision a of subsection 7.
- (e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2 and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.
- (f) The permit shield under subdivision f of subsection 5 shall not extend to minor permit modifications.
- (2) Group processing of minor permit modifications. Consistent with this paragraph, the department may modify the procedure outlined in paragraph 1 to process groups of a source's applications for certain modifications eligible for minor permit modification processing.
 - (a) Criteria. Group processing of modifications may be used only for those permit modifications:
 - [1] That meet the criteria for minor permit modification procedures under item 1 of subparagraph a of paragraph 1 of subdivision 1; and
 - [2] That collectively are below the threshold level which is ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five tons [4.54 metric tons] per year, whichever is least.
 - (b) Application. An application requesting the use of group processing procedures shall meet the requirements of

subdivision c of subsection 4 and shall include the following:

- [1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.
 - [2] The source's suggested draft permit.
 - [3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.
 - [4] A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item 2 of subparagraph a of paragraph 2 of subdivision e.
 - [5] Certification, consistent with subdivision d of subsection 4, that the source has notified the United States environmental protection agency of the proposed modification. Such notification need only contain a brief description of the requested modification.
 - [6] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.
- (c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of

subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

- (d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision c within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.
- (e) Source's ability to make change. The provisions of subparagraph e of paragraph 1 apply to modifications eligible for group processing.
- (f) The permit shield under subdivision f of subsection 5 shall not extend to group processing of minor permit modifications.

(3) Significant modification procedures.

- (a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this subsection that would render existing permit compliance terms and conditions irrelevant.
- (b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal. The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

- (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
 - (a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.
 - (b) Additional requirements, including excess emissions requirements, become applicable to an affected source under title IV of the Federal Clean Air Act or the regulations promulgated thereunder. Upon approval by the administrator of the United States environmental protection agency, excess emissions offset plans shall be deemed to be incorporated into the permit.
 - (c) The department or the United States environmental protection agency determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - (d) The administrator of the United States environmental protection agency or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
- (2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
- (3) Reopenings under paragraph 1 shall not be initiated before a notice of such intent is provided to the title V source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

- g. Reopenings for cause by the United States environmental protection agency.
- (1) If the administrator of the United States environmental protection agency finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subdivision f, within ninety days after receipt of such notification, the department shall forward to the United States environmental protection agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.
 - (2) The administrator of the United States environmental protection agency will review the proposed determination from the department within ninety days of receipt.
 - (3) The department shall have ninety days from receipt of the United States environmental protection agency objection to resolve any objection that the United States environmental protection agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.
 - (4) If the department fails to submit a proposed determination or fails to resolve any objection, the administrator of the United States environmental protection agency will terminate, modify, or revoke and reissue the permit after taking the following actions:
 - (a) Providing at least thirty days' notice to the permittee in writing of the reasons for any such action.
 - (b) Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.
- h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:
- (1) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice; to persons on a mailing list developed by the department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

- (2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the department that are relevant to the permit decision; a brief description of the comment procedures required by this subsection; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled;
- (3) The department shall provide such notice and opportunity for participation by affected states as is provided for by subsection 7;
- (4) The department shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing; and
- (5) The department shall keep a record of the commenters and also of the issues raised during the public participation process. These records shall be available to the public.

7. Permit review by the United States environmental protection agency and affected states.

a. Transmission of information to the administrator.

- (1) The department shall provide a copy of each permit application including any application for a permit modification (including the compliance plan), to the administrator of the United States environmental protection agency except that the applicant shall provide such information directly to the administrator of the United States environmental protection agency when directed to do so by the department. The department shall provide a copy of each proposed permit and each final title V permit to operate to the administrator of the United States environmental protection agency. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the United States environmental protection agency's national database management system.
- (2) The department may waive the requirements of paragraph 1 and paragraph 1 of subdivision b for any category of sources (including

any class, type, or size within such category) other than major sources upon approval by the administrator or the United States environmental protection agency.

(3) The department shall keep these records for at least five years.

b. Review by affected states.

(1) The department shall give notice of each draft permit to any affected state on or before the time that the notice to the public under subdivision h of subsection 6 is given, except to the extent paragraphs 1 and 2 of subdivision e of subsection 6 requires the timing of the notice to be different.

(2) As part of the submittal of the proposed permit to the administrator of the United States environmental protection agency (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraph 1 and 2 of subdivision e of subsection 6) the department shall notify the administrator of the United States environmental protection agency and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this section.

c. United States environmental protection agency objection: No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subdivision h of subsection 6, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator of

the United States environmental protection agency objects to the permit as a result of a petition filed under this subdivision, the department shall not issue the permit until the United States environmental protection agency's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five day review period and prior to the United States environmental protection agency objection. If the department has issued a permit prior to receipt of the United States environmental protection agency objection under this subdivision, the department may thereafter issue only a revised permit that satisfies the United States environmental protection agency's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

- e. Prohibition on default issuance. The department shall issue no title V permit to operate, including a permit renewal or modification, until affected states and the United States environmental protection agency have had an opportunity to review the proposed permit as required under this subsection.

8. Judicial review of title V permit to operate decisions.

- a. The applicant, any person who participated in the department's public participation process, and any other person who could obtain judicial review under North Dakota Century Code section 28-32-42 may obtain judicial review provided such appeal is filed in accordance with North Dakota Century Code section 28-32-42 within thirty days after notice of the final permit action.
- b. The department's failure to take final action on an application for a permit, permit renewal, or permit revision within the time frames referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-42 within thirty days after expiration of the applicable time frames.
- c. In accordance with North Dakota Century Code chapter 28-32, the mechanisms outlined in this subsection shall be the exclusive means for judicial review of permit decisions referenced in this section.
- d. Solely for the purpose of obtaining judicial review in state court, final permit action shall include the failure of the department to take final action on an application for a permit, permit renewal, or permit revision within the time frames referenced in this section.
- e. Failure to take final action within ninety days of receipt of an application requesting minor permit modification procedures (or 180 days for

modifications subject to group processing requirements) shall be considered final action and subject to judicial review in state court.

9. **Enforcement.** The department may suspend, revoke or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.
10. **Compliance assurance monitoring.** Except as noted below, 40 Code of Federal Regulations, part 64, compliance assurance monitoring, as it exists on July 2, 2010, is incorporated by reference.
 - a. “Administrator” means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.
 - b. Part 70 permit means a Title V permit to operate.
 - c. Permitting authority means the department.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; March 1, 2003; February 1, 2005; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

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

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

- c. "Fountain solution additives" includes isopropyl alcohol, n-propyl alcohol, n-butanol, and alcohol substitutes.
- d. "Hazardous air contaminant" means any air contaminant listed pursuant to subsection 112(b) of the Federal Clean Air Act.
- e. "Refueling positions" means the number of vehicles that could be dispensing simultaneously at a gasoline service station.

3. Applicability.

- a. The owner or operator of the following stationary sources is not required to obtain a Title V permit to operate under section 33-15-14-06 if the conditions of this section are met:
 - (1) Gasoline service stations.
 - (2) Gasoline bulk plants.
 - (3) Coating sources.
 - (4) Printing, publishing, and packaging operations.
 - (5) Degreasers using volatile organic solvents.
 - (6) Hot mix asphalt plants.
- b. Any facility obtaining coverage under this section must submit a notification in writing to the department within ninety days of publication of this section unless specifically exempted from this requirement in the applicable subdivision of this section. The notification must contain the following information:
 - (1) Facility name, location, and nature of business.
 - (2) A list of all the sources of air contaminants at the facility.
 - (3) The condition of this section which is applicable to the facility.
 - (4) Total material usage, source capacity, or throughput for the previous month or twelve months at the facility, in accordance with the subdivision that is applicable to the facility.
 - (5) A signed statement accepting the throughput or usage limitation.

- c. Complying with the conditions of this section does not exempt the owner or operator of a facility from the obligation to apply for and obtain a permit to construct or a minor source permit to operate unless specifically exempted in section 33-15-14-02 or 33-15-14-03.
- d. The owner or operator of any facility listed in subdivision a which has potential emissions that would classify it as a major source even after the conditions of this section are met, or are not able to comply with the applicable conditions, shall obtain a Title V permit to operate or a minor source permit to operate which limits the potential to emit of the source to a level below the major source threshold.
- e. Complying with the conditions of this section does not relieve the owner or operator of a source of the responsibility to comply with any other applicable requirements of this article.
- f. If the facility deviates from any condition, limit, or requirement of this section, a report must be submitted to the department within thirty days of the deviation containing the following information:
 - (1) The facility's name and location.
 - (2) Applicable condition, limit, or requirement for the facility for which a deviation occurred.
 - (3) A summary of the records showing the deviation, accompanied by an explanation of the deviation.
 - (4) A plan of action to prevent future occurrences of any deviation at the facility.
- g. All records required by this section must be maintained for a period of five years from the last date of entry. The records must be available for inspection or submittal to the department upon request. If a facility is limited by a material usage, capacity, or throughput based on a twelve-month rolling period, a log must be updated monthly to include the previous twelve months' total material usage, capacity, or throughput.

4. Exclusion standards.

- a. Gasoline service stations. The owner or operator of sources where gasoline dispensing operations account for more than ninety percent of all emissions from the facility is not required to obtain a title V permit to operate if the following conditions are met.
 - (1) No vapor recovery is used:

- (a) The source's total sales of gasoline must not exceed three hundred eighty thousand gallons [1438300 liters] per month in any calendar month. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.
 - (b) If the number of refueling positions is no more than seventeen at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.
- (2) Stage I vapor recovery is used:
 - (a) The source's total sales of gasoline must not exceed six hundred thirty thousand gallons [2384800 liters] per month in any calendar year. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.
 - (b) If the number of refueling positions is no more than twenty-nine at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.
- b. Gasoline bulk plants. The owner or operator of gasoline bulk plants where gasoline loading and unloading operations account for more than ninety percent of all emissions from the source are covered by this subdivision. To demonstrate compliance with the twenty thousand gallons [75700 liters] per day of gasoline definition of a bulk plant, monthly records of throughput must be maintained at the source.
- c. Coating sources.
 - (1) The owner or operator of sources where surface coating operations account for more than ninety percent of all hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in subparagraph a or b are met.
 - (a) The source's total usage of surface coatings must not exceed two hundred fifty gallons [946.25 liters] of coatings per month in any calendar month nor exceed three thousand gallons [11355 liters] of coatings per twelve-month period. The coatings are limited to six pounds per gallon [719 grams per liter] of any individual hazardous air contaminant. To

demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

- (b) The source's total hazardous air contaminant emissions shall not exceed ten tons per twelve-month period. Hazardous air contaminant emissions must be calculated by multiplying the surface coating material usage in gallons by the individual hazardous air contaminant content in pounds per gallon. To demonstrate compliance with the emissions limitation, the emissions must be calculated on a monthly basis and recorded in a log. All records of material usage, hazardous air contaminant content and emissions must be maintained at the facility.

- (2) The owner or operator of an automobile refinishing shop where operations account for more than ninety percent of volatile organic compound emissions and hazardous air contaminant emissions is not required to obtain a title V permit to operate if the usage of coatings is less than two hundred fifty gallons [9946.25 liters] per month or three thousand gallons [11355 liters] of coatings per twelve-month period. This item does not apply to facilities capable of refinishing vehicles other than automobiles or trucks. Sources are exempt from the notification requirements under subdivision b of subsection 3 if:

- (a) The auto refinishing shop business is entirely, or almost entirely, for collision repairs and the business has two or fewer bays;
- (b) Substantial portions of the auto refinishing shop business are devoted to repainting entire vehicles and only has one bay devoted to painting; or
- (c) The auto refinishing shop business does not have the physical or operational capability to do more than fifty jobs per week.

d. Printing, publishing, and packaging operations.

- (1) The owner or operator of facilities where sheetfed (nonheatset) offset lithography or nonheatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

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

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

- (5) The owner or operator of facilities where flexography or rotogravure printing operations with solvent inks are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
- (a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of the sum of ink, coatings, adhesives, dilution solvents and cleaning solvents in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
- e. Degreasers using volatile organic solvents. The owner or operator of facilities where degreasing operations account for more than ninety percent of all volatile organic compound emissions and hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in paragraph 1 or 2 are met.
- (1) If non-halogenated solvents are used, the usage is limited to two thousand two hundred gallons [8327 liters] of any one solvent-containing material and five thousand four hundred gallons [20439 liters] of any combination of solvent-containing materials in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.
 - (2) If halogenated solvents are used, including methyl chloroform, trichloroethane, and methylene chloride, the usage is limited to one thousand two hundred gallons [4542 liters] of any one solvent-containing material and two thousand nine hundred gallons [10976 liters] of any combination of solvent-containing materials in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.
- f. Hot mix asphalt plants. The owner or operator of facilities where hot mix asphalt production operations account for more than ninety percent of all emissions from

the facility, is not required to obtain a title V permit to operate if the amount of hot mix asphalt produced does not exceed two hundred fifty thousand tons [226757 metric tons] in any twelve-month rolling period. To demonstrate compliance with this limit, monthly records of hot mix asphalt produced must be maintained at the facility. Sources that are excluded under this subdivision must obtain a minor source permit to operate under section 33-15-14-03.

History: Effective June 1, 2001.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Section

33-15-15-01 General Provisions [Repealed]

33-15-15-01.1 Purpose

33-15-15-01.2 Scope

33-15-15-02 Reclassification

33-15-15-01. General provisions. Repealed effective February 1, 2005.

33-15-15-01.1. Purpose. The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

History: Effective February 1, 2005.

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

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

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations Part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa) and (bb) as they exist on July 1, ~~2013~~ 2015, are incorporated by reference into this chapter. This includes revisions to the rules that were published as a final rule in the Federal Register by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

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

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

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

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

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

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

(l)(2) - Air quality models.

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

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

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

- 40 CFR 52.21(b)(1) The following is added:
For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
- 40 CFR 52.21(b)(2) The following is added:
For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
- 40 CFR 52.21(b)(2)(iii)(a) The following is deleted:
Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section.
- 40 CFR 52.21(b)(3)(iii)(a) The words “the administrator or other reviewing authority” are replaced with “the department or the administrator of the U.S. environmental protection agency”.
- 40 CFR 52.21(b)(14) The following is added:
(v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
- 40 CFR 52.21(b)(15) The following is added:
(iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [pub. L. 95-95]: the Cass County portion of Region No. 130, the Metropolitan Fargo-Moorhead Interstate Air Quality Control Region; and Region No. 172, the North Dakota Intrastate Air Quality Control Region (the remaining fifty-two counties).
- 40 CFR 52.21(23)(i) The following is added:
Greenhouse gases: 75,000 tpy CO₂ equivalent
- 40 CFR 52.21(b)(22) The following is added:

Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

40 CFR 52.21(b)(29)

The following is added:

This term does not include effects on integral vistas.

40 CFR 52.21(b)(30)

The term section 51.100(s) of this chapter is deleted and replaced with “40 CFR 51.100(s).”

40 CFR 52.21(b)(43)

The paragraph is deleted in its entirety and replaced with the following:

Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the U.S. environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.

40 CFR 52.21(b)(48)(ii)

The following words are deleted: “by the administrator for a permit required under this section or”.

40 CFR 52.21(b)(49)

The following words are deleted “administrator in subchapter C of this chapter” and replaced with the following:

Administrator of the United States environmental protection agency in title 40, code of federal regulations, chapter I, subchapter C.

40 CFR 52.21(b)(49)(i)

“§ 86.181-12(a) of this chapter” is deleted and replaced with: 40 CFR 86.1818-12(a).

40 CFR 52.21(b)(49)(ii)(a)

“Table A-1 to subpart A of part 98 of this chapter” is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.

The following is deleted:

For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or

micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

40 CFR 52.21(b)(49)(iv) This paragraph is deleted in its entirety.

40 CFR 52.21(b)(49)(v) This paragraph is deleted in its entirety.

40 CFR 52.21(b)(50)(i)(c) This paragraph is deleted in its entirety and replaced with the following:

Nitrogen oxides are a precursor to PM_{2.5} in all attainment and unclassifiable areas.

40 CFR 52.21(b)(50)(i)(d) This paragraph is deleted in its entirety and replaced with the following:

Volatile organic compounds are not a precursor to PM_{2.5} in any attainment or unclassifiable areas.

40 CFR 52.21(b)(51) The paragraph is deleted in its entirety and replaced with the following:

Reviewing authority means the department.

40 CFR 52.21(b)(53) This paragraph is deleted in its entirety and replaced with the following:

Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.

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

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

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

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

No concentration of a contaminant shall exceed:

- (1) The concentration permitted under the national primary and secondary ambient air quality standards.
- (2) The concentration permitted by the ambient air quality standards in chapter 33-15-02.

40 CFR 52.21(e)

The following is added:

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

40 CFR 52.21(h)

The paragraph is deleted and replaced with the following:

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

40 CFR 52.21(i)

The following subparagraphs are added:

- (11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.
- (12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1)

This subparagraph is deleted and replaced with the following:

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

40 CFR 52.21(l)(1)

This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix W of 40 CFR 51 ("guideline on

air quality models” as it exists on January 1, 2012) as supplemented by department guidance. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

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

40 CFR 52.21(p)(6) “paragraph (q)(4)” is replaced with “paragraph (p)(4)” and “(q)(7)” is replaced with “ (p)(7)”

40 CFR 52.21(p)(7) “paragraph (q)(7)” is replaced with “paragraph (p)(7)”

40 CFR 52.21(p)(8) “paragraphs (q)(5) or (6)” is replaced with “paragraphs (p)(5) or (6)”

40 CFR 52.21(p) The following is added:

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

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

q. Public participation.

- (1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.
- (2) With respect to a completed application, the department shall:

- (a) Within one year after receipt, make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
- (b) Make available in at least one location in each region in which the proposed source or modification would be constructed or on the department's website, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.
- (c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least 30 days for public comment.
- (d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.
- (e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or

modification, the control technology required and other appropriate considerations.

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

40 CFR 52.21(r)(2)

The following is added:

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

40 CFR 52.21(v)(1)

This subparagraph is deleted and replaced with the following:

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

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

This subitem is deleted and replaced with the following:

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

40 CFR 52.21(w)(1)

This subparagraph is deleted and replaced with the following:

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

40 CFR 52.21(aa)(15)

This paragraph is deleted in its entirety.

History: Effective February 1, 2005; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

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

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

33-15-15-02. Reclassification.

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

- a. **Reclassification by petition.**

- (1) **Filing of petition.** After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.
- (2) **Contents of petition.** The petition to reclassify any area to either class I, class II, or class III must contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either class I, class II, or class III and such statement must specify which class; a list of those persons or person circulating such petition, which persons must be designated "Committee of Petitioners"; an affidavit to be attached to each

petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated; all petitions' signatures must be numbered and dated by month, day, and year, and the name must be written with residence address and post-office address including the county of residence followed by state of North Dakota.

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

2. **Procedures for reclassification.**

- a. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either class I or class II pursuant to subdivisions a and b of subsection 1, provided that:
 - (1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.
 - (2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.
 - (3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.
 - (4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In

redesignating any area with respect to which any federal land manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).

- (5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:
 - (a) Growth anticipated in the area.
 - (b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.
 - (c) Any impacts of such proposed redesignation upon regional or national interests. Anticipated growth shall include growth resulting both directly and indirectly from proposed development.
 - (6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.
- b. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands but excluding lands within the exterior boundaries of any Indian reservations, to class III if:
- (1) Such redesignation would meet the requirements of subdivision a.
 - (2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session, and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.
 - (3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.

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

3. Reclassification hearings.

- a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:
 - (1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.
 - (2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.
 - (3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).
 - (4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.
 - (5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region.
 - (6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.
- b. The department shall prepare and retain for inspection a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.
- c. Any hearing held pursuant to the provisions of this subsection must be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and consideration of reclassification to other classes not so noticed shall not be allowed.
- d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.

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

History: Amended effective July 1, 1982; October 1, 1987; January 1, 1989; March 1, 1994; February 1, 2005.

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

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-20
CONTROL OF EMISSIONS FROM OIL AND GAS WELL
PRODUCTION FACILITIES

Section	
33-15-20-01	General Provisions
33-15-20-02	Registration and Reporting Requirements
33-15-20-03	Prevention of Significant Deterioration Applicability and Source Information Requirements
33-15-20-04	Requirements for Control of Production Facility Emissions

33-15-20-01. General provisions.

1. **Applicability.** The provisions of this chapter apply to any actively producing oil or gas well ~~production~~ facility which emits ~~sulfur or sulfur compounds~~ air contaminants to the atmosphere.
2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04 or in North Dakota Century Code chapter 23-25.
 - a. "Actively producing" means that a well has been producing for thirty days or more from initial production through the wellhead equipment.
 - ab. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the North Dakota state industrial commission.
 - bc. "Completion" means an oil well must be considered completed when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run. A gas well must be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole must be considered complete when all North Dakota state industrial commission provisions of plugging are complied with.
 - ed. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
 - de. "Continuous burning pilot" means a stable auxiliary flame supported by a reliable fuel source which is independent of wellhead production.
 - ef. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seven-tenths pounds per square inch [1034 grams per square centimeter]

absolute at a base temperature of sixty degrees Fahrenheit [15.5 degrees Celsius].

- fg. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota state industrial commission.
- gh. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
- hi. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of specific gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
- ij. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the North Dakota state industrial commission.
- jk. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
- kl. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces.
- lm. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.
- mn. "Production facility" means all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary nontransportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil or gas well or wells which are located on one or more contiguous or adjacent surface properties and are under the control of the same person (or persons under common control).
- no. "Recomplete" or "recompletion" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
- op. "Reservoir" means pool or common source of supply.

History: Effective October 1, 1987; amended effective June 1, 1990; June 1, 1992.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. The owner or operator of any actively producing oil or gas well that is completed or recompleted on or after July 1, 1987, shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well. The registration form and gas analysis must be submitted to the department within ninety days of the ~~completion or recompletion of the well~~ well achieving active production status. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter.
2. ~~The owner or operator of any oil or gas well that has been completed or recompleted prior to July 1, 1987, and emits ten tons per year or more of sulfur (all sulfur compounds expressed as S) from any associated production facility shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter. The registration form and gas analysis must be submitted to the department by January 1, 1988, unless the emissions are the result of a modification or change that occurs after July 1, 1987. For wells that are subject to this subsection due to a modification or change which occurred after July 1, 1987, the registration form and gas analysis must be submitted within ninety days of the modification or change. [Reserved]~~
3. The owner or operator of any oil or gas well subject to this section shall inform the department of any change to the information contained on the registration form for a particular well and shall submit a new gas analysis if the composition or the volume of the gas produced from the well has changed from the previous analysis to cause an increase of ten tons per year or more of sulfur (all sulfur compounds expressed as S).

History: Effective October 1, 1987; amended effective June 1, 1990; June 1, 1992.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-20-03. Prevention of significant deterioration applicability and source information requirements.

1. Any oil or gas well production facility that ~~emits or has the potential to emit two hundred fifty tons per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25, as determined by the department, is a major stationary source or a major modification as defined in Chapter 33-15-15,~~ shall comply with the permitting requirements of chapter 33-15-15.
2. To determine prevention of significant deterioration of air quality (PSD)

applicability for sulfur dioxide, the following formula must be used:

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

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

R = the average daily amount of gas burned, incinerated and/or flared (thousand cubic feet per day at 60°F and 14.7 psia-MCFD) based upon a thirty-day period. The thirty-day period must be the last thirty operating days of a one hundred eighty-day period following the completion or recompletion of a well. In cases where the well is shut in for extended periods during the one hundred eighty-day period following completion or recompletion, a case-by-case determination of PSD can be requested of the department.

T = days of operation per year (days/yr).

This number must be three hundred sixty-five unless there are verifiable physical limitations or a federally enforceable permit that limits the number of operating days.

% H₂S = mole percent hydrogen sulfide content as determined by the most recent gas analysis.

The formula is derived as follows:

$$E = \frac{(\text{Mcf})(1000 \text{ cf})(\% H_2S)(\text{lb-mole})(64.06 \text{ lb SO}_2)(\text{days})(\text{ton})}{\text{day Mcf } 100 \text{ } 379.5 \text{ cf lb-mole year } 2000 \text{ lb}}$$

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

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

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

History: Effective October 1, 1987; amended effective June 1, 1990; June 1, 1992.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. The emissions from all treaters, separators, engines, incinerators, flares, tanks, and other onsite equipment must comply with the requirements of subsection 5.
2. Each flare used for treating gas containing hydrogen sulfide (H₂S), must be equipped and operated with an automatic ignitor or a continuous burning pilot which must be maintained in good working order. This must be required even if the flare is used for emergency purposes only. A continuous burning pilot must be required if this department determines that an automatic ignition system is ineffective due to production characteristics. The flare stack must be of sufficient height to allow for adequate dispersion of sulfur dioxide (SO₂) necessary to meet the requirements of this article.
3. Any volatile organic compound gas or vapor may be subject to controls as specified in chapter 33-15-07.
4. Routine inspections and maintenance of tanks, hatches, compressors, vent lines, pressure relief valves, packing elements, and couplings must be conducted to minimize emissions from equipment used for gas containing hydrogen sulfide (H₂S). Tank hatches must hold a positive working pressure or must be repaired or replaced.
5. The owner or operator of any oil or gas well production facility shall install equipment necessary to ensure that emissions comply with the ambient air quality standards of chapter 33-15-02, including, but not limited to, hydrogen sulfide and sulfur dioxide; the Class I and Class II increments for sulfur dioxide, nitrogen dioxide, and particulate matter of chapter 33-15-15, if applicable; the odor concentration limits of chapter 33-15-16; and any other applicable chapter of this article. For the purpose of this chapter, compliance must be determined outside the surface boundary of the production facility.
6. When a malfunction, the correction of a malfunction or maintenance at any oil and gas well production facility occurs that can be expected to cause the emission of air contaminants in violation of this article for longer than twenty-four hours, the person responsible for such installation shall notify the department of such malfunction or maintenance as set forth in section 33-15-01-13. This subsection pertains only to the reporting of malfunctions and maintenance and does not obviate the source's responsibility to comply with the remainder of this chapter or article.
7. The owner or operator of any oil and gas well production facility completed prior to the effective date of the revisions to section 33-15-20-04 shall comply with the requirements of this chapter within six months of the effective date of these

revisions. The owner or operator of any oil and gas well production facility completed after the effective date of the revisions to section 33-15-20-04 shall comply with the requirements of this chapter within ninety days of the completion of the well.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-22
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR SOURCE CATEGORIES

Section

- 33-15-22-01 Scope
- 33-15-22-02 Definitions
- 33-15-22-03 Emissions Standards

33-15-22-01. Scope. The subparts and appendices of 40 Code of Federal Regulations, part 63 [40 CFR 63] as they exist on July 1, 2013 2015, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective January 1, 1996; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-02. Definitions. For the purposes of this chapter:

“Administrator” means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

History: Effective December 1, 1994; amended effective February 1, 2005.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C -List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for dry cleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

Subpart CC - National emissions standards for hazardous air pollutants from petroleum refineries.

Subpart GG - National emissions standards for aerospace manufacturing and rework facilities.

Subpart HH - National emission standards for hazardous air pollutants from oil and natural gas production facilities.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart JJ - National emissions standards for wood furniture manufacturing operations.

Subpart KK - National emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart SS - National emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emission standards for equipment leaks - control level 1.

Subpart UU - National emission standards for equipment leaks - control level 2 standards.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Subpart WW - National emission standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emission standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emission standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to Subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart EEEE – National emission standards for hazardous air pollutants: organic liquids distribution (non-gasoline).

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

Subpart YYYY – National emission standards for hazardous air pollutants for stationary combustion turbines.

Subpart ZZZZ - National emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart DDDDD – National emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters.

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

Subpart UUUUU – National emission standards for hazardous air pollutants: coal and oil-fired electric utility steam generating units.

Subpart JJJJJ – National emission standards for hazardous air pollutants for industrial, commercial and institutional boilers area sources.

*Only the requirements that are applicable to boilers with a heat input of ten million Btu per hour or more are adopted.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (F_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective January 1, 1996; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

**CHAPTER 33-15-23
FEES**

Section

- 33-15-23-01 Definitions
- 33-15-23-02 Permit to Construct Fees
- 33-15-23-03 Minor Source Permit to Operate Fees
- 33-15-23-04 Major Source Permit to Operate Fees
- 33-15-23-05 Phase I Substitution Units

33-15-23-01. Definitions. For purposes of this chapter:

1. "Major source" means any source that has been issued or is required by this article to obtain a title V permit to operate. This includes sources that have begun operation but have not yet applied for a title V permit to operate.
2. "Minor source" has the meaning given to it in section 33-15-14-01.1.
3. "Regulated contaminant" means any "regulated air contaminant", as defined in section 33-15-14-06, except the following:
 - a. Carbon monoxide.
 - b. Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - c. Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

History: Effective August 1, 1995; amended effective February 1, 2005.

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

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

33-15-23-02. Permit to construct fees. Any person constructing, installing, or establishing a new stationary source or altering an existing source which requires a permit to construct under subsections 1 and 3 of section 33-15-14-02 is required to pay a permit to construct application filing fee and a permit to construct processing fee to the state department of health.

1. **Application fee.** A nonrefundable filing fee of ~~one hundred fifty~~ three hundred twenty-five hundred dollars must be submitted with the permit application.
2. **Processing fee.** The applicant shall pay a processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources which would involve a major analysis the cost of which

would exceed ~~one hundred fifty~~ three hundred twenty-five hundred dollars as determined by the department. The following procedures and criteria will be utilized in establishing the fee:

- a. A record of all permit to construct application processing costs incurred must be maintained by the department.
- b. Upon request, the department, in consultation with the applicant, will prepare an estimate of the processing fee and the billing schedule that will be utilized in processing the application. ~~If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.~~
- c. Statement(s) will be sent to the applicant containing the actual processing costs incurred by the department.
- d. The applicant must pay the processing fee regardless of whether a permit to construct is issued, denied, or withdrawn.
- e. Any source that initiates operation under a permit to construct prior to receiving a permit to operate is subject to the fees outlined in section 33-15-23-03 or 33-15-23-04, whichever is applicable.

History: Effective August 1, 1995; January 1, 2013.

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

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

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

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

<u>Classification</u>	<u>Annual Fee (\$)</u>
Designated	300
Other	100
State and local government	0
Exempt	0

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

Designated: A source that is designated for scheduled inspections.

Other: As designated by the department.

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

Exempt: As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:
 - a. Observation of source or performance specification testing, or both.
 - b. Audits of source operated ambient air monitoring networks.

An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.

3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.
4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.
5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.

History: Effective August 1, 1995; April 1, 2009; January 1, 2013; April 1, 2014.

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

Law Implemented: NDCC 23-25-04.2

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.
2. Effective January 1, 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of twelve dollars per ton. The minimum fee will be five hundred dollars per source.

3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.
4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ton] per year cap referenced in subsection 3 is applied to each boiler.
5. Any state-owned or local government-owned facility is exempt from the fee.
6. The fee calculation must be based upon actual annual emissions from the previous calendar year.
7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.
8. The fee rates and the limits established under subsection 2 may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-one of each calendar year.
9. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the petitioner's financial status must be submitted with the request to allow the department to evaluate the request.
10. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.
11. Greenhouse gases are exempt from the fees in this section.

History: Effective August 1, 1995; amended effective February 1, 2005; January 1, 2007; April 1, 2009; January 1, 2013.

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

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

33-15-23-05. Phase I substitution units. Substitution units, as defined in 40 CFR part 72, shall pay an annual administrative fee equal to one hundred thousand dollars per source. This fee must be adjusted on an annual basis to account for any increase in the consumer price index. The adjustment shall be made on August thirty-one of each year and shall be based on the department of labor's published change in the index.

History: Effective August 1, 1995.

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

Law Implemented: NDCC 23-25-04.2

33-15-23-06. Oil and gas well production facilities. The owner or operator of an oil and gas well production facility that is required to register the facility in accordance with section 33-15-20-02 shall pay a nonrefundable filing fee of one hundred fifty dollars per well. The filing fee must be submitted with the registration form.

History: Effective January 1, 2013.

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

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

Chapter 33-15-25
Regional Haze Requirements

Section	
33-15-25-01	Definitions
33-15-25-02	Best Available Retrofit Technology
33-15-25-03	Guidelines for Best Available Retrofit Technology Determinations under the Regional Haze Rule
33-15-25-04	Monitoring, Recordkeeping and Reporting

33-15-25-01. Definitions. The definitions in title 40, Code of Federal Regulations, part 51, section 301, as they exist on October 1, 2005, are incorporated by reference into this chapter. For purposes of this chapter only:

1. “Boiler operating day” means any twenty-four hour period between midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.
2. “Contributes to visibility impairment” means a change in visibility impairment in a class I federal area of five-tenths deciviews or more (twenty-four-hour average) above the average natural visibility baseline. A source exceeds the threshold when the ninety-eighth percentile (eighth highest value) of the modeling results based on any one year of the three years of meteorological data modeled exceeds five-tenths deciviews.

History: Effective January 1, 2007.

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

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

33-15-25-02. Best available retrofit technology.

1. ~~Submission of best available retrofit technology analysis.~~ The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, part 51, section 301, that contributes to visibility impairment in a class I federal area shall submit a best available retrofit technology analysis to the department. The analysis shall be submitted within nine months after being notified by the Department that the existing stationary facility contributes to visibility impairment. [Reserved]
2. **Installation of best available retrofit technology.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, section 301, which contributes to visibility impairment in a class I federal area shall install and operate best available retrofit technology. The equipment shall be installed and operating as expeditiously as practicable but in no event later than five years after the United States environmental protection agency’s approval of North Dakota’s state implementation plan revision for best available retrofit technology.

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

History: Effective January 1, 2007.

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

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

33-15-25-03. Guidelines for best available retrofit technology determinations under the regional haze rule. ~~Title 40, Code of Federal Regulations, part 51, appendix y, as published in the federal register on July 6, 2005 is incorporated by reference into this chapter.~~

~~The owner or operator of a fossil-fuel fired steam electric plant with a generating capacity greater than seven hundred fifty megawatts of electricity shall comply with the requirements of appendix y. All other facility owners or operators shall use appendix y as guidance for preparing their best available control retrofit technology determinations. [Reserved]~~

History: Effective January 1, 2007.

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

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

33-15-25-04. Monitoring, recordkeeping and reporting. The owner or operator of any existing stationary facility that is required to install best available retrofit technology shall conduct monitoring, recordkeeping and reporting sufficient to show compliance or noncompliance. Monitoring for sulfur dioxide and nitrogen oxides from the main stack of a fossil-fuel-fired steam electric plant shall be conducted using continuous emissions monitoring systems which comply with the requirements of section 33-15-21-09. Particulate monitoring shall be in accordance with the requirements of subsection 10 of section 33-15-14-06. Recordkeeping and reporting shall comply with the requirements of section 33-15-14-06. Monitoring, recordkeeping and reporting for other source units shall comply with the requirements of section 33-15-14-06.

History: Effective January 1, 2007.

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

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