

## **ARTICLE 33-22 PRACTICE AND PROCEDURE**

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### **CHAPTER 33-22-01 GENERAL PROVISIONS**

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#### **33-22-01-01. Scope.**

The provisions of this article shall apply to all hearings held by the department for the purposes of adjudicating the rights of parties under North Dakota Century Code chapters 23-20.1, 23-25, 23-29, and 61-28. This article shall provide procedures in addition to or in explanation of those procedures provided by such chapters, and North Dakota Century Code chapter 28-32.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

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

#### **33-22-01-02. Liberal construction.**

This article shall be liberally construed in order to secure just, speedy, and inexpensive determination of the issues presented.

**General Authority:** NDCC 28-32-02

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

#### **33-22-01-03. Suspension of article.**

The department or any hearing officer shall have the right, upon either its own motion or the motion of any party, to suspend the operation and effect of this article or any portion thereof, whenever the public interest or the interest of any party to a proceeding shall not be substantially prejudiced by such suspension.

**General Authority:** NDCC 28-32-02

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

#### **33-22-01-04. Definitions.**

As used in this article, the following words shall have the meaning given to them below, unless otherwise made inappropriate by context:

1. "Department" means the North Dakota state department of health.
2. "Hearing officer" or "officer" means the person appointed by the department to call and conduct a hearing.
3. "Order" means any written command or direction made by the department as provided by law.
4. "Permit" means any discharge, emission, or disposal authorization, any construction or operation authorization, and any radiation license issued pursuant to North Dakota Century Code chapters 23-20.1, 23-25, 23-29, or 61-28.
5. "Person" means any real person, county, municipality or other political subdivision, department, agency, or commission, any public or private corporation, any partnership, association, or other organization, any receiver, trustee, assignee, or other legal entity, other than a court of law, or other legal representative of the foregoing but does not include the department.

**General Authority:** NDCC 28-32-02

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

#### **33-22-01-05. Case numbers and title.**

Each matter coming formally before the department for hearing will be known as a case and shall be given a docket number and title, descriptive of the subject matter. The number and title shall be used on all papers in the case, and as far as possible, any communication to the department in any particular case shall bear the number of the case.

**General Authority:** NDCC 28-32-02

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

#### **33-22-01-06. Personal appearances.**

Participants may appear in any proceeding in person or by an attorney or other representative qualified under subsection 3 of section 33-22-01-07. An individual may appear in the individual's own behalf, a member of a partnership may represent the partnership, a bona fide officer or duly authorized employee of a corporation, association or group may represent the corporation, association, or group, and an officer or employee of a state agency, of a department or political subdivision of the state or other governmental authority may represent the state agency or the department or the political subdivision of the state or other governmental authority in any proceeding.

**General Authority:** NDCC 28-32-02

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

#### **33-22-01-07. Practice before the department.**

1. **Person in own interest.** Any person may appear before the department in the person's own right if the person has a bona fide interest in the subject matter of the proceeding.
2. **Attorneys.** Attorneys at law who are admitted to practice before the courts of North Dakota may represent any party to a proceeding. Any member of the bar of another state may be permitted by the department to appear in and conduct a case or proceeding while retaining residence in another state.

3. **Other persons.** Any other person who shall file proof to the satisfaction of the department that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the department.
4. **Rules of conduct.** All persons appearing before the department or hearing officer must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota.

**General Authority:** NDCC 28-32-02

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

### **33-22-01-08. Parties.**

1. **Complainant.** Persons who complain of any act or omission in violation of any statute, regulation, or permit of the department shall be styled complainants.
2. **Intervenor.** Persons petitioning to intervene when admitted as a participant to a proceeding shall be styled intervenors. Admission as an intervenor shall not be construed as recognition by the department that such intervenor might be aggrieved by any order of the department in such proceeding.
3. **Parties.** Any person whose legal rights, duties, or privileges may be determined in the case for which the hearing is to be held shall be a party. When a hearing is held pursuant to a request for a hearing, the person making the request shall be a party. The department shall be a party in any hearing to enforce any regulation, statute, or permit condition. Any person who has properly intervened in a case shall be a party.
4. **Petitioner.** Any person seeking reconsideration, as provided by law, of any administrative action taken pursuant to law and this article shall be styled the petitioner.
5. **Respondent.** Any person against whom any complaint is filed or order issued under this article shall be styled the respondent.

**General Authority:** NDCC 28-32-02

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

### **33-22-01-09. Investigation on the department's own motion.**

The department may at any time, upon its own motion, or upon the complaint of any person, institute investigations and order hearings in any thing done by any person which the department may believe is in violation of the law or any order, regulation, or permit of the department. The department may secure and present such evidence as it may consider necessary or desirable in any proceeding in addition to the evidence presented by any other party.

**General Authority:** NDCC 28-32-02

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

### **33-22-01-10. Computation of time.**

1. In determining the day upon which an answer must be served pursuant to North Dakota Century Code section 28-32-05, the day of the hearing and the last day upon which an answer may properly be received shall not be included in computing the required three-day time period. If the day upon which the answer is due falls on a Saturday, Sunday, or legal holiday, the answer shall be due on the preceding business day.
2. In computing any period of time prescribed or allowed by these rules, other than that time period set out in subsection 1, the day of the act, event, or default after which the designated

period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.

**General Authority:** NDCC 28-32-02

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

**33-22-01-11. Service.**

For the purposes of this article, service or filing shall be deemed to have occurred upon actual receipt of the document served or filed.

**General Authority:** NDCC 28-32-02

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

**33-22-01-12. Record.**

Unless any party demands otherwise at least ten days prior to the date of hearing, a written summary record or tape recording of the proceeding will be made and filed. If demanded, the department shall cause a verbatim transcript to any proceedings to be made at the expense of the demanding parties. The time period required herein shall be computed, as nearly as practicable, by that method specified in subsection 1 of section 33-22-01-10.

**General Authority:** NDCC 28-32-02

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