

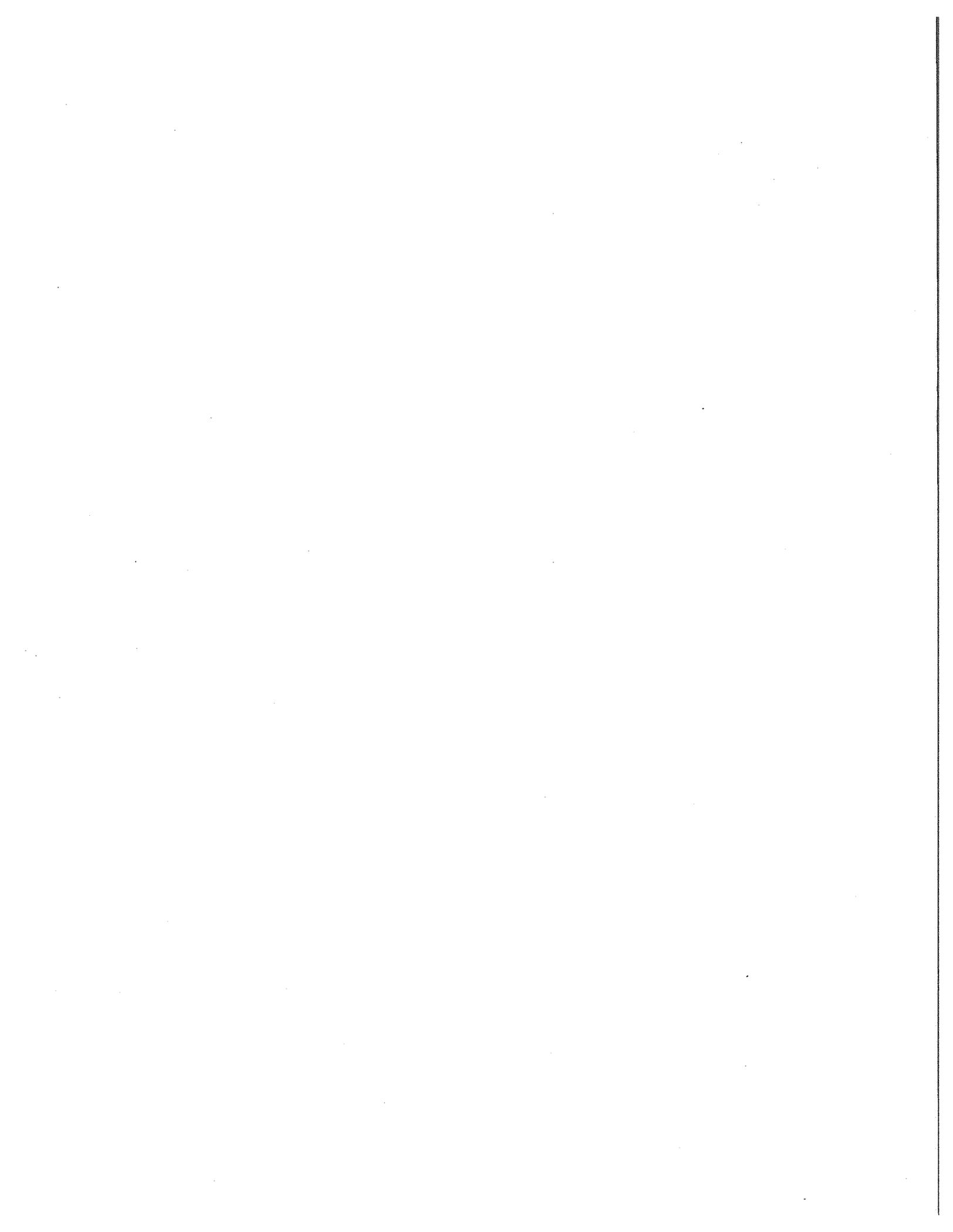
NORTH DAKOTA ADMINISTRATIVE CODE

VOLUME 2

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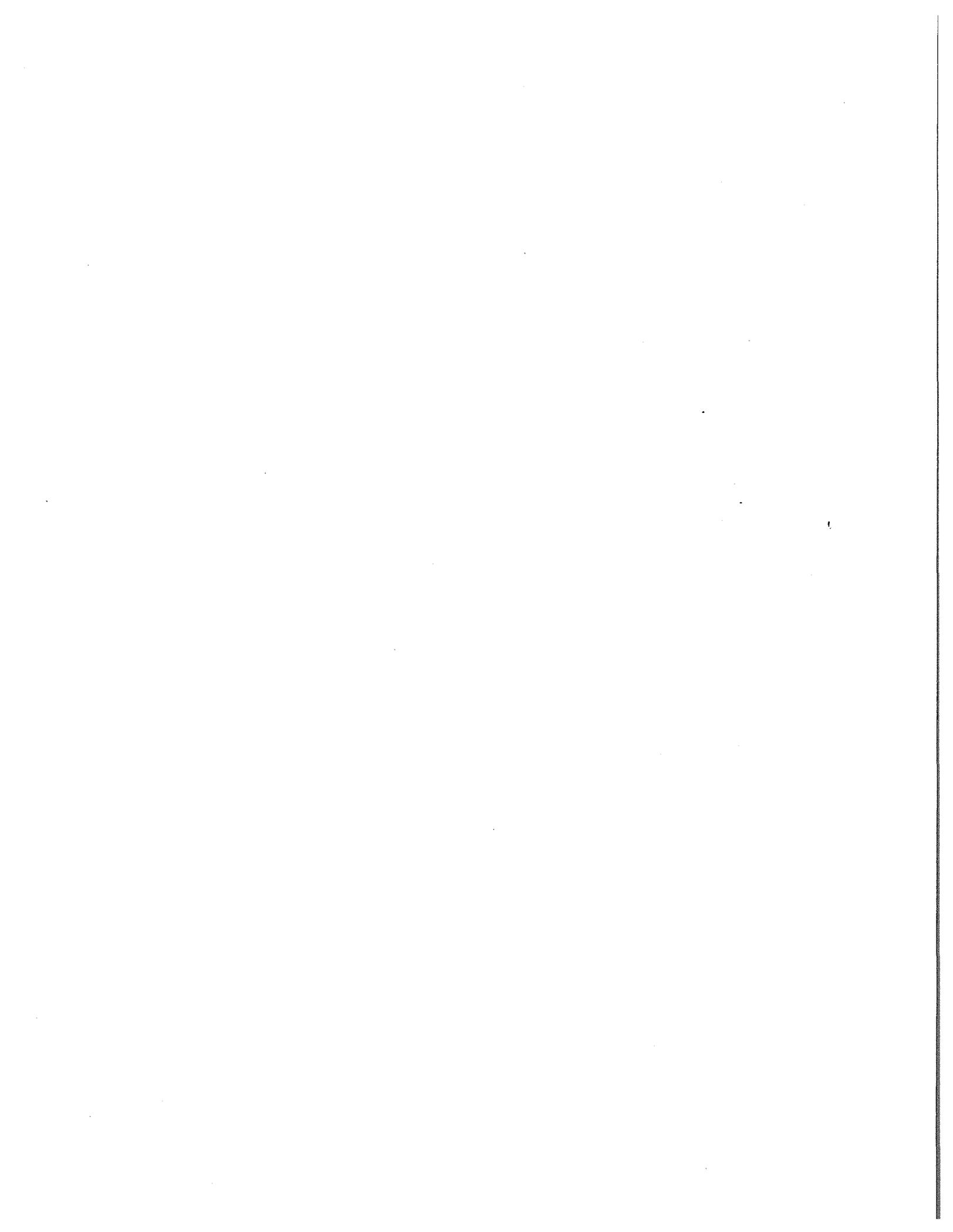
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33-24-01-04. Definitions. As used in this article the following words have the meaning ascribed to them unless otherwise made inappropriate by use and context.

1. "Act" means North Dakota Century Code chapter 23-20.3.
2. "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of the Act and which is not a closed portion. (See also "closed portion" and "inactive portion".)
3. "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.
4. "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.
5. "Boiler" means an enclosed device using controlled flame combustion and:
 - a. Boilers must have the following characteristics:
 - (1) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
 - (2) The unit combustion chamber and primary energy recovery sections must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery sections (such as waterwalls

and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to processed steam), and fluidized bed combustion units;

(3) While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(4) The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit should be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

b. The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards of section 33-24-01-11.

6. "Certification" means a statement of professional opinion based on knowledge and belief.
- ~~6-~~ 7. "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)
- ~~7-~~ 8. "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.
- ~~8-~~ 9. "Constituent" or "hazardous waste constituent" means a constituent that caused the department to list the hazardous waste in chapter 33-24-02, or a constituent listed in Table 1 of section 33-24-02-14.

- ~~9-~~ 10. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
- ~~10-~~ 11. "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.
- ~~11-~~ 12. "Department" means the North Dakota state department of health.
- ~~12-~~ 13. "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received a hazardous waste permit, or a facility with interim status, as defined by RERA Resource Conservation and Recovery Act, or a facility which qualifies for treatment as having been issued a permit under North Dakota Century Code section 23-20.3-05, or that is regulated under subdivision b of subsection 3 of section 33-24-02-06 or section 33-24-05-230, and has been designated on the manifest by the generator, pursuant to section 33-24-03-04.
- ~~13-~~ 14. "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.
- ~~14-~~ 15. "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.
- ~~15-~~ 16. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water including ground water.
- ~~16-~~ 17. "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which wastes will remain after closure.
- ~~17-~~ 18. "Elementary neutralization unit" means a device which:
- a. Is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity defined in section 33-24-02-12, or are listed in chapter 33-24-02 only for this reason; and
 - b. Meets the definition of tank, container, transport vehicle, or vessel.

- ~~18-~~ 19. "Equivalent method" means any testing or analytical method approved by the department under sections 33-24-01-06 and 33-24-01-07.
- ~~19-~~ 20. "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction commenced on or before July 1, 1981. A facility has commenced construction if:
- a. The owner or operator has obtained all necessary federal, state, and local approvals or permits necessary to begin physical construction; and
 - b. Either of the following:
 - (1) A continuous onsite, physical construction program has begun; or
 - (2) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the facility to be completed within a reasonable time.
- ~~20-~~ 21. "Existing portion" means that land surface area of an existing waste management unit, included in part A of the permit application, as originally filed, on which wastes have been placed prior to the issuance of a permit.
- ~~21-~~ 22. "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.
- ~~22-~~ 23. "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the government printing office.
- ~~23-~~ 24. "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, regulations, or ordinances.
- ~~24-~~ 25. "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

- ~~25-~~ 26. "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.
- ~~26-~~ 27. "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.
- ~~27-~~ 28. "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 33-24-02 or whose act first causes a hazardous waste to become subject to regulation.
- ~~28-~~ 29. "Ground water" means water below the land surface in a zone of saturation.
- ~~29-~~ 30. "Hazardous waste" means a hazardous waste as defined in chapter 33-24-02.
- ~~30-~~ 31. "Hazardous waste constituent". See "constituent".
- ~~31-~~ 32. "Hazardous waste number" means the number assigned to each hazardous waste identified in chapter 33-24-02.
- ~~32-~~ 33. "Identification number" means the number assigned by the environmental protection agency and the department to each generator, transporter, and treatment, storage, or disposal facility.
- ~~33-~~ 34. "Inactive portion" means that portion of a facility which is not operated after the effective date of this chapter. (See also "active portion" and "closed portion".)
- ~~34-~~ 35. "Incinerator" means an any enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.
36. "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of material for energy:
- a. Cement kilns.
 - b. Lime kilns.
 - c. Aggregate kilns.
 - d. Phosphate kilns.

- e. Coke ovens.
- f. Blast furnaces.
- g. Smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces).
- h. Titanium dioxide chloride process oxidation reactors.
- i. Methane reforming furnaces.
- j. Pulping liquor recovery furnaces.
- k. Combustion devices used in the recovery of sulfur values from spent sulfuric acid.
- l. Such other devices as the department may, after notice and comment, add to this list on the basis of one or more of the following factors:
 - (1) The design and use of the device primarily to accomplish recovery of material products.
 - (2) The use of the device to burn or reduce raw materials to make a material product.
 - (3) The use of a device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feed stock.
 - (4) The use of a device to burn or reduce secondary materials as ingredients in an industrial process to make a material product.
 - (5) The use of a device in common industrial practice to produce a material product.
 - (6) Other factors, as appropriate.

~~35-~~ 37. "Incompatible waste" means a hazardous waste which is unsuitable for:

- a. Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or
- b. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent

reaction, toxic dust, mists, fumes, or gases, or flammable fumes or gases.

- ~~36-~~ 38. "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.
- ~~37-~~ 39. "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.
- ~~38-~~ 40. "Injection well" means a well into which fluids are injected. (See also "underground injection".)
- ~~39-~~ 41. "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.
- ~~40-~~ 42. "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- ~~41-~~ 43. "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.
- ~~42-~~ 44. "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.
- ~~43-~~ 45. "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.
- ~~44-~~ 46. "Leachate" means any liquid, including any suspended components in the liquid, that have percolated through or drained from hazardous waste.
- ~~45-~~ 47. "Liner" means a continuous layer of natural or manmade materials beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.
- ~~46-~~ 48. "Major facility" means any facility classified as such by the environmental protection agency in conjunction with the department.

- ~~47-~~ 49. "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- ~~48-~~ 50. "Manifest" means the shipping document uniform hazardous manifest environmental protection agency form 8700-22 and, if necessary, environmental protection agency form 8700-22a, originated and signed by the generator which contains the information required by section 33-24-03-05 in accordance with instructions included in the appendix to chapter 33-24-03.
- ~~49-~~ 51. "Manifest document number" means the serially increasing state environmental protection agency twelve-digit identification number assigned to the generator, plus a unique five-digit document number assigned to the uniform hazardous waste manifest by the generator for recording and reporting purposes.
- ~~50-~~ 52. "Mining overburden returned to the minesite" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.
- ~~51-~~ 53. "Movement" means that hazardous waste transported to a facility in an individual vehicle.
- ~~52-~~ 54. "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
- ~~53-~~ 55. "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced, after July 1, 1981. (See also "existing hazardous waste management facility".)
- ~~54-~~ 56. "Onsite" means the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right of way. Noncontiguous property owned by the same person, but connected by a right of way which that person controls and to which the public does not have access is also considered onsite property.
- ~~55-~~ 57. "Open burning" means the combustion of any material without the following characteristics:
- a. Control of combustion air to maintain adequate temperature for efficient combustion.

- b. Containment of the combustion reactions in an enclosed device to provide sufficient residence time and mixing for complete combustion.
- c. Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)
- ~~56-~~ 58. "Operator" means the person responsible for the overall operation of a facility.
- ~~57-~~ 59. "Owner" means the person who owns a facility or part of a facility.
- ~~58-~~ 60. "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirement of chapter 33-24-05 or 40 CFR Part 265, if applicable. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell, or a pit, while other parts of the facility continue in operation or will be placed in operation in the future.
- ~~59-~~ 61. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.
- ~~60-~~ 62. "Personnel" or "facility personnel" means all persons who work, at, or oversee the operation of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of chapter 33-24-05 or 40 CFR Part 265, if applicable.
- ~~61-~~ 63. "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.
- ~~62-~~ 64. "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.
- ~~63-~~ 65. "Publicly owned treatment works" means any device or system used in the treatment (including recycling or reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by this state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

- ~~64-~~ 66. "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, or ground water, which can be expected to exhibit the average properties of the universe or whole.
- ~~65-~~ 67. "Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.
- ~~66-~~ 68. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.
- ~~67-~~ 69. "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.
- ~~68-~~ 70. "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.
- ~~69-~~ 71. "Solid waste" means a solid waste as defined in section 33-24-02-02.
- ~~70-~~ 72. "State" means this state.
- ~~71-~~ 73. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
- ~~72-~~ 74. "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.
- ~~73-~~ 75. "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of nonearthen materials, e.g., wood, concrete, steel, or plastic, which provide structural support.
- ~~74-~~ 76. "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)
- ~~75-~~ 77. "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an

industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

- ~~76-~~ 78. "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas, or other similar areas where shipments of hazardous waste are held during the normal course of transportation.
- ~~77-~~ 79. "Transportation" means the movement of hazardous wastes by air, rail, highway, or water.
- ~~78-~~ 80. "Transport vehicle" means a motor vehicle or railcar used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.
- ~~79-~~ 81. "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.
- ~~80-~~ 82. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
- ~~81-~~ 83. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.
- ~~82-~~ 84. "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)
- ~~83-~~ 85. "United States" means the fifty states, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the northern Mariana Islands.
- ~~84-~~ 86. "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.
- ~~85-~~ 87. "Uppermost aquifer" means the natural geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~86-~~ 88. "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

~~87-~~ 89. "Wastewater treatment unit" means a device which:

- a. Is part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act;
- b. Receives and treats or stores an influent wastewater which is a hazardous waste as identified in section 33-24-02-03, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in section 33-24-02-03, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 33-24-02-03; and
- c. Meets the definition of tank.

~~88-~~ 90. "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried onboard a vessel without containers or labels.

~~89-~~ 91. "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form and often walled with bricks or tubing to prevent the earth from caving in.

~~90-~~ 92. "Well injection". (See "underground injection".)

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-05. References. When used in this article, the following publications are incorporated by reference:

1. "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester", ASTM Standard D-3278-78, available from the American society for testing and materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
2. "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester," ASTM Standard D-93-97 or D-93-80, available from the American society for testing and materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
3. "Flammable and Combustible Liquids Code" (1977 or 1981), available from the national fire protection association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

4. "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (1980), EPA publication number SW-846, available from the United States environmental protection agency, solid waste information, 26 West Saint Clair Street, Cincinnati, Ohio 45268. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 (second edition 1982 as amended by update 1, April 1, 1984), and update 2 (April 1985) [The second edition of SW-846 and updates 1 and 2 are available from the superintendent of documents, United States government printing office, Washington, D.C., 20401, 202-783-3228 on a subscription basis].

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-08. Petitions to amend chapter 33-24-02 to exclude a waste produced at a particular facility.

1. Any person seeking to exclude a waste at a particular generating facility from the list in chapter 33-24-02 may petition for a regulatory amendment under this section and section 33-24-01-06. To be successful, the petitioner must demonstrate to the satisfaction of the department that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste listed under subdivision b of subsection 1 of section 33-24-02-09, that it also does not meet the criterion of subsection e of subsection 1 of section 33-24-02-09. A waste which is so excluded may still, however, be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14. Any person seeking to exclude a waste at a particular generating facility from the lists in sections 33-24-02-15 through 33-24-02-18 may petition for a regulatory amendment under this section and section 33-24-01-06. To be successful:
 - a. The petitioner must demonstrate to the satisfaction of the department that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and
 - b. Based on a complete application, the department must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than

those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.

2. The procedures in this section and section 33-24-01-06 may also be used to petition the department for a regulatory amendment to exclude from paragraph 2 of subdivision b of subsection 1, or from subsection 3, of section 33-24-02-03, a waste which is described in those sections and is either a waste listed in chapter 33-24-02, contains a waste listed in chapter 33-24-02, or is derived from a waste listed in chapter 33-24-02. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by subsection 1 of this section, except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or derived from one or more hazardous wastes, the petitioner's demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
3. If the waste is listed with codes "I", "C", "R", or "E" in chapter 33-24-02, the petitioner must show that demonstration samples of the waste do not exhibit the relevant characteristics defined in section 33-24-02-11, 33-24-02-12, 33-24-02-13, or 33-24-02-14 using any applicable test methods prescribed therein. If the waste is listed with codes "I", "C", "R", or "E" in sections 33-24-02-15 through 33-24-02-18:
 - a. The petitioner must show that the waste does not exhibit the relevant characteristics for which the waste was listed as defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, or 33-24-02-14 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, or 33-24-02-14 using any applicable methods prescribed therein.
 - b. Based on a complete application, the department must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.

4. If the waste is listed with a code "T" in chapter 33-24-02, the petitioner must demonstrate that-
- a- Demonstration samples of the waste do not contain the constituent (as defined in Appendix IV that caused the department to list the waste, using the appropriate test methods prescribed in Appendix III, or
 - b- The waste does not meet the criterion of subdivision c of subsection 1 of section 33-24-02-09 when considering the factors in paragraphs 1 through 11 of that subdivision.

If the waste is listed with code "T" in sections 33-24-02-15 through 33-24-02-18:

- a. The petitioner must demonstrate that the waste:
 - (1) Does not contain the constituent or constituents (as defined in appendix IV of chapter 33-24-02) that caused the department to list the wastes, using the appropriate test methods prescribed in appendix III; or
 - (2) Containing one or more of the hazardous constituents (as defined in appendix IV of chapter 33-24-02) that caused the department to list the waste, does not meet the criterion of subdivision c of subsection 1 of section 33-24-02-09 when considering the factors used by the department in paragraphs 1 through 11 of subdivision c of subsection 1 of section 33-24-02-09 under which the waste was listed as hazardous.
 - b. Based on a complete application, the department must determine where they have a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.
 - c. The petitioner must demonstrate that the waste does not exhibit any characteristics defined in sections 33-24-02-11, 33-24-02-12, 33-24-02-13, and 33-24-02-14.
 - d. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
5. If the waste is listed with the code "H" in chapter 33-24-02, the petitioner must demonstrate that the waste does not meet both the following criteria-

- a- The criterion of subdivision b of subsection 1 of section 33-24-02-09.
- b- The criterion of subdivision c of subsection 1 of section 33-24-02-09 when considering the factors listed in paragraphs 1 through 11 of that subdivision.

If the waste is listed with the code "H" in sections 33-24-02-15 through 33-24-02-18:

- a. The petitioner must demonstrate that the waste does not meet the criterion of subdivision d of subsection 1 of section 33-24-02-09.
 - b. Based on a complete application, the department must determine where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.
 - c. The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in sections 33-24-02-12, 33-24-02-13, and 33-24-02-14 using any applicable methods prescribed therein.
 - d. A waste which is so excluded, however, still may be a hazardous waste by operation of sections 33-24-02-10 through 33-24-02-14.
- 6. Reserved for listing radioactive wastes.
 - 7. Reserved for listing infectious wastes.
 - 8. Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.
 - 9. Each petition must include, in addition to the information required by subsection 2 of section 33-24-01-06:
 - a. The name and address of the laboratory facility performing the sampling or tests of the wastes.
 - b. The names and qualifications of the persons sampling and testing the wastes.
 - c. The dates of sampling and testing.
 - d. The location of the generating facility.

- e. A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration.
- f. A description of the waste and an estimate of average and maximum monthly and annual quantities of waste covered by the demonstration.
- g. Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste where the demonstration is based on the factors in subdivision c of subsection 1 of section 33-24-02-09.
- h. A description of the methodologies and equipment used to obtain the representative sample.
- i. A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the sample.
- j. A description of the tests performed (including results).
- k. The names and model numbers of the instruments used in performing the tests.
- l. The following statement signed by the generator of the waste or the generator's authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

10. After receiving a petition for an exclusion, the department may request any additional information which it may reasonably require to evaluate the petition.
11. An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to wastes from any other facility.
12. The department may exclude only part of the waste for which the demonstration is submitted where it has reason to believe that variability of the waste justifies a partial exclusion.

- 13- The department may (but is not required to) grant a temporary exclusion before making a final decision under subsection 4 of section 33-24-01-06 whenever it finds that there is a substantial likelihood that an exclusion will be finally granted-

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-09. Variances from classification as a solid waste. In accordance with the standards and criteria in section 33-24-01-10 and the procedures in section 33-24-01-12, the department may determine on a case-by-case basis that the following recycled materials are not solid wastes:

1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in subdivision h of subsection 3 of section 33-24-02-01).
2. Materials that are reclaimed and then reused within the original primary production process in which they were generated.
3. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-10. Standards and criteria for variances from classification as a solid waste.

1. The department may grant requests for a variance for classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The department's decision will be based on the following standards and criteria:
 - a. The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling).

- b. The reason that the applicant has accumulated the material for one or more years without recycling seventy-five percent of the volume accumulated at the beginning of the year.
 - c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled.
 - d. The extent to which the material is handled to minimize loss.
 - e. Other relevant factors.
2. The department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feed stock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:
- a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials.
 - b. The prevalence of the practice on an industrywide basis.
 - c. The extent to which the material is handled before reclamation to minimize loss.
 - d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process.
 - e. The location of the reclamation operation in relation to the production process.
 - f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form.
 - g. Whether the person who generates the material also reclaims it.
 - h. Other relevant factors.
3. The department may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed, but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a

commercial product, and has to be reclaimed further). This determination will be based on the following factors:

- a. The degree of processing the material has undergone and the degree of further processing that is required.
- b. The value of the material after it has been reclaimed.
- c. The degree to which the reclaimed material is like an analagous raw material.
- d. The extent to which an end market for the reclaimed material is guaranteed.
- e. The extent to which the reclaimed material is handled to minimize loss.
- f. Other relevant factors.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-11. Variance to be classified as a boiler. In accordance with the standards and criteria in section 33-24-01-04 (definition of "boiler"), and the procedures in section 33-24-01-12, the department may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in section 33-24-01-04, after considering the following criteria:

1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.
2. The extent to which the combustion chamber and energy recovery equipment are of integral design.
3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel.
4. The extent to which exported energy is utilized.
5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce a steam, heated fluids, or heated gases.
6. Other factors, as appropriate.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-12. Procedures for variances from classification as a solid waste or to be classified as a boiler. The department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

1. In the application to the department, the applicant must address the relevant criteria contained in section 33-24-01-10 or 33-24-01-11.
2. The department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in locality where the recycler is located. The department will accept comments on the tentative decisions for thirty days and may also hold a public hearing upon request or at its discretion. The department will issue a final decision after receipt of comments and after the hearing, if any, and this decision may not be appealed to the department.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-13. Additional regulation of certain hazardous waste recycling activities on a case-by-case basis. The department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in paragraph 4 of subdivision b of subsection 1 of section 33-24-02-06 should be regulated under subsections 2 and 3 of section 33-24-02-06. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the department will consider the following factors:

1. The types of materials accumulated or stored and the amounts accumulated or stored.
2. The method of accumulation or storage.
3. The length of time the materials have been accumulated or stored before being reclaimed.
4. Whether any contaminants are being released into the environment or are likely to be so released.
5. Other relevant factors.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-01-14. Procedures for case-by-case regulation of hazardous waste recycling activities. The department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in paragraph 4 of subdivision d of subsection 1 of section 33-24-02-06 under the provisions of subsections 2 and 3 of section 33-24-02-06 rather than under the provisions of section 33-24-05-230:

1. If a generator is accumulating the waste, the department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of chapter 33-24-03. The notice will become final within thirty days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the department will provide notice of the hearing to the public and allow public participation at the hearing. The department will issue a final order after the hearing stating whether or not compliance with chapter 33-24-03 is required. The order becomes effective thirty days after serving the decision unless the department specifies a later date or unless review by the department is requested. The order may be appealed to the department by any person who participated in the public hearing. The department may choose to grant or to deny the appeal. Final department action occurs when a final order is issued and department review procedures are exhausted.

2. If the person is accumulating the recyclable materials as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of chapters 33-24-06 and 33-24-07. The owner or operator of the facility must apply for a permit within no less than sixty days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the department's decision, the owner or operator may do so in his or her permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question whether the department's decision was proper will remain open for consideration during the public comment period discussed under chapter 33-24-07 and in any subsequent hearing.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

STAFF COMMENT: 7 appendices and 10 tables were submitted with chapter 33-24-02.

33-24-02-01. Purpose and scope.

1. This chapter identifies those solid wastes which are subject to regulation as hazardous wastes and which are subject to the notification requirements. In this chapter:
 - a. Sections 33-24-02-02 through 33-24-02-07 define the terms "solid waste" and "hazardous waste", identify those wastes which are excluded from regulation under chapters 33-24-03 through 33-24-07, and establish special management requirements for hazardous wastes produced by small quantity generators and hazardous waste which is used, reused, recycled, or reclaimed.
 - b. Sections 33-24-02-08 and 33-24-02-09 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous waste.
 - c. Sections 33-24-02-08 through 33-24-02-14 identify characteristics of hazardous waste.
 - d. Sections 33-24-02-15 through 33-24-02-18 list particular hazardous wastes.
2. This chapter identifies only some of the materials which are hazardous wastes under North Dakota Century Code chapter 23-20-3. A material which is not a hazardous waste identified in this chapter is still a hazardous waste for purposes of North Dakota Century Code chapter 23-20-3 if: The definition of solid waste contained in this chapter:
 - a. In the case of North Dakota Century Code section 23-20-3-06 the department has reason to believe that the material may be a hazardous waste within the meaning of subsection 5 of North Dakota Century Code section 23-20-3-02. Applies only to wastes that also are hazardous for purposes of the rules implementing North Dakota Century Code chapter 23-20.3. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recyclable.
 - b. In the case of North Dakota Century Code section 23-20-3-08, the statutory elements are established. This chapter identifies only some of the materials which are solid wastes and hazardous wastes

under North Dakota Century Code chapter 23-20.3. A material which is not defined as a solid waste in this chapter or is not a hazardous waste identified or listed in this chapter, is still a solid waste and a hazardous waste for purposes of these sections if:

(1) In the case of North Dakota Century Code section 23-20.3-06 the department has reason to believe that the material may be a hazardous waste within the meaning of subsection 5 of North Dakota Century Code section 23-20.3-02.

(2) In the case of North Dakota Century Code section 23-20.3-08, the statutory elements are established.

3. For the purpose of sections 33-24-02-02 and 33-24-02-06:

a. A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

b. "Sludge" has the same meaning used in section 33-24-01-04.

c. A "byproduct" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residue, such as slags or distillation column bottoms, the term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

d. A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

e. A material is "used or reused" if it is either:

(1) Employed as an ingredient (including used as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal containing secondary materials); or

(2) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner or in wastewater treatment).

- f. "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.
- g. A material is "recycled" if it is used, reused, or reclaimed.
- h. A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year (commencing on January first) the amount material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Material accumulating in units that would be exempt from regulation under subsection 3 of section 33-24-02-04 are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

History: Effective January 1, 1984; amended effective October 1, 1986.
General Authority: NDCC 23-20.3-03
Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-02. Definition of solid waste.

1. A solid waste is any garbage, refuse, sludge, or any other waste material which is not excluded under subsection 1 of section 33-24-02-04. A solid waste is:
- a. Any discarded material that is not excluded by subsection 1 of section 33-24-02-04 or that is not excluded by variance granted under sections 33-24-01-09 and 33-24-01-10.
- b. A discarded material is any material which is:
- (1) Abandoned, as explained in subsection 2;

(2) Recycled, as explained in subsection 3; or

(3) Considered inherently wastelike, as explained in subsection 4.

2. An "other waste material" is any solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, or agricultural operations, or from community activities which: Materials are solid wastes if they are abandoned by being:
- a. Is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded, Disposed of;
 - b. Has served its original intended use and sometimes is discarded, or Burned or incinerated; or
 - c. Is a manufacturing or mining byproduct and sometimes is discarded. Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.
3. A material is "discarded" if it is abandoned (and not used, reused, reclaimed, or recycled) by being: Materials are solid wastes if they are recycled or accumulated, stored, or treated before recycling as specified in subdivisions a through d of subsection 3.
- a. Disposed of; Used in a manner constituting disposal.
 - (1) Materials noted with an "asterisk" in column 1 of table 1 are solid wastes when they are:
 - (a) Applied to or placed on the land in a manner that constitutes disposal; or
 - (b) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a solid waste).
 - (2) However, commercial chemical products listed in section 33-24-02-18 are not solid wastes if they are applied to the land and that is their ordinary manner of use.
 - b. Burned or incinerated, except where the material is being burned for a fuel for the purpose of

recovering usable energy, or Burning for energy recovery.

(1) Materials noted with an "asterisk" in column 2 of table 1 are solid wastes when they are:

(a) Burned to recover energy.

(b) Used to produce a fuel or are otherwise contained in fuels (in which case the fuel itself remains a solid waste).

(2) However, commercial chemical products listed in section 33-24-02-18 are not solid wastes if they are themselves fuels.

c. Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed of. Reclaimed. Materials noted with an "asterisk" in column 3 of table 1 are solid wastes when reclaimed.

d. Accumulated speculatively. Materials noted with an "asterisk" in column 4 of table 1 are solid wastes when accumulated speculatively.

4. A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked, or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Inherently wastelike materials. The following materials are solid wastes when they are recycled in any manner:

a. Hazardous waste numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

b. The department will use the following criteria to add wastes to that list:

(1) The materials:

(a) Are ordinarily disposed of, burned, or incinerated; or

(b) Contain toxic constituents listed in Appendix V of chapter 33-24-02 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in

smaller concentrations) and are not used or reused during the recycling process; and

(2) The material may pose a substantial hazard to human health and the environment when recycled.

5. A "manufacturing or mining byproduct" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time. Materials that are not solid waste when recycled:

a. Materials are not solid waste when they can be shown to be recycled by being:

(1) Used or reused as ingredients in an industrial process to make a product provided the materials are not being reclaimed;

(2) Used or reused as effective substitutes for commercial products; or

(3) Returned to the original process from which they are generated, without first being reclaimed. The material must be returned if a substitute for raw material feedstock, and the process must use raw materials as principle feedstocks.

b. The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs 1 through 3 of subdivision a of subsection 5):

(1) Materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(2) Materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(3) Materials accumulated speculatively; or

(4) Materials listed in subdivision a of subsection 4.

6. Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing North Dakota Century Code chapter 23-20.3 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from the regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-03. Definition of hazardous waste.

1. A solid waste, as defined in section 33-24-02-02, is a hazardous waste if:
 - a. It is not excluded from regulation as a hazardous waste under subsection 2 of section 33-24-02-04; and
 - b. It meets any of the following criteria:
 - (1) It exhibits any of the characteristics of hazardous waste identified in this chapter.
 - (2) It is listed in this chapter and has not been excluded from the lists in this chapter under sections 33-24-01-06 and 33-24-01-08.
 - (3) It is a mixture of a solid waste and a hazardous waste that is listed in this chapter solely because it exhibits one or more of the characteristics of hazardous waste identified in this chapter, unless the resulting mixture no longer exhibits any characteristic of hazardous waste identified in this chapter.
 - (4) It is a mixture of solid waste and one or more hazardous wastes listed in this chapter and has not been excluded from this paragraph under sections 33-24-01-06 and 33-24-01-08; however, the following mixtures of solid wastes and hazardous wastes listed in this chapter are not hazardous wastes (except by application of paragraph 1 or 2 of subdivision b of

subsection 1) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under subsections 18 and 19, or 25 of North Dakota Century Code section 61-28-04 (including wastewater at the facilities which have eliminated the discharge of wastewater) and:

- (a) One or more of the following spent solvents listed in section 33-24-02-16 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one part per million;
- (b) One or more of the following spent solvents listed in section 33-24-02-16 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed twenty-five parts per million;
- (c) One of the following wastes listed in section 33-24-02-17 - heat exchanger bundle cleaning sludge from the petroleum refining industry (environmental protection agency hazardous waste number K050);
- (d) A discarded chemical commercial product, or chemical intermediate listed in section 33-24-02-18, arising from de minimus losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimus" losses include those from normal material handling operations, e.g., spills from the unloading or transfer of materials from bins or other containers and leaks from pipes, valves, or other devices used to transfer materials;

minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

- (e) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in this chapter, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.
2. A solid waste which is not excluded from regulation under subdivision a of subsection 1 becomes a hazardous waste when any of the following events occur:
- a. In the case of a waste listed in this chapter, when the waste first meets the listing description set forth in this chapter.
 - b. In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in this chapter is first added to the solid waste.
 - c. In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in this chapter.
3. Unless and until it meets the criteria of subsection 4:
- a. A hazardous waste will remain a hazardous waste.
 - b. **Any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff), is a hazardous waste. Except as otherwise provided in paragraph 2 of subdivision d of subsection 3:**

(1) Any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(2) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332).

4. Any solid waste described in subsection 3 is not a hazardous waste if it meets the following criteria:
- a. In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in this chapter.
 - b. In the case of a waste which is a listed waste under this chapter, contains a waste listed in this chapter or is derived from a waste listed in this chapter, it also has been excluded from subsection 3 under sections 33-24-01-06 and 33-24-01-08.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-04. Exclusions.

1. **Materials which are not solid wastes.** The following materials are not solid wastes for the purpose of this chapter:
 - a. Domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.
 - b. Industrial wastewater discharges that are point source discharges subject to regulation under subsections 18 and 19 of North Dakota Century Code section 61-28-04. (Comment: This exclusion applies only to the actual point

source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)

- c. Irrigation return flows.
- d. Source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].
- e. Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.
- f. Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection 3 of section 33-24-02-01.
- g. Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection 3 of section 33-24-02-01.

2. **Solid wastes which are not hazardous wastes.** The following solid wastes are not hazardous wastes:

- a. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, and motels), bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste may not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purpose of regulation under this article, if such facility:

(1) Receives and burns only:

(a) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(b) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(2) Such facility does not accept hazardous wastes and the owner or operator of such facility has

established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

- b. Solid wastes generated by any of the following and which are returned to the soils as fertilizers:
 - (1) The growing and harvesting of agricultural crops.
 - (2) The raising of animals, including animal manures.
- c. Mining overburden returned to the minesite.
- d. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels.
- e. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.
- f. The following chromium-containing wastes:
 - (1) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in this chapter due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:
 - (a) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium;
 - (b) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
 - (c) The waste is typically and frequently managed in nonoxidizing environments.
 - (2) Specific wastes which meet the standard of paragraph 1 (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristics) are:

- (a) Chrome (blue) trimmings, chrome (blue) shavings, sewer screenings, and wastewater treatment sludges, generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
 - (b) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.
 - (c) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.
 - (d) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.
 - (e) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.
- g. Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.
 - h. Cement kiln dust waste.
 - i. Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials intended end use.
3. **Hazardous wastes which are exempted from certain regulations.** A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under chapters 33-24-03 through 33-24-07 or to the notification requirements until it exits the unit in which it was generated, unless the unit is a surface

impoundment, or unless the hazardous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

4. Samples.

a. Except as provided in subdivision b, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter or chapters 33-24-03 through 33-24-07 or to the notification requirements when:

- (1) The sample is being transported to a laboratory for the purpose of testing;
- (2) The sample is being transported back to the sample collector after testing;
- (3) The sample is being stored by the sample collector before transport to a laboratory for testing;
- (4) The sample is being stored in a laboratory before testing;
- (5) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
- (6) The sample is being stored temporarily in the laboratory after testing for a specific purpose, e.g., until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

b. In order to qualify for the exemption in paragraphs 1 and 2 of subdivision a, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

- (1) Comply with the United States department of transportation, the United States postal service, or any other applicable shipping requirement; or
- (2) Comply with the following requirements if the sample collector determines that the United States department of transportation, the United States postal service, or other shipping requirements do not apply to the shipment of the sample:
 - (a) Assure that the following information accompanies the sample:

- [1] The sample collector's name, mailing address, and telephone number.
- [2] The laboratory's name, mailing address, and telephone number.
- [3] The quantity of the sample.
- [4] The date of shipment.
- [5] A description of the sample.

(b) Package the sample so that it does not leak, spill, or vaporize from its packaging.

c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subdivision a.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-10

33-24-02-05. Special requirements for hazardous waste generated by small quantity generators.

1. A generator is a small quantity generator in a calendar month if the generator generates less than one thousand kilograms of hazardous waste in that month.
2. Except for those wastes identified in subsections 5 and 6, 7, and 8, a small quantity generator's hazardous wastes are not subject to regulation under chapters 33-24-03 through 33-24-07, and the notification requirements, provided the generator complies with the requirements of subsection 6, 7, and 8.
3. Hazardous waste that is beneficially used or reused or legitimately recycled or reclaimed and that is excluded from regulation by subsection 1 of section 33-24-02-06 is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the special requirements of subsection 2 of section 33-24-02-06 is included in the quantity determinations of this section and is subject to the requirements of this section. Hazardous waste that is recycled and that is excluded from regulation under paragraphs 3 and 5 of subdivision b of subsection 1 of section 33-24-02-06, subdivision c of subsection 1 of section 33-24-02-06, or section 33-24-05-216

is not included in the quantity determinations of this section and is not subject to any requirements of this section. Hazardous waste that is subject to the requirements of subsections 2 and 3 of section 33-24-02-06 and sections 33-24-05-201 through 33-24-05-204, sections 33-24-05-210 through 33-24-05-216, and section 33-24-05-225 is included in the quantity determination of this section and is subject to the requirements of this section.

4. In determining the quantity of hazardous waste generated, a generator need not include:
 - a. The generator's hazardous waste when it is removed from onsite storage; or
 - b. Hazardous waste produced by onsite treatment of the generator's hazardous waste.
5. If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulations under chapters 33-24-03 through 33-24-07, and the notification requirements:
 - a. A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in subsection 5 of section 33-24-02-18, and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in subsection 5 of section 33-24-02-18. A total of one kilogram of acute hazardous waste listed in section 33-24-02-16, 33-24-02-17, or subsection 5 of section 33-24-02-18.
 - b. A total of one hundred kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in subsection 5 of section 33-24-02-18, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in subsection 5 of section 33-24-02-18. A total of one hundred kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of

any acute hazardous wastes listed in section 33-24-02-16, 33-24-02-17, or subsection 5 of section 33-24-02-18.

6. A small quantity generator may accumulate hazardous waste onsite. If the generator accumulates at any time more than a total of one thousand kilograms of the generator's hazardous waste, or the generator's acutely hazardous wastes in quantities greater than set forth in subdivision a or b of subsection 5, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulations under chapters 33-24-03 through 33-24-07, and the notification requirements. The time period of section 33-24-03-12 for accumulation of wastes onsite begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level. In order for hazardous wastes generated by a small quantity generator of acutely hazardous wastes in quantities equal to or less than those set forth in subdivision a or b of subsection 5 to be excluded from full regulation under this section, the generator must comply with the following requirements:

a. Section 33-24-02-09.

b. A small quantity generator may accumulate acutely hazardous waste onsite. If the generator accumulates at any time acutely hazardous wastes in quantities greater than those set forth in subdivision a or b of subsection 5, all those accumulated wastes for which the accumulation time was exceeded are subject to regulation under chapters 33-24-03 through 33-24-07 and the applicable notification requirements. The time period of section 33-24-03-12 for accumulation of waste onsite begins when the accumulated wastes exceed the applicable exclusion limit.

c. A small quantity generator may either treat or dispose of their hazardous waste in an onsite facility or ensure delivery to an offsite storage, treatment, or disposal facility, either of which is:

(1) Permitted under chapter 33-24-06;

(2) In interim status under chapter 33-24-06;

(3) Authorized to manage hazardous waste by the state;

(4) Permitted, licensed, or registered by the state to manage municipal or industrial solid waste; or

(5) A facility which:

(a) Beneficially uses or reuses or legitimately recycles or reclaims its wastes; or

(b) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

7. In order for hazardous wastes generated by a small quantity generator to be excluded from full regulation under this section, the generator must-
In order for hazardous waste generated by a small quantity generator in quantities of less than one hundred kilograms hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

a. Comply with section 33-24-03-02, Section 33-24-02-09.

b. If the generator stores the generator's hazardous waste onsite, store it in compliance with the requirements of subsection 6, and The small quantity generator may accumulate hazardous waste onsite. If the generator accumulates at any time more than a total of one thousand kilograms of this hazardous waste, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under chapters 33-24-03 through 33-24-07, and the applicable notification requirements. The time period of section 33-24-03-12 for accumulation of wastes onsite begins for a small quantity generator when the accumulated wastes exceed one thousand kilograms.

c. Either treat or dispose of the generator's hazardous waste in an onsite facility, or ensure delivery to an offsite storage, treatment or disposal facility, either of which is: A small quantity generator may either treat or dispose of the generator's hazardous waste in an onsite facility, or ensure delivery to an offsite storage, treatment, or disposal facility, either of which is:

(1) Permitted under 40 CFR Part 122 or chapter 33-24-06, Permitted under chapter 33-24-06;

(2) Treated as having a permit under section 33-24-06-16 or in interim status under 40 CFR Parts 122 and 265, In interim status under chapter 33-24-06;

(3) Permitted, licensed, or registered by any state to manage municipal or industrial solid or hazardous waste, or Authorized to manage hazardous waste by the state;

(4) A facility which- Permitted, licensed, or registered by the state to manage municipal or industrial solid waste; or

(a) Beneficially uses or reuses or legitimately recycles or reclaims the generator's wastes, or

(b) Treats the generator's waste prior to beneficial use or reuse or legitimate recycling or reclamation.

(5) A facility which:

(a) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(b) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

8. In order for hazardous waste generated by a small quantity generator in a quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

a. Section 33-24-03-02.

b. A small quantity generator may accumulate hazardous waste onsite. If the generator accumulates at any time more than a total of one thousand kilograms of hazardous waste, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under chapters 33-24-03 through 33-24-07, and applicable notification requirements. The time period of sections 33-24-03 through 33-24-07, and applicable notification requirements. The time period of section 33-24-03-12 for accumulation of hazardous waste onsite begins for a small quantity generator when the accumulated wastes exceed one thousand kilograms.

c. For any hazardous waste shipped offsite, the generator must ensure that such waste is accompanied by a copy of the uniform hazardous waste manifest (environmental protection agency form 8700-22) signed by the generator and containing the following information:

(1) The name and address of the generator of the waste.

(2) The United States department of transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA).

(3) The number and type of containers.

(4) The quantity of waste being transported.

(5) The name and address of the facility designated to receive the waste.

d. A small quantity generator may either treat or dispose of the generator's hazardous waste in an onsite facility, or ensure delivery to an offsite storage, treatment, or disposal facility, either of which is:

(1) Permitted under chapter 33-24-06;

(2) In interim status under chapter 33-24-06;

(3) Authorized to manage hazardous waste by the state;

(4) Permitted, licensed, or registered by the state to manage municipal or industrial solid waste; or

(5) A facility which:

(a) Beneficially uses or reuses, or legitimately recycles or reclaims the facility's wastes; or

(b) Treats the facility's waste prior to beneficial use or reuse, or legitimately recycling or reclamation.

9. Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in this chapter.

9- 10. If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-06. Special requirements for hazardous waste which is used, reused, recycled, or reclaimed-

1- Except as otherwise provided in subsection 2, a hazardous waste which meets any of the following criteria is not subject to regulation under chapters 33-24-03 through 33-24-07 and is not

subject to the notification requirements until such time as the department promulgates regulations to the contrary.

- a- It is being beneficially used or reused or legitimately recycled or reclaimed.
 - b- It is being accumulated, stored, or physically, chemically, or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation.
 - c- It is one of the following materials being used, reused, recycled, or reclaimed in the specified manner: spent pickle liquor which is reused in wastewater treatment at a facility holding a North Dakota pollutant discharge elimination system permit, or which is being accumulated, stored, or physically, chemically or biologically treated before such reuse.
- 2- Except for those wastes listed in subdivision e of subsection 1, a hazardous waste that is a sludge, or that is listed in section 33-24-02-16 or 33-24-02-17, or that contains one or more hazardous wastes listed in section 33-24-02-16 or 33-24-02-17, and that is transported or stored prior to being used, reused, recycled, or reclaimed is subject to the notification requirements and the applicable regulations under chapters 33-24-03 through 33-24-07 with respect to such transportation or storage.

Requirements for recyclable materials.

1. The following requirements for recyclable materials are:
 - a. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections 2 and 3, except for the materials listed in subdivisions b and c of subsection 1. Hazardous wastes that are recycled will be known as "recyclable materials".
 - b. The following recyclable materials are not subject to the requirements of this section but are regulated under sections 33-24-05-201 through 33-24-05-230 and all applicable provisions in chapters 33-24-06 and 33-24-07:
 - (1) Recyclable materials used in a manner constituting disposal (sections 33-24-05-201 through 33-24-05-204).

(2) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under sections 33-24-05-144 through 33-24-05-150.

(3) (Reserved for used oil).

(4) Recyclable materials from which precious metals are reclaimed (section 33-24-05-225).

(5) Spent lead-acid batteries that are being reclaimed (section 33-24-05-230).

c. The following recyclable materials are not subject to regulation under chapters 33-24-03 through 33-24-07 and are not subject to notification requirements:

(1) Industrial ethyl alcohol that is reclaimed.

(2) Used batteries (or used battery cells) returned to a battery manufacturer for regeneration.

(3) Used oil that exhibits one or more of the characteristics of hazardous waste.

(4) Scrap metal.

(5) Fuel produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility, if such wastes result from normal petroleum refining, production, and transportation practices.

(6) Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility.

(7) Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

2. Generators and transporters of recyclable materials are subject to the applicable requirements of chapters 33-24-03 and 33-24-04 and the notification requirements, except as provided in subsection 1.

3. Owners or operators of facilities that:

a. Store recyclable materials before they are recycled are regulated under all applicable provisions of chapters 33-24-05 through 33-24-07 and the notification

requirement, except as provided in subsection 1. (The recycling process itself is exempt from regulations.)

b. Recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection 1:

(1) Notification requirements.

(2) Sections 33-24-05-38 and 33-24-05-39 (dealing with the use of the manifest and manifest discrepancies).

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-07. Residues of hazardous wastes in empty containers.

1. Unless empty as defined in subsection 2, 3, or 4, any hazardous waste in either a container or an inner liner removed from a container is subject to regulation under chapters 33-24-02 through 33-24-07 and to the notification requirements.
2. A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified ~~in subsection 3 of section 33-24-02-18~~ as an acute hazardous waste listed in section 33-24-02-16, 33-24-02-17, or subsection 5 of section 33-24-02-18, is empty if:
 - a. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and
 - b. One of the following:
 - (1) No more than two and one-half centimeters [1 inch] of residue remain on the bottom of the container or inner liner;
 - (2) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to one hundred ten gallons [416.40 liters] in size; or
 - (3) No more than three-tenths of one percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than one hundred ten gallons [416.40 liters] in size.

3. A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric levels.
4. A container or an inner liner removed from a container that has held a hazardous waste identified in subsection 3 of section 33-24-02-18 listed in section 33-24-02-16, 33-24-02-17, or subsection 5 of section 33-24-02-18 is empty if:
 - a. The container or inner liner has been triple-rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
 - b. The container or inner liner has been cleaned by another method that has been shown in the scientific literature or by tests conducted by the generator, to achieve equivalent removal; or
 - c. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-14. Characteristic of EP toxicity.

1. A solid waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II or equivalent methods approved by the department, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than one-half of one percent filterable solid, the waste itself, after filtering, is considered to be the extract for the purposes of this section.
2. A solid waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste in this chapter has a hazardous waste number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

TABLE 1
 MAXIMUM CONCENTRATION OF CONTAMINANTS
 FOR CHARACTERISTIC OF EP TOXICITY

<u>Hazardous Waste Number</u>	<u>Contaminant</u>	<u>Maximum Concentration, mg/l</u>
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0
D007	Chromium	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin ¹	0.02
D013	Lindane ²	0.4
D014	Methoxychlor ³	10.0
D015	Toxaphene ⁴	0.5
D016	2,4-D ⁵	10.0
D017	2,4,5-TP Silvex ⁶	1.0

1 1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo, endo-5,8-dimethane endo-5,8-dimethano naphthalene

2 1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer

3 1,1,1-trichloro-2,2-bis [p-methoxyphenyl] ethane

4 C₁₀ H₁₀ Cl₈, technical chlorinated camphene, 67-69% chlorine

5 2,4-dichlorophenoxyacetic acid

6 2,4,5-trichlorophenoxyprionic acid

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-15. Lists of hazardous wastes.

1. A solid waste is a hazardous waste if it is listed in sections 33-24-02-15 through 33-24-02-18, unless it has been excluded from these lists under section 33-24-01-06 or 33-24-01-08.
2. The department will indicate its basis for listing the classes or types of wastes listed in this chapter by employing one or more of the following hazard codes:

Waste Type	Waste Hazard Code
Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
EP Toxic Waste	(E)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

Appendix IV identifies the constituent which caused the department to list the waste as an EP toxic waste (E) or toxic wastes (T) in sections 33-24-02-16 and 33-24-02-17.

3. Each hazardous waste listed in this chapter is assigned a hazardous waste number which precedes the name of the waste. The number must be used in complying with the notification requirements and certain recordkeeping and reporting requirements under chapters 33-24-03 through 33-24-06.
4. The hazardous wastes listed in sections 33-24-02-16 and 33-24-02-17 are subject to the exclusion limits for acutely hazardous wastes established in section 33-24-02-05: hazardous waste numbers F020, F021, F023, F026, and F027.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-16. Hazardous waste from nonspecific sources. The following solid wastes are listed hazardous wastes from nonspecific sources unless they are excluded under sections 33-24-01-06 and 33-24-01-08 and listed in Appendix VI.

Hazardous Waste No.	Hazardous waste	Hazard Code
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Generic:

F001	The following spent halogenated solvents used in	(T)
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degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more the above halogenated solvents or those solvents listed in F002, F004, and F005; and sludges from the recovery of these solvents in degreasing operations still bottoms from the recovery of these spent solvents and spent solvent mixtures.

- F002 The following spent halogenated solvents: (T)
tetrachloroethylene, methylene chloride,
trichloroethylene, 1,1,1-trichloroethane,
chlorobenzene, ~~1,1,2-trichloro-~~1,2,2-trichloro-1,2,2-
~~trifluoroethane~~ trifluoroethane, ortho-dichlorobenzene, and
trichlorofluoromethane; all spent solvent
mixtures/blends containing, before use, a total of
ten percent or more of the above halogenated solvents
or those solvents listed in F001, F004, and F005; and
the still bottoms from the recovery of these spent
solvents and spent solvent mixtures.
- F003 The following spent nonhalogenated solvents: (I)*
xylene, acetone, ethyl acetate, ethyl benzene, ethyl
ether, methyl isobutyl ketone, n-butyl alcohol,
cyclohexanone, and methanol; all spent solvent
mixtures/blends containing, before use, only the
above spent nonhalogenated solvents; and all spent
solvent mixtures/blends containing, before use, one
or more of the above nonhalogenated solvents, and, a
total of ten percent or more (by volume) of one or
more of those solvents listed in F001, F002, F004,
and F005; and the still bottoms from the recovery of
these spent solvents and spent solvent mixtures.
- F004 The following spent nonhalogenated solvents: (T)
cresols and cresylic acid, and nitrobenzene; all
spent solvent mixtures/blends containing, before use,
a total of ten percent or more (by volume) of the
above nonhalogenated solvents or those solvents
listed in F001, F002, and F005; and the still
bottoms from the recovery of these spent solvents and
spent solvent mixtures.
- F005 The following spent nonhalogenated solvents: (T)
toluene, methyl ethyl ketone, carbon disulfide,
isobutanol, and pyridine; all spent solvent
mixtures/blends containing, before use, a total of
ten percent or more (by volume) of one or more of the
above nonhalogenated solvents listed in F001, F002,

and F004; and ~~the~~ still bottoms from the recovery of these spent solvents and spent solvent mixtures.

- F006 Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (T)
- F019 Wastewater treatment sludges from the chemical conversion coating of aluminum. (T)
- F007 Spent cyanide plating bath solutions from electroplating operations ~~(except for precious metals electroplating spent cyanide plating bath solutions)~~. (R, T)
- F008 Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process ~~(except for precious metals electroplating plating bath sludges)~~. (R, T)
- F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process ~~(except for precious metals electroplating spent stripping and cleaning bath solutions)~~. (R, T)
- F010 Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process ~~(except for precious metals heat treating quenching bath sludges)~~. (R, T)
- F011 Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations ~~(except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning)~~. (R, T)
- F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process ~~(except for precious metals heat treating quenching wastewater treatment sludges)~~. (T)
- F024 Wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This (T)

listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in section 33-24-02-17.)

- F020 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) or tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F021 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives. (H)
- F022 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions. (H)
- F023 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.) (H)
- F026 Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions. (H)
- F027 Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized (H)

from prepurified 2,4,5-trichlorophenol as the sole component).

F028 Residues resulting from the incineration or thermal treatment of soil contaminated with environmental protection agency hazardous waste Nos. F020, F021, F022, F023, F026, and F027. (T)

*(I,T) should be used to specify mixtures containing ignitable and toxic constituents.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-17. Hazardous waste from specific sources. The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under sections 33-24-01-06 and 33-24-01-08 and listed in Appendix VI.

Hazardous Waste No.	Hazardous Waste	Hazard Code
Wood Preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
K006	Wastewater treatment sludge from	(T)

the production of chrome oxide green pigments (anhydrous and hydrated).

K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R, T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R, T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	(T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)

K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K093	Distillation light ends from the production of phthalic anhydride from orthoxylene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from orthoxylene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K026	Stripping still tails from the production of methy ethyl pyridines.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R, T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K095	Distillation bottoms from the production of 1,1,1-trichlorethane.	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)

K083	Distillation bottoms from aniline production.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
Inorganic Chemicals:		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)
Pesticides:		
K031	Byproduct salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated	(T)

	in the production of creosote.	
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
K047	Pink/red water from TNT operations.	(R)
Petroleum Refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining	(T)

	industry.	
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)
Iron and Steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)
K062	Spent pickle liquor from steel finishing operations.	(C, T)
Secondary Lead:		
K069	Emission control dust/sludge from secondary lead smelting.	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T)
Veterinary Pharmaceuticals:		
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
Ink Formulation:		
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and	(T)

stabilizers containing chromium and lead.

Coking:

- K060 Ammonia still lime sludge from coking operations. (T)
- K087 Decanter tank tar sludge from coking operations. (T)

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-02-18. Discarded commercial chemical products, off-specification species, container residues, and associated specification materials, containers, and spill residues thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded, when they are mixed with waste oil or used oil or other material and applied to land for dust suppression or road treatment, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel:

1. Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in subsection 5 or 6.
2. Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection 5 or 6.
3. Any residue remaining in a container or an inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection 5, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection 5, unless Any container or inner liner removed from a container that has been used to hold any commercial chemical product, manufacturing chemical intermediate having the generic names listed in subsection 5, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product, manufacturing chemical intermediate which, if it met specifications, would have the generic names listed in subsection 5, unless:

- a. The container or inner liner has been triple-rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;
 - b. The container or inner liner has been cleaned by another method that has been shown in the scientific literature or by tests conducted by the generator, to achieve equivalent removal; or
 - c. In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.
4. Any residue or contaminated soil, water, or other debris, resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection 5 or 6, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection 5 or 6. (Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in ..." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in subsection 5 or 6. Where a manufacturing process is deemed to be a hazardous waste because it contains a substance listed in subsection 5 or 6, such waste will be listed in either section 33-24-02-16 or 33-24-02-17 or will be identified as a hazardous waste by the characteristics set forth in this chapter.)
5. The commercial chemical products or manufacturing chemical intermediates, referred to in subsections 1 through 4, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in subsection 5 of section 33-24-02-05. These wastes and their corresponding hazardous waste numbers are:

Hazardous Waste No.

Substance

P023	Acetaldehyde, chloro-
P002	Acetamide, N-(aminothioxomethyl)-
P057	Acetamide, 2-fluoro-
P058	Acetic acid, fluoro-, sodium salt
P066	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester
P001	<u>3-(alpha-acetonylbenzyl)-4-hydroxycoumarin</u> <u>3-(alpha-acetonylbenzyl)-4-hydroxycoumarin</u> and salts, when present at concentrations greater than 0.3 percent
P002	1-Acetyl-2-thiourea
P003	Acrolein
P070	Aldicarb
P004	Aldrin
P005	Allyl alcohol
P006	Aluminum phosphide
P007	5-(Aminomethyl)-3-isoxazolol
P008	4-aAminopyridine
P009	Ammonium picrate (R)
P119	Ammonium vanadate
P012	Arsenic (III) oxide
P011	Arsenic (V) oxide
P010	Arsenic acid
P011	Arsenic pentoxide
P012	Arsenic trioxide
P038	Arsine, diethyl-
P054	Aziridine
P013	Barium cyanide
P024	Benzenamine, 4-chloror-
P077	Benzenamine, 4-nitro-
P028	Benzene, (chloromethyl)
P042	1,2-Benzenediol, 4-[1-hydroxy-2-(methyl-amino)ethyl]-
P014	Benzethiol
P028	Benzyl chloride
P015	Beryllium dust
P016	Bis(chloromethyl)ether
P017	Bromoacetonez
P018	Brucine
P021	Calcium cyanide
P123	Camphene, octachloro-
P103	Carbamimidoseleonic acid
P022	Carbon bisulfide
P022	Carbon disulfide
P095	Carbonyl chloride
P033	Chlorine cyanide
P023	Chloroacetaldehyde

P024	p-Chloroaniline
P026	1-(o-Chlorophenyl)thiourea
P027	3-Chlorophropionitrile
P029	Copper cyanides
P030	Cyanides (soluable cyanide salts), not elsewhere specified
P031	Cyanogen
P033	Cyanogen chloride
P036	Dichlorophenylarsine
P037	Dieldrin
P038	Diethylarsine
P039	0,0-Diethyl S-[2-(ethylthio)ethyl], phosphorodithioate
P041	Diethyl-p-nitrophenyl phosphate
P040	0,0-Diethyl 0-pyrazinyl phosphorothioate
P043	Diisopropyl fluorophosphate
P044	Dimethoate
P045	3,3-Dimethyl-1-(methylthio)-2-butanone,0-[(methylamino)carbonyl]oxime
P071	0,0-Dimethyl 0-p-nitrophenyl phosphorothioate
P082	Diemthylnitrosamine
P046	alpha, alpha-Dimethylphenethylamine
P047	4,6-Dinitro-o-cresol and salts
P034	4,6-Dinitro-o-cyclohexylphenol
P048	2,4-Dinitrophenol
P020	Dinoseb
P085	Diphosphoramide, octamethyl-
P039	Disulfoton
P049	2,4-Dithiobiuret
P109	Dithiopyrophosphoric acid, tetraethyl ester
P050	Endosulfan
P088	Endothall
P051	Endrin
P042	Epinephrine
P046	Ethanamine, 1,1-dimethyl-2-phenyl-
P084	Ethenamine, N-methyl-N-nitroso-
P101	Ethyl cyanide
P054	Ethylenimine
P097	Famphur
P056	Fluorine
P057	Fluoroacetamide
P058	Fluroacetic acid, sodium salt
P065	Fulminic acid, mercury (II) salt (R,T)
P059	Heptachlor
P051	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-demethanonaphthalene
P037	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-demethanonaphthalene
P060	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene

P004	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanona-phthalene
P060	Hexachlorohexahydro-exo,exo-dimethanona-phthalene
P062	Hexaethyl tetraphosphate
P116	Hydrazinecarbothioamide
P068	Hydrazine, methyl-
P063	Hydrocyanic acid
P063	Hydrogen cyanide
P096	Hydrogen phosphide
P064	Isocyanic acid, methyl ester
P007	3(2H)-isoxazolone, 5-(aminomethyl)-
P092	Mercury, (acetato-O)phenyl-
P065	Mercury fulminate (R,T)
P016	Methane, oxybis(chloro-
P112	Methane, tetranitro- (R)
P118	Methanethiol, trichloro-
P059	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-hepta-chloro-3a,4,7,7a-tetrahydro-
P066	Methomyl
P067	2-Methylaziridine
P068	Methyl hydrazine
P064	Methyl isocyanate
P069	2-Methylactonitrile
P071	Methyl parathion
P072	alpha-Naphthylthiourea
P073	Nickel carbonyl
P074	Nickel cyanide
P074	Nickel(II) cyanide
P073	Nickel tetracarbonyl
P075	Nicotine and salts
P076	Nitric oxide
P077	p-Nitroaniline
P078	Nitrogen dioxide
P076	Nitrogen(II) oxide
P078	Nitrogen(IV) oxide
P081	Nitroglycerine (R)
P082	N-Nitrosodimethylamine
P084	N-Nitrosomethylvinylamine
P050	5-Norbornene-2,3-dimethanol, 1,4,5,6,7,7-hexa-chloro, cyclic sulfite
P085	Octamethylpyrophosphoramidate
P087	Osmium oxide
P087	Osmium tetroxide
P088	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P089	Parathion
P034	Phenol, 2-cyclohexyl-4,6-dinitro-
P048	Phenol, 2,4-dinitro
P047	Phenol, 2,4-dinitro-6-methyl-
P020	Phenol, 2,4-dinitro-6-(1-methylpropyl)-
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)

P036	Phenyl dichloroarsine
P092	Phenylmercuric acetate
P093	N-Phenylthiourea
P094	Phorate
P095	Phosgene
P096	Phosphine
P041	Phosphoric acid, diethyl p-nitrophenyl ester
P044	Phosphorodithioic acid, 0,0-dimethyl S-[2-(methylamino)-2-oxoethyl]ester
P043	Phosphorofluoric acid, bis(1-methylethyl)-ester
P094	Phosphorothioic acid, 0,0-diethyl S-(ethylthio) methyl ester
P089	Phosphorothioic acid, 0,0-diethyl O-(p-nitrophenyl) ester
P040	Phosphorothioic acid, 0,0-diethyl O-pyrazinyl ester
P097	Phosphorothioic acid, 0,0-dimethyl O-[p-((dimethylamino)-sulfonyl)phenyl]ester
P110	Plumbane, tetraethyl-
P098	Potassium cyanide
P099	Potassium silver cyanide
P070	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P101	Propanenitrile
P027	Propanenitrile, 3-chloro-
P069	Propanenitrile, 2-hydroxy-2methyl-
P081	1,2,3-Propanetriol, trinitrate-(R)
P017	2-Propanone, 1-bromo-
P102	Propargyl alcohol
P003	2-Propenal
P005	2-Propen-1-ol
P067	1,2-Propylenimine
P102	2-Propyn-1-ol
P008	4-Pyridinamine
P075	Pyridine, (S)-3-(1-methyl-2-pyrrolidnyl)- and salts
P111	Pyrophosphoric acid, tetraethyl ester
P103	Selenourea
P104	Silver cyanide
P105	Sodium azide
P106	Sodium cyanide
P107	Strontium sulfide
P108	Strychnidin-10-one, and salts
P018	Strychnidin-10-one, 2,3-dimethoxy-
P108	Strychnine and salts
P115	Sulfuric acid, thallium(I) salt
P109	Tetraethyldithiopyrophosphate
P110	Tetraethyl lead
P111	Tetraethylpyrophosphate
P112	Tetranitromethane (R)
P062	Tetraphosphoric acid, hexaethyl ester

P113	. . . . .	Thallic oxide
P113	. . . . .	Thallium(III) oxide
P114	. . . . .	Thallium(I) selenite
P115	. . . . .	Thallium(I) sulfate
P045	. . . . .	Thiofanox
P049	. . . . .	Thioimidodicarbonic diamide
P014	. . . . .	Thiophenol
P116	. . . . .	Thiosemicarbazide
P026	. . . . .	Thiourea, (2-chlorophenyl)
P072	. . . . .	Thiourea, 1-naphthalenyl-
P093	. . . . .	Thiourea, phenyl-
P123	. . . . .	Toxaphene
P118	. . . . .	Trichloromethanethiol
P119	. . . . .	Vanadium acid, ammonium salt
P120	. . . . .	Vanadium pentoxide
P120	. . . . .	Vanadium(V) oxide
P001	. . . . .	Warfarin, <u>when present at concentrations greater than 0.3 percent</u>
P121	. . . . .	Zinc cyanide
P122	. . . . .	Zinc phosphide (R,T), <u>when present at concentrations greater than 10 percent</u>

6. The commercial chemical products, manufacturing chemical intermediates, ~~or~~ off-specification commercial chemical products, or mixtures of the chemicals referred to in subsections 1 through 4, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in subsections 1 and 6 of section 33-24-02-05. (Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (toxicity), R (reactivity), I (ignitability), and C (corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.)

These wastes and their corresponding hazardous waste numbers are:

Hazardous Waste No.

Substance

U001	Acetaldehyde (I)
U034	Acetaldehyde, trichloro-
U187	Acetamide, N-(4-ethoxyphenyl)-
U005	Acetamide, N-9H-fluoren-2-yl-
U112	Acetic acid, ethyl ester (I)
U144	Acetic acid, lead salt
U214	Acetic acid thallium(I) salt
U002	Acetone (I)
U003	Acetonitrile (I,T)
U248	<u>3-(alpha-acetonylbenzyl)-4-hydroxycoumarin</u> <u>and salts when present at concentrations</u> <u>at 0.3 percent or less</u>
U004	Acetophenone
U005	2-Acetylaminofluorene
U006	Acetyl chloride (C,R,T)
U007	Acrylamide
U008	Acrylic acid (I)
U009	Acrylonitrile
U150	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-
U011	Amitrole
U012	Aniline (I,T)
U014	Auramine
U015	Azaserine
U010	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7- dione, 6-amino-8-(((aminocarbonyloxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy- 5-methyl-,
U157	Benz[j]aceanthrylene, 1,2-dihydromethyl-
U016	Benz[c]acridine
U016	3,4-Benzacridine
U017	Benzal chloride
U018	Benz[a]anthracene
U018	1,2-Benzanthracene
U094	1,2-Benzanthracene, 7,12-dimethyl-
U012	Benzenamine (I,T)
U014	Benzenamine, 4,4'-carbonimidoylbis(N,N'- dimethyl-
U049	Benzenamine, 4-chloro-2-methyl-
U093	Benzenamine, N,N'-dimethyl-4-phenylazo-
U158	Benzenamine, 4,4'-methylenebis(2-chloro-
U222	Benzenamine, 2-methyl-, hydrochloride
U181	Benzenamine, 2-methyl-5-nitro
U019	Benzene (I,T)
U038	Benzeneacetic acid, 4-chloro-alpha-(4-chloro- phenyl)-alpha-hydroxy, ethyl ester
U030	Benzene, 1-bromo-4-phenoxy-
U037	Benzene, chloro-

U190	1,2-Benzenedicarboxylic acid anhydride
U028	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester
U069	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	1,2-Benzenedicarboxylic acid, diethyl ester
U102	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	1,2-Benzenedicarboxylic acid, di-n-octyl ester
U070	Benzene, 1,2-dichloro-
U071	Benzene, 1,3-dichloro-
U072	Benzene, 1,4-dichloro-
U017	Benzene, (dichloromethyl)-
U223	Benzene, 1,3-diisocyanatomethyl-(R,T)
U239	Benzene, dimethyl-(I,T)
U201	1,3-Benzenediol
U127	Benzene, hexachloro-
U056	Benzene, hexahydro-(I)
U188	Benzene, hydroxy-
U220	Benzene, methyl-
U105	Benzene, 1-methyl-1-2,4-dinitro
U106	Benzene, 1-methyl-2,6-dinitro
U203	Benzene, 1,2-methylenedioxy-4-allyl-
U141	Benzene, 1,2-methylenedioxy-4-propenyl
U090	Benzene, 1,2-methylenedioxy-4-propyl
U055	Benzene, (1-methylethyl)-(I)
U169	Benzene, nitro- (I,T)
U183	Benzene, pentachloro-
U185	Benzene, pentachloro-nitro-
U020	Benzenesulfonic acid chloride (C,R)
U020	Benzenesulfonyl chloride (C,R)
U207	Benzene, 1,2,4,5-tetrachloro-
U023	Benzene, (trichloromethyl)-(C,R,T)
U234	Benzene, 1,3,5-trinitro-(R,T)
U021	Benzidine
U202	1,2-Benzisothiazolin-3-one, 1,1-dioxide
U120	Benzo[j,k]fluorene
U022	Benzo[a]pyrene
U022	3,4-Benzopyrene
U197	p-Benzoquinone
U023	Benzotrichloride (C,R,T)
U050	1,2-Benzphenanthrene
U085	2,2'-Bioxirane (I,T)
U021	(1,1'-Biphenyl)-4,4'-diamine
U073	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-
U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-
U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-
U024	Bis(2-chloroethoxy) methane
U027	Bis(2-chloroisopropyl) ether
U244	Bis(dimethylthiocarbamoyl) disulfide
U028	Bis (2-ethylhexyl) phthalate
U246	Bromine cyanide
U225	Bromoform
U030	4-Bromophenyl phenyl ether
U128	1,3-Butadiene, 1,1,2,3,4,4-hexchloro-

U172	1-Butanamine, N-butyl-N-nitroso-
U035	Butanoic acid, 4-[Bis(2-chloroethyl)amino] benzene-
U031	1-Butanol (I)
U159	2-Butanone (I,T)
U160	2-Butanone peroxide (R,T)
U053	2-Butenal
U074	2-Butene, 1,4-dichloro- (I,T)
U031	n-Butyl alcohol (I)
U136	Cacodylic acid
U032	Calcium chromate
U238	Carbamic acid, ethyl ester
U178	Carbamic acid, methylnitroso-, ethyl ester
U176	Carbamide, N-ethyl-N-nitroso-
U177	Carbamide, N-methyl-N-nitroso-
U219	Carbamide, thio-
U097	Carbamoyl chloride, dimethyl-
U215	Carbonic acid, dithallium(I) salt
U156	Carbonochloridic acid, methyl ester (I,T)
U033	Carbon oxyfluoride (R,T)
U211	Carbon tetrachloride
U033	Carbonyl fluoride (R,T)
U034	Chloral
U035	Chlorambucil
U036	Chlordane, technical
U026	Chlornaphazine
U037	Chlorobenzene
U039	4-Chloro-m-cresol
U041	1-Chloro-2,3-epoxypropane
U042	2-Chloroethyl vinyl ether
U044	Chloroform
U046	Chloromethyl methyl ether
U047	beta-Chloronaphthalene
U048	o-Chlorophenol
U049	4-Chloro-o-toluidine, hydrochloride
U032	Chromic acid, calcium salt
U050	Chrysene
U051	Creosote
U052	Cresols
U052	Cresylic acid
U053	Crotonaldehyde
U055	Cumene (I)
U246	Cyanogen bromide
U197	1,4-Cyclohexadienedione
U056	Cyclohexane (I)
U057	Cyclohexanone (I)
U130	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexa-chloro-
U058	Cyclophosphamide
U240	2,4-D, salts and esters
U059	Daunomycin
U060	DDD
U061	DDT
U142	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta-

	(c,d)-pentalen-2-one
U062	Diallate
U133 :	Diamine (R,T)
U221	Diaminotoluene
U063	Dibenz(a,h)anthracene
U063	1,2:5,6-Dibenzanthracene
U064	1,2:7,8-Dibenzopyrene
U064	Dibenz[a,i]pyrene
U066	1,2-Dibromo-3-chloropropane
U069	Dibutyl phthalate
U062	S-(2,3-dichloroallyl) diisopropylthiocarbamate
U070	o-Dichlorobenzene
U071	m-Dichlorobenzene
U072	p-Dichlorobenzene
U073	3,3'-Dichlorobenzidine
U074	1,4-Dichloro-2-butene (I,T)
U075	Dichlorodifluoromethane
U192	3,5-Dichloro-N-(1,1-dimethyl-2propynyl) benzamide
U060	Dichloro diphenyl dichloroethane
U061	Dichloro diphenyl trichloroethane
U078	1,1-Dichloroethylene
U079	1,2-Dichloroethylene
U025	Dichloroethyl ether
U081	2,4-Dichlorophenol
U082	2,6-Dichlorophenol
U240	2,4-Dichlorophenoxyacetic acid, salts and esters
U083	1,2-Dichloropropane
U084	1,3-Dichloropropane
U085	1,2:3,4-Diepoxybutane (I,T)
U108	1,4-Diethylene dioxide
U086	N,N-Diethylhydrazine
U087	0,0-diethyl-S-methyl-dithiophosphate
U088	Diethyl phthalate
U089	Diethylstilbestrol
U148	1,2-dihydro-3,6-pyridazinedione
U090	Dihydrosafrole
U091	3,3'-Dimethoxybenzidine
U092	Dimethylamine (I)
U093	Dimethylaminoazobenzene
U094	7,12-Dimethylbenz(a)anthracene
U095	3,3'-Dimethylbenzidine
U096	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	Dimethylcarbamoyl chloride
U098	1,1-Dimethylhydrazine
U099	1,2-Dimethylhydrazine
U101	2,4-Dimethylphenol
U102	Dimethyl phthalate
U103	Dimethyl sulfide
U105	2,4-Dinitrotoluene
U106	2,6-Dinitrotoluene
U107	Di-n-octyl phthalate

U108	. . . . .	1,4-Dioxane
U109	. . . . .	1,2-Diphenylhydrazine
U110	. . . . .	Dipropylamine (I)
U111	. . . . .	Di-N-propylnitrosamine
U001	. . . . .	Ethanol (I)
U174	. . . . .	Ethanamine, N-ethyl-N-nitroso-
U067	. . . . .	Ethane, 1,2-dibromo-
U076	. . . . .	Ethane, 1,1-dichloro-
U077	. . . . .	Ethane, 1,2-dichloro-
U114	. . . . .	1,2-Ethanediylobiscarbamodithioic acid
U131	. . . . .	Ethane, 1,1,1,2,2,2-hexachloro-
U024	. . . . .	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U003	. . . . .	Ethanenitrile (I,T)
U117	. . . . .	Ethane, 1,1'-oxybis-(I)
U025	. . . . .	Ethane, 1,1'-oxybis[2-chloro-
U184	. . . . .	Ethane, pentachloro-
U208	. . . . .	Ethane, 1,1,1,2-tetrachloro-
U209	. . . . .	Ethane, 1,1,2,2-tetrachloro-
U218	. . . . .	Ethanethioamide
U227	. . . . .	Ethane, 1,1,2-trichloro-
U247	. . . . .	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)
U043	. . . . .	Ethene, chloro-
U042	. . . . .	Ethene, 2-chloroethoxy-
U078	. . . . .	Ethene, 1,1-dichloro-
U079	. . . . .	Ethene, trans-1,2-dichloro-
U210	. . . . .	Ethene, 1,1,2,2-tetrachloro-
U173	. . . . .	Ethanol, 2,2'-(nitrosoimino)bis-
U004	. . . . .	Ethanone, 1-phenyl-
U006	. . . . .	Ethanoyl chloride (C,R,T)
U112	. . . . .	Ethyl acetate (I)
U113	. . . . .	Ethyl acrylate (I)
U238	. . . . .	Ethyl carbamate (urethan)
U038	. . . . .	Ethyl 4,4'-dichlorobenzilate
U114	. . . . .	Ethylenebis(dithiocarbamic acid)
U067	. . . . .	Ethylene dibromide
U077	. . . . .	Ethylene dichloride
U115	. . . . .	Ethylene oxide (I,T)
U116	. . . . .	Ethylene thiourea
U117	. . . . .	Ethyl ether (I)
U076	. . . . .	Ethylidene dichloride
U118	. . . . .	Ethylmethacrylate
U119	. . . . .	Ethyl methanesulfonate
U139	. . . . .	Ferric dextran
U120	. . . . .	Fluoranthene
U122	. . . . .	Formaldehyde
U123	. . . . .	Formic acid (C,T)
U124	. . . . .	Furan (I)
U125	. . . . .	2-Furancarboxaldehyde (I)
U147	. . . . .	2,5-Furandione
U213	. . . . .	Furan, tetrahydro- (I)
U125	. . . . .	Furfural (I)
U124	. . . . .	Furfuran (I)
U206	. . . . .	D-Glucopyranose, 2-deoxy-2(3-methyl-3-ni

	trosoureido)-
U126	Glycidylaldehyde
U163	Guanidine, N-nitroso-N-methyl-N'nitro-
U127	Hexachlorobenzene
U128	Hexachlorobutadiene
U129	Hexachlorocyclohexane (gamma isomer)
U130	Hexachlorocyclopentadiene
U131	Hexachloroethane
U132	Hexachlorophene
U243	Hexachloropropene
U133	Hydrazine (R,T)
U086	Hydrazine, 1,2-diethyl-
U098	Hydrazine, 1,1-dimethyl-
U099	Hydrazine, 1,2-dimethyl-
U109	Hydrazine, 1,2-diphenyl-
U134	Hydrofluoric acid (C,T)
U134	Hydrogen fluoroide (C,T)
U135	Hydrogen sulfide
U096	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U136	Hydroxydimethylarsine oxide
U116	2-Imidazolidinethione
U137	Indeno (1,2,3-cd)pyrene
U139	Iron dextran
U140	Isobutyl alcohol (I,T)
U141	Isosafrole
U142	Kepone
U143	Lasiocarpine
U144	Lead acetate
U145	Lead phosphate
U146	Lead subacetate
U129	Lindane
U147	Maleic anhydride
U148	Maleic hydrazide
U149	Malononitrile
U150	Melphalan
U151	Mercury
U152	Methacrylonitrile (I,T)
U092	Methanamine, N-methyl- (I)
U029	Methane, bromo-
U045	Methane, chloro- (I,T)
U046	Methane, chloromethoxy-
U068	Methane, dibromo-
U080	Methane, dichloro-
U075	Methane, dichlorodifluoro-
U138	Methane, iodo-
U119	Methanesulfonic acid, ethyl ester
U211	Methane, tetrachloro-
U121	Methane, trichlorofluoro-
U153	Methanethiol (I,T)
U225	Methane, tribromo-
U044	Methane, trichloro-
U121	Methane, trichlorofluoro-
U123	Methanoic acid (C,T)

U036	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-
U154	Methanol (I)
U155	Methapyrilene
U247	Methoxychlor
U154	Methyl alcohol (I)
U029	Methyl bromide
U186	1-Methylbutadiene (I)
U045	Methyl chloride (I,T)
U156	Methyl chlorocarbonate (I,T)
U226	Methylchloroform
U157	3-Methylcholanthrene
U158	4,4'-Methylenebis (2-chloroaniline)
U132	2,2'-Methylenebis (3,4,6-trichlorophenol)
U068	Methylene bromide
U080	Methylene chloride
U122	Methylene oxide
U159	Methyl ethyl ketone (I,T)
U160	Methyl ethyl ketone peroxide (R,T)
U138	Methyl iodide
U161	Methyl isobutyl ketone (I)
U162	Methyl methacrylate (I,T)
U163	N-Methyl-N'-nitro-N-nitrosoguanidine
U161	4-Methyl-2-pentanone (I)
U164	Methylthiouracil
U010	Mitomycin C
U059	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxohexopyranosyl)oxyl]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-
U165	Naphthalene
U047	Naphthalene, 2-chloro-
U166	1,4-Naphthalenedione
U236	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'diyl)]-bis(azo)bis(5-amino-4-hydroxy)-tetrasodium salt
U166	1,4,Naphthaquinone
U167	1-Naphthylamine
U168	2-Naphthylamine
U167	alpha-Naphthylamine
U168	beta-Naphthylamine
U026	2-Naphthylamine, N,N'-bis(2-chloro-methyl)-
U169	Nitrobenzene (I,T)
U170	p-Nitrophenol
U171	2-Nitropropane (I)
U172	N-Nitrosodi-n-butylamine
U173	N-Nitrosodiethanolamine
U174	N-Nitrosodiethylamine
U111	N-Nitroso-N-propylamine
U176	N-Nitroso-N-ethylurea
U177	N-Nitroso-N-methylurea
U178	N-Nitroso-N-methylurethane
U179	N-Nitrosopiperidine

U180	. . . . .	N-Nitrosopyrrolidine
U181	. . . . .	5-Nitro-o-toluidine
U193	. . . . .	1,2-Oxathiolane, 2,2-dioxide
U058	. . . . .	2H-1,3,2-Oxazaphosphorine, 2-[bis(2-chloro-ethyl)amino]tetrahydro-,oxide 2-
U115	. . . . .	Oxirane (I,T)
U041	. . . . .	Oxirane, 2-(chloromethyl)-
U182	. . . . .	Paraldehyde
U183	. . . . .	Pentachlorobenzene
U184	. . . . .	Pentachloroethane
U185	. . . . .	Pentachloronitrobenzene
U242	. . . . .	Pentachlorophenol
F027	. . . . .	Pentachlorophenol
U186	. . . . .	1,3-Pentadiene (I)
U187	. . . . .	Phenacetin
U188	. . . . .	Phenol
U048	. . . . .	Phenol, 2-chloro-
U039	. . . . .	Phenol, 4-chloro-3-methyl-
U081	. . . . .	Phenol, 2,4-dichloro-
U082	. . . . .	Phenol, 2,6-dichloro-
U101	. . . . .	Phenol, 2,4-dimethyl-
U170	. . . . .	Phenol, 4-nitro-
U242	. . . . .	Phenol, pentachloro-
U212	. . . . .	Phenol, 2,3,4,6-tetrachloro-
U230	. . . . .	Phenol, 2,4,5-trichloro-
U231	. . . . .	Phenol, 2,4,6-trichloro-
F027	. . . . .	Phenol, pentachloro-
Do	. . . . .	Phenol, 2,3,4,6-tetrachloro-
Do	. . . . .	Phenol, 2,4,5-trichloro-
Do	. . . . .	Phenol, 2,4,6-trichloro-
U137	. . . . .	1,10-(1,2-phenylene)pyrene
U145	. . . . .	Phosphoric acid, Lead salt
U087	. . . . .	Phosphorodithioic acid, 0,0-diethyl, S-methyl-ester
U189	. . . . .	Phosphorous sulfide (R)
U190	. . . . .	Phthalic anhydride
U191	. . . . .	2-Picoline
U192	. . . . .	Pronamide
U194	. . . . .	1-Propanamine (I,T)
U110	. . . . .	1-Propanamine, N-propyl-(I)
U066	. . . . .	Propane, 1,2-dibromo-3-chloro-
U149	. . . . .	Propanedinitrile
U171	. . . . .	Propane, 2-nitro- (I)
U027	. . . . .	Propane, 2,3'oxybis(2-chloro-
U193	. . . . .	1,3-Propane sulfone
U235	. . . . .	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U126	. . . . .	1-Propanol, 2,3-epoxy-
U140	. . . . .	1-Propanol, 2-methyl- (I,T)
U002	. . . . .	2-Propanone (I)
U007	. . . . .	2-Propenamide
U084	. . . . .	Propene, 1,3-dichloro-
U243	. . . . .	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	. . . . .	2-Propenenitrile

U152	2-Propenenitrile, 2-methyl- (I,T)
U008	2-Propenoic acid (I)
U113	2-Propenoic acid, ethyl ester (I)
U118	2-Propenoic acid, 2-methyl-, ethyl ester
U162	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U233	Propionic acid, 2-(2,4,5-
trichlorophenoxy)-	
F027	Propionic acid, 2-(2,4,5-trichlorophenoxy)-
U194	n-Propylamine (I,T)
U083	Propylene dichloride
U196	Pyridine
U155	Pyridine, 2-[(2-(dimethylamino)-2-thenylamino]-
U179	Pyridine, hexahydro-N-nitroso-
U191	Pyridine, 2-methyl-
U164	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	Pyrrole, tetrahydro-N-nitroso-
U200	Reserpine
U201	Resorcinol
U202	Saccharin and salts
U203	Safrole
U204	Selneious acid
U204	Selneious dioxide
U205	Selenium disulfide (R,T)
U015	L-Serine, diazoacetate (ester)
U233	Silvex
F027	Silvex
U089	4,4'-Stilbenediol, alpha, alpha'-diethyl-
U206	Streptozotocin
U135	Sulfur hydride
U103	Sulfuric acid, dimethyl ester
U189	Sulfur phosphide (R)
U205	Sulfur selenide (R,T)
U232	2,4,5-T
F027	2,4,5-T
U207	1,2,4,5-Tetrachlorobenzene
U208	1,1,1,2-Tetrachloroethane
U209	1,1,2,2-Tetrachloroethane
U210	Tetrachloroethylene
U212	2,3,4,6-Tetrachlorophenol
F027	2,3,4,6-Tetrachlorophenol
U213	Tetrahydrofuran (I)
U214	Thallium(I) acetate
U215	Thallium(I) carbonate
U216	Thallium(I) chloride
U217	Thallium(I) nitrate
U218	Thioacetamide
U153	Thiomethanol (I,T)
U219	Thiourea
U244	Thiram
U221	Toluenediamine
U223	Toluene diisocyanate (R,T)
U222	O-Toluidine hydrochloride
U011	1H-1,2,4-Triazol-3-amine

U226	. . . . .	1,1,1-Trichloroethane
U227	. . . . .	1,1,2-Trichloroethane
U228	. . . . .	Trichloroethene
U228	. . . . .	Trichloroethylene
U121	. . . . .	Trichloromonofluoromethane
U230	- - - - -	2,4,5-Trichlorophenol
U231	- - - - -	2,4,6-Trichlorophenol
U232	- - - - -	2,4,5-Trichlorophenoxyacetic acid
F027	. . . . .	<u>2,4,5-Trichlorophenol</u>
Do	. . . . .	<u>2,4,6-Trichlorophenol</u>
Do	. . . . .	<u>2,4,5-Trichlorophenoxyacetic acid</u>
U234	. . . . .	sym-Trinitrobenzene (R,T)
U182	. . . . .	1,3,4-Trioxane, 2,4,5-trimethyl-
U235	. . . . .	Tris(2,3-dibromopropyl)phosphate
U236	. . . . .	Trypan blue
U237	. . . . .	Uracil, 5[bis(2-chloromethyl)amino]-
U237	. . . . .	Uracil, mustard
U043	. . . . .	Vinyl chloride
U248	. . . . .	<u>Warfarin, when present at concentrations of</u> <u>0.3 percent or less</u>
U239	. . . . .	Xylene (I)
U200	. . . . .	Yohimban-16-Carboxylic acid, 11,17-dimethoxy- 18-[(3,4,5-trimethoxy-benzoyl)oxy]-,methyl ester
U249	. . . . .	<u>Zinc phosphide, when present at concentrations</u> <u>of 10 percent or less</u>

History: Effective January 1, 1984; amended effective October 1, 1986.
General Authority: NDCC 23-20.3-03
Law Implemented: NDCC 23-20.3-03, 23-20.3-04

STAFF COMMENT: 1 appendix was submitted with chapter 33-24-03.

33-24-03-04. General requirements of the manifest.

1. A generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal must prepare a manifest before transporting the waste offsite uniform hazardous waste manifest, environmental protection agency form 8700-22, and if necessary, environmental protection agency form 8700-22a, according to instructions included in the appendix to this chapter.
2. A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.
3. A generator may also designate on the manifest one alternate facility which is permitted to handle the generator's waste in the event an emergency prevents delivery of the waste to the primary designated facility.
4. If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-03-05. Required information on the manifest.

- 1- The manifest must contain all of the following information:
 - a- A manifest document number.
 - b- The generator's name, mailing address, telephone number, and identification number.
 - c- The name and identification number of each transporter.
 - d- The name, address, and identification number of the designated facility and an alternate facility, if any.
 - e- The description of the waste, e.g., proper shipping name, etc., required by regulations of the United States department of transportation in 49 CFR 172-101, 172-202, and 172-203.

f. The total quantity of each hazardous waste by units of weight or volume and the type and number of containers as loaded into or onto the transport vehicle.

2. The following certification must appear on the manifest.

This is to certify that the above-named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the department of transportation and the environmental protection agency.

Acquisition of manifests.

1. If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator must use that manifest.
2. If the consignment state does not supply the manifest, then the generator may obtain the manifest from any source.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-03-12. Accumulation time.

1. A generator may accumulate hazardous waste onsite without a permit for ninety days or less, provided that:
 - a. The waste is placed in containers and the generator complies with sections 33-24-05-90 through 33-24-05-93, 33-24-05-95, and 33-24-05-96, or in tanks, provided the generator complies with the requirements of sections 33-24-05-105 through 33-24-05-109.
 - b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
 - c. While being accumulated onsite, each container and tank is properly labeled or marked with the words "Hazardous Waste".
 - d. The generator complies with the requirements for owners or operators in sections 33-24-05-07 and 33-24-05-15 through 33-24-05-36.

2. A generator who accumulates hazardous waste for more than ninety days, is an operator of a storage facility, and is subject to the requirements of chapter 33-24-05 and the permit requirements of chapter 33-24-06, unless the generator has been granted an extension to the ninety-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than ninety days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.
3. A generator may accumulate as much as fifty-five gallons [208.20 liters] of hazardous waste or one quart [0.95 liters] of acutely hazardous waste listed in subsection 5 of section 33-24-02-18 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection 1 provided the operator:
 - a. Complies with sections 33-24-05-90, 33-24-05-91, and subsection 1 of section 33-24-05-92; and
 - b. Marks the operator's containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-03-14. Annual reporting.

1. A generator who ships the generator's hazardous waste offsite must prepare and submit a single copy of an annual report to the department by March first of each year. The annual report must be submitted on department-approved forms ~~(available from the department's division of environmental waste management and research)~~, must cover generator activities during the previous calendar year, and must include the following information:
 - a. The identification number, name, and address of the generator.
 - b. The calendar year covered by the report.
 - c. The identification number, name, and address for each offsite treatment, storage, or disposal facility to which waste was shipped during the reporting year; for exported shipments, the report must give the name and address of the foreign facility.

- d. The name and identification number of each transporter used during the reporting year.
 - e. A description, hazardous waste number (from chapter 33-24-02), department of transportation hazard class, and quantity of each hazardous waste shipped offsite. This information must be listed by the identification number of each offsite facility to which waste was shipped.
 - f. ~~The certification signed by the generator or the generator's authorized representative-~~ ^A
description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
 - g. A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to the previous year to the extent such information is available for years prior to 1984.
 - h. The certification signed by the generator or authorized representative.
2. Any generator who treats, stores, or disposes of hazardous waste onsite must submit an annual report covering those wastes in accordance with the provisions of chapters 33-24-05 and 33-24-06.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-03-16. Additional reporting.

- 1. Any generator who makes an offsite shipment of hazardous waste must send to the department a legible copy of the signed manifest or shipping paper within twenty-one days of the date:
 - a. When first signed by the generator and transporter; and
 - b. As signed by and received from the designated facility or alternate facility.
- 2. The department, as it deems necessary, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in this article.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-03-17. International shipments.

1. Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into this state must comply with the requirements of this section.
2. When shipping hazardous waste outside the United States, the generator must:
 - a. Notify the department and the environmental protection agency (office of international activities) in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year.
 - (1) The waste must be identified by its hazardous waste identification number and its department of transportation shipping description.
 - (2) The name and address of the foreign consignee must be included in this notice.
 - (3) These notices must be sent to ~~the~~ North Dakota state department of health, division of environmental waste management and research hazardous waste management and special studies.
 - b. Require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose.
 - c. Meet the requirements under section 33-24-03-05 33-24-03-04 for the manifest, except that:
 - (1) In place of the name, address, and identification number of the designated facility, the name and address of the foreign consignee must be used.
 - (2) The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.
 - d. The generator may obtain the manifest from any source.
3. A generator must file an exception report if:
 - a. He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter; or
 - b. Within ninety days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

4. When importing hazardous waste, a person must meet all requirements of section 33-24-03-05 for the manifest except that: Any person exporting hazardous waste identified or listed under this article shall file with the department no later than March first of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.
5. When importing hazardous waste, a person must meet all requirements of subsection 1 of section 33-24-03-04 for the manifest, except that:
 - a. In place of the generator's name, address, and identification number, the name and address of the foreign generator and the importer's name, address, and identification number must be used.
 - b. In place of the generator's signature on the certification statement, the United States importer or the importer's agent must sign and date the certification and obtain the signature of the initial transporter.
6. A person who imports hazardous waste must obtain the manifest form from the consignment state if that state supplied the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

STAFF COMMENT: 3 appendices and 3 tables were submitted with chapter 33-24-05.

33-24-05-01. Purpose, scope, and applicability.

1. The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste.
2. The standards in this chapter apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this chapter or chapter 33-24-02.
3. The requirements of this chapter apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an underground injection control program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by chapter 33-24-06.

4. The requirements of this chapter apply to the owner or operator of a publicly owned treatment works which treats, stores, or disposes of hazardous waste only to the extent they are included in a hazardous waste permit by rule granted to such a person under chapter 33-24-06.
5. The requirements of this chapter do not apply to recyclable materials used in a manner constituting disposal, hazardous waste burned for energy recovery, recyclable materials utilized for precious metal recovery, and spent lead-acid batteries being reclaimed.
6. The requirements of this chapter do not apply to:
 - a. The owner or operator of a facility permitted, licensed, or registered by the department to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under section 33-24-02-05.
 - b. The owner or operator of a facility which treats or stores hazardous wastes, which treatment or storage meets the criteria in subsection 1 of section 33-24-02-06, except to the extent that subsection 2 of section 33-24-02-06 provides otherwise managing recyclable hazardous wastes described in subdivisions a and b of subsection 1 of section 33-24-02-06 (except to the extent that requirements of this chapter are referred to in sections 33-24-05-201 through 33-24-05-235).
 - c. A generator accumulating waste onsite in compliance with section 33-24-03-12.
 - d. A farmer disposing of waste pesticides from the farmer's own use in compliance with section 33-24-03-18.
 - e. The owner or operator of a totally enclosed treatment facility, as defined in section 33-24-01-04.
 - f. The owner or operator of an elementary neutralization or a wastewater treatment unit as defined in section 33-24-01-04.
 - g. Immediate response activities.
 - (1) Except as provided in paragraph 2, a person engaged in treatment or containment activities during immediate response to any of the following situations:
 - (a) A discharge of hazardous waste.

- (b) An imminent and substantial threat of a discharge of hazardous waste.
 - (c) A discharge of material which, when discharged, becomes a hazardous waste.
- (2) An owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of sections 33-24-05-15 through 33-24-05-36.
 - (3) Any person who is covered by paragraph 1 and continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and chapters 33-24-06 and 33-24-07.
- h. A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of section 33-24-03-08 at a transfer facility for a period of ten days or less.
 - i. The addition of absorbent material to waste in a container (as defined in section 33-24-01-04) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in a container, and subsection 2 of section 33-24-05-08 and sections 33-24-05-90 and 33-24-05-91 are complied with.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-04. General waste analysis.

- 1. Waste analysis requirements.
 - a. Before an owner or operator treats, stores, or disposes of any hazardous waste the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this chapter or a permit issued under chapter 33-24-06.
 - b. The analysis may include data developed under chapter 33-24-02 and existing published or documented data on the hazardous waste or on waste generated from similar processes.

- c. The analysis must be repeated as necessary to ensure that it is accurate and up-to-date. At a minimum, the analysis must be repeated:
 - (1) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and
 - (2) For offsite facilities when the results of the inspection required in subdivision d indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.
 - d. The owner or operator of an offsite facility shall inspect and if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.
2. The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which the owner or operator will carry out to comply with subsection 1. The owner or operator must keep this plan at the facility. At a minimum, the plan must specify:
- a. The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters, i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subsection 1.
 - b. The test methods which will be used to test for these parameters.
 - c. The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:
 - (1) One of the sampling methods described in Appendix 1 of chapter 33-24-02; or
 - (2) An equivalent sampling method.
 - d. The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up-to-date.
 - e. For offsite facilities the waste analysis that hazardous waste generators have agreed to supply.
 - f. Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific

waste management methods as specified in sections 33-24-05-08 and, 33-24-05-145, and 33-24-05-183.

3. For offsite facilities, the waste analysis plan required in subsection 2 must also specify the procedures which will be used to inspect and analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:
 - a. The procedures which will be used to determine the identity of each movement of waste managed at the facility.
 - b. The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-09. Location standards.

1. The department will not issue a permit to any facility which is or will be constructed in a location with a geology, hydrogeology, hydrology, or topography which the department reasonably believes is incompatible with the type of hazardous waste management activity occurring or proposed to occur. Locations which are specifically within the meaning of this section include but are not limited to floodplains, ground water recharge areas, highly permeable soils, high ground water tables, and areas of high topographic relief.
2. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-37. Applicability of manifest system, recordkeeping, and reporting requirements. Sections 33-24-05-37 through 33-24-05-46 apply to owners and operators of both onsite and offsite facilities except as section 33-24-05-01 provides otherwise. Sections 33-24-05-38, 33-24-05-39, and 33-24-05-43 do not apply to owners and operators of onsite facilities that do not receive any hazardous waste from offsite sources. Subsection 2 of section 33-24-05-40 only applies to permittees who treat, store, or dispose of hazardous waste onsite where such wastes were generated.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-40. Operating record.

1. The owner or operator shall keep a written operating record at the facility.
2. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
 - a. A description and quantity of each hazardous waste received and the methods and dates of its treatment, storage, or disposal at the facility as required by Appendix I.
 - b. The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-reference to specific manifest document numbers, if the waste was accompanied by a manifest.
 - c. Records and results of waste analysis and trial tests performed as specified in sections 33-24-05-04, 33-24-05-08, and 33-24-05-145, and 33-24-05-183.
 - d. Summary reports and details of all incidents that require implementing the contingency plan as specified in subsection 10 of section 33-24-05-31.
 - e. Records and results of inspections as required by subsection 4 of section 33-24-05-06 (except these data need to be kept only three years).
 - f. Monitoring, testing, or analytical data where required by sections 33-24-05-47 through 33-24-05-58 and sections 33-24-05-117, 33-24-05-132, 33-24-05-150, 33-24-05-164, 33-24-05-165, 33-24-05-167, 33-24-05-178, and 33-24-05-180.
 - g. For offsite facilities, notices to generators as specified in subsection 2 of section 33-24-05-03.
 - h. All closure and postclosure cost estimates under section 33-24-05-76.
 - i. A certification by the permittee no less often than annually, that the permittee has a program in place to

reduce the volume and toxicity of hazardous waste that is generated to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage, or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-42. Annual report. The owner or operator shall prepare and submit a single copy of an annual report to the department by March first of each year. The report form and instructions can be obtained from the department's division of environmental hazardous waste management and ~~research~~ special studies. The annual report must cover facility activities during the previous calendar year and must include the following information:

1. The identification number, name, and address of the facility.
2. The calendar year covered by the report.
3. For offsite facilities, identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator.
4. A description and quantity of each hazardous waste the facility received during the year. For offsite facilities, this information must be listed by identification number of each generator.
5. The method of treatment, storage, or disposal for each hazardous waste.
6. Any ground water monitoring data which the owner or operator is required to collect under section 33-24-05-55, 33-24-05-56, or 33-24-05-57, and which the owner or operator has not otherwise submitted to the department under those sections.
7. The most recent closure and postclosure cost estimate under section 33-24-05-76.
8. The certification signed by the owner or operator of the facility or the owner's or operator's authorized representative.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-47. Applicability of ground water protection requirements.

1. Except as provided in subsection 2, sections 33-24-05-47 through 33-24-05-58 (hereinafter referred to as the "ground water protection requirements") apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills. The owner or operator shall satisfy the ground water protection requirements for all waste (or constituents thereof) contained in any such waste management unit at the facility that receives hazardous waste after January 1, 1984 (hereinafter referred to as a "regulated unit"). Any waste or waste constituent migrating beyond the waste management area under subsection 2 of section 33-24-05-52 is assumed to originate from a regulated unit, unless the department finds that such waste or waste constituent originated from another source Applicability.

a. Except as provided in subsection 2, the regulations in this chapter apply to owners or operators of facilities that treat, store, or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in subdivision b of subsection 1 for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

b. All solid waste management units must comply with the requirements in section 33-24-05-58. A surface impoundment, waste pile, and land treatment unit, or landfill that receives hazardous waste after July 26, 1982, (hereinafter referred to as a "regulated unit") must comply with the requirements of sections 33-24-05-48 through 33-24-05-57 in lieu of section 33-24-05-58 for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of section 33-24-05-58 apply to regulated units.

2. The owner or operator is not subject to regulation owner's or operator's regulated unit or units, are not subject to regulation for releases into the uppermost aquifer under this chapter if:

- a. The owner or operator is exempted under section 33-24-05-01; or
- b. He operates a unit which the department finds:
- (1) Is an engineered structure;
 - (2) Does not receive or contain liquid waste or waste containing free liquids;
 - (3) Is designed and operated to exclude liquid, precipitation, and other run-on and runoff;
 - (4) Has both inner and outer layers of containment enclosing the waste;
 - (5) Has a leak detection system built into each containment layer;
 - (6) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and postclosure care periods; and
 - (7) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period;
- c. The department finds, pursuant to subsection 4 of section 33-24-05-167, that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of section 33-24-05-165 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this subdivision section can only relieve an owner or operator of responsibility to meet the ground water protection requirements of this chapter during the postclosure care period; ~~or~~
- ~~e-~~ d. The department finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the postclosure care period specified under section 33-24-05-65. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any

predictions made under this subdivision section on assumptions that maximize the rate of liquid migration; or

- e. He designs and operates a pile in compliance with subsection 3 of section 33-24-05-130.
3. The ground water protection requirements apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the ground water protection requirements:
 - a. Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;
 - b. Apply during the postclosure care period under section 33-24-05-65 if the owner or operator is conducting a detection monitoring program under section 33-24-05-55; or
 - c. Apply during the compliance period under section 33-24-05-53 if the owner or operator is conducting a compliance monitoring program under section 33-24-05-56 or a corrective action program under section 33-24-05-57.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-58. {Reserved} Corrective action for solid waste management units.

1. The owner or operator of a facility seeking a permit for the treatment, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.
2. Corrective action will be specified in the permit. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-61. Closure plan - Amendment of plan.

1. The owner or operator of a hazardous waste management facility shall have a written closure plan. The plan must be submitted with the permit application, in accordance with subdivision m of subsection 2 of section 33-24-06-17, and approved by the department as part of the permit issuance proceeding under chapter 33-24-07. In accordance with section 33-24-06-05, the approved closure plan will become a condition of the hazardous waste permit. The department's decision must assure that the approved closure plan is consistent with sections 33-24-05-60, 33-24-05-62, 33-24-05-63, 33-24-05-64, and the applicable requirements of sections 33-24-05-97, 33-24-05-107, 33-24-05-119, 33-24-05-135, 33-24-05-151, 33-24-05-167, and 33-24-05-180. A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified in accordance with section 33-24-05-64. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:
 - a. A description of how and when the facility will be partially closed, if applicable, and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the requirements of sections 33-24-05-60, 33-24-05-62, 33-24-05-63, 33-24-05-64, and the applicable closure requirements of sections 33-24-05-97, 33-24-05-107, 33-24-05-119, 33-24-05-135, 33-24-05-151, 33-24-05-167, and 33-24-05-180 will be met.
 - b. An estimate of the maximum inventory of wastes in storage and in treatment at any time during the life of the facility. (Any change in this estimate is a minor modification under section 33-24-06-14.)
 - c. A description of the steps needed to decontaminate facility equipment during closure.
 - d. An estimate of the expected year of closure and a schedule for final closure. The schedule must include, at a minimum, the total time required to close the facility and the time required for intervening closure activities which will allow tracking of the progress of closure. (For example, in the case of a landfill, estimates of the time required to treat and dispose of all waste inventory and of the time required to place a final cover must be included.)
 - e. A closure cost estimate.
2. The owner or operator may amend the closure plan at any time during the active life of the facility. (The active life of

the facility is that period during which wastes are periodically received.) The owner or operator shall amend the plan whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure. When the owner or operator requests a permit modification to authorize a change in operating plans or facility design, the owner or operator shall request a modification of the closure plan at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within sixty days after the change in plans or design occurs.

3. The owner or operator shall notify the department at least one hundred eighty days prior to the date the owner or operator expects to begin closure.
4. The department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the closure plan for existing hazardous waste management facilities and request modifications of the plan within thirty days of the date of the notice. The department will also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The department will give public notice of the hearing at least thirty days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The department will approve, modify, or disapprove the plan within ninety days of its receipt. If the department does not approve the plan, the owner or operator must modify the plan or submit a new plan for approval within thirty days. The department will approve or modify this plan in writing within sixty days. If the department modifies the plan, this modified plan becomes the approved closure plan. The department's decision must assure that the approved closure plan is consistent with sections 33-24-05-60, 33-24-05-62, 33-24-05-63, and 33-24-05-64 and the applicable requirements of sections 33-24-05-107, 33-24-05-119, 33-24-05-135, 33-24-05-151, 33-24-05-167, and 33-24-05-180. A copy of this modified plan must be mailed to the owner or operator.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-77. Financial assurance for closure and postclosure care. In accordance with section 33-24-05-74 an owner or operator of each facility shall establish financial assurance for closure and

postclosure of the facility. The owner or operator shall choose from the options as specified in subsections 1 through 5 of this section.

1. Closure and postclosure trust fund.

- a. An owner or operator may satisfy the requirements of this section by establishing a closure and postclosure trust fund which conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the department. An owner or operator of the new facility shall submit the originally signed duplicate of the trust agreement to the department at least sixty days before the day on which hazardous waste is first received for treatment, storage, or disposal. The trustee must be an entity which has the authority to act as a trustee in this state and whose trust operations are regulated and examined by a federal agency or by the state department of banking and financial institutions.
- b. The wording of the trust agreement must be identical to the wording specified in subdivision a of subsection 1 of section 33-24-05-81 and the trust agreement must be accompanied by a formal certification of acknowledgement (for example see subdivision b of subsection 1 of section 33-24-05-81). Schedule A of the trust agreement must be updated within sixty days after a change in the amount of the current closure and postclosure cost estimate covered by the agreement.
- c. Payments into the trust fund must be made annually by the owner or operator over the term of the initial hazardous waste permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereinafter referred to as the "pay-in period". The payments into the trust fund must be made as follows:
 - (1) For a new facility the first payment must be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the department before the initial receipt of hazardous waste. The first payment must be at least equal to the current closure and postclosure cost estimate, except as provided in subsection 7, divided by the number of years in the pay-in period. Subsequent payments must be made no later than thirty days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

Where CE is the current closure and postclosure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- (2) If an owner or operator establishes a trust fund as specified in 40 CFR Part 265.143(a) or 265.145(a) of the federal hazardous waste regulations and the value of that trust fund is less than the current closure and postclosure cost estimate when a permit is awarded to the facility, the amount of the current closure and postclosure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in subdivision c. Payments must continue to be made no later than thirty days after each anniversary date of the first payment made pursuant to 40 CFR Part 265. The amount of each payment must be determined by this formula.

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

Where CE is the current closure and postclosure cost estimate CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- d. The owner or operator may accelerate payments into the trust fund or the owner or operator may deposit the full amount of the current closure and postclosure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subdivision c.
- e. If the owner or operator establishes a closure and postclosure trust fund after having used one or more alternate mechanisms specified in this section (or in 40 CFR Part 265.143 or 265.145), the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments were made according to the specifications of this subsection.
- f. After the pay-in period is completed, whenever the current closure and postclosure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within sixty days after the change in the cost estimate shall either deposit an amount into the fund so that its value after the

deposit at least equals the amount of the current closure and postclosure cost estimate or obtain other financial assurance as specified in this section to cover the difference.

- g. If the value of the trust fund is greater than the total amount of the current closure and postclosure cost estimate the owner or operator may submit a written request to the department for release of the amount in excess of the current closure and postclosure cost estimate.
- h. If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, the owner or operator may submit a written request to the department for release of the amount in excess of the current closure and postclosure cost estimate covered by the trust fund.
- i. Within sixty days after receiving a request from the owner or operator for release of funds as specified in subdivision g or h, the department will instruct the trustee to release to the owner or operator such funds as the department specifies in writing.
- j. During the period of postclosure care the department may approve a release of funds if the owner or operator demonstrates to the department that the value of the trust fund exceeds the remaining cost of the postclosure care.
- k. After beginning final closure or during the postclosure care period, or both, an owner or operator or any other person authorized to perform closure or postclosure activities may request reimbursement for expenditures incurred during these activities by submitting itemized bills to the department. Within sixty days after receiving bills for closure or postclosure activities, the department will determine whether the expenditures are in accordance with the closure or postclosure plans or otherwise justified and if so, it will instruct the trustee to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the cost of closure will be significantly greater than the value of the trust fund it may withhold reimbursement of such amounts as it deems prudent until it determines in accordance with subsection 9 that the owner or operator is no longer required to maintain financial assurance for closure.
- l. The department will agree to termination of the trust when:

- (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
- (2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.

2. Surety bond guaranteeing payment into a closure and postclosure trust fund.

- a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the department. An owner or operator of a new facility must submit the bond to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States department of treasury and be authorized to do business within this state. If the surety is using reinsurance, a treasury reinsurance form must be submitted with the bond or within forty-five days thereafter. If cosureties are being used, the original bond must reflect that fact.
- b. The wording of the surety bond must be identical to the wording specified in subsection 2 of section 33-24-05-81.
- c. The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the department. This standby trust fund must meet the requirements specified in subsection 1 except that:
 - (1) An originally signed duplicate of the trust agreement must be submitted to the department with the surety bond; and
 - (2) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by this chapter:
 - (a) Payments into the trust fund as specified in subsection 1.
 - (b) Updating of Schedule A of the trust agreement to show current closure and postclosure cost estimates.

- (c) Annual evaluations as required by the trust agreement.
 - (d) Notices of nonpayment as required by the trust agreement.
- d. The bond must guarantee that the owner or operator will:
 - (1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;
 - (2) Fund the standby trust fund in an amount equal to the penal sum within fifteen days after an order to begin closure is issued by the department or a United States district court or other court of competent jurisdiction; or
 - (3) Provide alternate financial assurance as specified in this section and obtain the department's written approval of the assurance provided within ninety days after receipt by both the owner or operator of a notice of cancellation of the bond from the surety.
- e. Under the terms of the bond the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- f. The penal sum of the bond must be in an amount at least equal to the current closure and postclosure cost estimate, except as provided in subsection 7.
- g. Whenever the current closure and postclosure cost estimate increases to an amount greater than the penal sum the owner or operator within sixty days after the increase must either cause the penal sum to be increased to an amount at least equal to the current closure and postclosure cost estimate and submit evidence of such increase to the department or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure and postclosure cost estimate decreases, the penal sum may be reduced to the amount of the current closure and postclosure cost estimate following written approval by the department.
- h. Under the terms of the bond the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of cancellation by both the owner or operator and the department as evidenced by the return receipts.

i. The owner or operator may cancel the bond if the department has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this section.

3. Surety bond guaranteeing performance of closure and postclosure care.

a. An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the department. An owner or operator of a new facility shall submit the bond to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those acceptable sureties on federal bonds in Circular 570 of the United States department of treasury and be authorized to do business within the state of North Dakota. If the surety is using reinsurance a treasury reinsurance form must be submitted with the bond or within forty-five days thereafter. If cosureties are being used the original bond must reflect that fact.

b. The wording of the surety bond must be identical to the wording specified in subsection 3 of section 33-24-05-81.

c. The owner or operator who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the bond all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the department. This standby trust fund must meet the requirements specified in subsection 1 except that:

(1) An originally signed duplicate of the trust agreement must be submitted to the department with the surety bond; and

(2) Until the standby trust fund is funded pursuant to the requirements of this section the following are not required by this chapter:

(a) Payments into the trust fund as specified in subsection 1.

(b) Updating of Schedule A of the trust agreement to show current closure and postclosure cost estimates.

- (c) Annual valuations as required by the trust agreement.
 - (d) Notices of nonpayment as required by the trust agreement.
- d. The bond must guarantee that the owner or operator will:
- (1) Perform postclosure care and final closure in accordance with the postclosure and closure plan and other requirements of the permit for the facility when required to do so; or
 - (2) Provide alternate financial assurance as specified in this section and obtain the department's written approval of the assurance provided within ninety days after receipt by both the owner or operator and the department of a notice of cancellation of the bond from the surety.
- e. Under the terms of the bond the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the department that the owner or operator has failed to perform postclosure care or final closure in accordance with the closure or postclosure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform the postclosure care or final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.
- f. The penal sum of the bond must be in an amount at least equal to the current closure or postclosure cost estimate, or both.
- g. Whenever the current closure or postclosure cost estimate, or both, increases to an amount greater than the penal sum, the owner or operator within sixty days after the increase must either cause the penal sum to be increased to an amount at least equal to the current closure or postclosure cost estimate, or both, and submit evidence of such increase to the department or obtain other financial assurance as specified in this section. Whenever the current closure or postclosure cost estimate, or both, decreases the penal sum may be reduced to the amount of the current closure or postclosure cost estimate, or both, following written approval by the department.
- h. During the period of postclosure care the department may approve a decrease in the penal sum if the owner or operator demonstrates to the department that the amount exceeds the remaining cost of postclosure care.

- i. Under the terms of the bond the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of this notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.
- j. The owner or operator may cancel the bond if the department has given prior written consent. The department will provide such written consent when:
 - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
 - (2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.
- k. The surety will not be liable for deficiencies in the performance of closure or postclosure care by the owner or operator after the department releases the owner or operator from the requirements of this section in accordance with subsection 9.

4. Closure and postclosure letter of credit.

- a. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subsection and submitting the letter to the department. An owner or operator of a new facility must submit the letter of credit to the department at least sixty days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit in this state and whose letters of credit operations are regulated and examined by a federal agency or by the state department of banking and financial institutions.
- b. The wording of the letter of credit must be identical to the wording specified in subsection 4 of section 33-24-05-81.
- c. An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit all amounts paid pursuant to a draft by the department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department. This

standby trust fund must meet the requirements of the trust fund specified in subsection 1 except that:

- (1) An originally signed duplicate of the trust agreement must be submitted to the department with the letter of credit.
 - (2) Unless the standby trust fund is funded pursuant to the requirements of this section the following are not required by this chapter:
 - (a) Payments into the trust fund as specified in subsection 1.
 - (b) Updating of Schedule A of the trust agreement to show current or postclosure, or both, cost estimates.
 - (c) Annual valuations as required by the trust agreement; and
 - (d) Notices of nonpayment as required by the trust agreement.
- d. The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution and date and providing the following information: The identification number, name, and address of the facility and the amount of funds assured for closure and postclosure care of the facility by the letter of credit.
 - e. The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless at least one hundred twenty days before the current expiration date, the issuing institution notifies both the owner or operator and the department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit the one hundred twenty days will begin on the date when both the owner or operator and the department have received notice as evidenced by the return receipts.
 - f. The letter of credit must be issued in an amount at least equal to the current closure or postclosure, or both, cost estimate, except as provided in subsection 7.
 - g. Whenever the current closure or postclosure, or both, cost estimate increases to an amount greater than the amount of the letter of credit during the operating life of the facility, the owner or operator within sixty days after

the increase shall either cause the amount of the letter of credit to be increased so that it at least equals the current closure or postclosure, or both, cost estimate and submit evidence of such increase to the department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure or postclosure, or both, cost estimate decreases, the amount of the credit may be reduced to the amount of the current estimate following written approval by the department.

- h. During the period of postclosure care, the department may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the department that the amount exceeds the remaining cost of postclosure care.
- i. Following a determination by the department that the owner or operator has failed to perform closure or postclosure care in accordance with the closure or postclosure plan or other permit requirements, the department may draw on the letter of credit.
- j. If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the department within ninety days after receipt by both the owner or operator and the department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department will draw on the letter of credit. The department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty days of any such extension the department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the department.
- k. The department will return the letter of credit to the issuing institution when:
 - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
 - (2) The department releases the owner or operator from requirements of this section in accordance with subsection 9.

5. Closure and postclosure insurance.

- a. An owner or operator may satisfy the requirements of this section by obtaining closure and postclosure insurance

which conforms to the requirements of this subsection and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance in this state or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

- b. The wording of the certificate of insurance must be identical to the wording specified in subsection 5 of section 33-24-05-81.
- c. The closure and postclosure insurance policy must be issued for a face amount of at least equal to the current closure or postclosure, or both, cost estimate, except as provided in subsection 7. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- d. The closure and postclosure insurance policy must guarantee that funds will be available to close the facility or perform postclosure final care, or both, whenever final closure or the postclosure period begins. The policy must also guarantee that once final closure or postclosure begins the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy upon the direction of the department to such party or parties as the department specifies.
- e. After beginning final closure or during the postclosure period, or both, an owner or operator or any other person authorized to perform closure or postclosure may request reimbursement for closure or postclosure expenditures by submitting itemized bills to the department. Within sixty days after receiving bills for closure or postclosure activities, the department will determine whether the expenditures are in accordance with the closure or postclosure plan or otherwise justified and if so, it will instruct the insurer to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the cost of closure will be significantly greater than the face amount of the policy it may withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection 9, that the owner or operator is no longer required to maintain financial assurance for closure of the facility.

- f. The owner or operator shall maintain the policy in full force and effect until the department consents to termination of the policy by the owner or operator as specified in subdivision k. Failure to pay the premium without substitution of alternate financial assurance, as specified in this section, will constitute a significant violation of this chapter warranting such remedy as the department deems necessary. Such violation will be deemed to begin upon receipt by the department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- g. Each policy must contain a provision allowing assignment of the policy to a successor, owner, or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.
- h. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the department. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty days beginning with the date of receipt of a notice by the department and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:
- (1) The department deems the facility abandoned;
 - (2) The permit is terminated or revoked or a new permit is denied;
 - (3) Closure is ordered by the department or a state court or other court of competent jurisdiction;
 - (4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under United States Code Title 11 (bankruptcy); or
 - (5) The premium due is paid.
- i. Whenever the current closure or postclosure, or both, cost estimate increases to an amount greater than the face amount of the policy the owner or operator within sixty days after the increase must either cause the face amount

to be increased to an amount at least equal to the current closure or postclosure, or both, cost estimate and submit evidence of such increase to the department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure or postclosure, or both, cost estimate decreases, the face amount may be reduced to the amount of the current closure or postclosure, or both, cost estimate following a written approval by the department.

- j. For postclosure insurance only, commencing on the date that liability to make payments pursuant to a postclosure policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy less any payments made, multiplied by an amount equivalent to eighty-five percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the United States treasury for twenty-six-week treasury securities.
- k. The department will give written consent to the owner or operator that it may terminate the insurance policy when:
 - (1) An owner or operator substitutes alternate financial assurance as specified in this section; or
 - (2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9.

6. Financial test and corporate guarantee for closure and postclosure care.

- a. An owner or operator may satisfy the requirements of this section by demonstrating ~~to the department that the owner or operator meets the financial test or corporate guarantee, or both, as specified in 40 CFR Part 264.143 of the federal hazardous waste regulations and submitting a copy of all documents required under that section to the department.~~ Companies not required to submit an audited financial statement to the United States securities and exchange commission must have an auditor's opinion prepared by an auditor licensed in the state of North Dakota that he passes a financial test as specified in this subsection. To pass this test the owner or operator must meet the criteria of either paragraph 1 of subdivision a of subsection 6 or paragraph 2 of subdivision a of subsection 6.

- (1) The owner or operator must have:

- (a) Two of the following three ratios: A ratio of total liabilities to net worth less than two; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth; and a ratio of current assets to current liabilities greater than one and five-tenths;
- (b) Net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimate;
- (c) Tangible net worth of at least ten million dollars; and
- (d) Assets in the United States amounting to at least ninety percent of his or her total assets or at least six times the sum of the current closure and postclosure cost estimates.

(2) The owner or operator must have:

- (a) A current rating for his or her most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
- (b) Tangible net worth at least six times the sum of the current closure and postclosure cost estimates;
- (c) Tangible net worth of at least ten million dollars; and
- (d) Assets located in the United States amounting to at least ninety percent of his or her total assets or at least six times the sum of the current closure and postclosure cost estimates.

b. The phrase "current closure and postclosure cost estimates" as used in subdivision a of subsection 6 refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (subsection 8 of section 33-24-05-81).

c. To demonstrate that the owner or operator meets this test, the owner or operator must submit the following items to the department:

- (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in subsection 8 of section 33-24-05-81;

- (2) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
- (3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
- (a) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, yearend financial statements for the latest fiscal year with the amounts in such financial statements; and
- (b) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.
- d. An owner or operator of a new facility must submit the items specified in subdivision c of subsection 6 to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal.
- e. After the initial submission of items specified in subdivision c of subsection 6, the owner or operator must send updated information to the department within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in subdivision c of subsection 6.
- f. If the owner or operator no longer meets the requirements of subdivision a of subsection 6, he must send notice to the department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety days after the end of the fiscal year for which the yearend financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within one hundred twenty days after the end of each fiscal year.
- g. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subdivision a of subsection 6, require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision c of subsection 6. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision a

of subsection 6, the owner or operator must provide alternate financial assurance specified in this section within thirty days after notification of such a finding.

h. The department may disallow use of this test on the basis of qualification in the opinion expressed by the independent certified public accountant in his or her report on examination of the owner's or operator's statements (see paragraph 2 of subdivision c of subsection 6). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within thirty days after notification of the disallowance.

i. The owner or operator is no longer required to submit the items specified in subdivision c of subsection 6 when:

(1) An owner or operator substitutes alternate financial assurance as specified in this section; or

(2) The department releases the owner or operator from the requirements of this section in accordance with subsection 9 of section 33-24-05-77.

j. An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee". The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subdivisions a through h of subsection 6 and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in subsection 10 of section 33-24-05-81. The corporate guarantee must accompany the items sent to the department as specified in subdivision c of subsection 6. The terms of the corporate guarantee must provide that:

(1) If the owner or operator fails to perform final closure or postclosure, or both, of a facility covered by the corporate guarantee in accordance with the closure or postclosure, or both, plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection 1 of section 33-24-05-77 in the name of the owner or operator.

(2) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however,

during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtains the written approval of such alternate assurance from the department within ninety days after receipt by both the owner or operator and the department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

k. Companies not required to submit an audited financial statement to the United States securities and exchange commission must have an auditor's opinion prepared by an auditor licensed in this state.

7. **The use of multiple financial mechanisms.** An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in this section, except that it is the combination of mechanisms, rather than the single mechanism which must provide financial assurance for an amount at least equal to the current closure or postclosure, or both, cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for closure or postclosure, or both, care of the facility.
8. **Use of a financial mechanism for multiple facilities.** An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the department must include a list showing for each facility the identification number, name, address, and the amount of funds for closure or postclosure, or both, care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or postclosure care of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for that facility unless the owner or operator

agrees to the use of additional funds available under the mechanism.

9. **Release of the owner or operator from the requirements of this section.** When an owner or operator has completed to the satisfaction of the department all closure or postclosure, or both, care requirements in accordance with the closure or postclosure plans and submitted the certification of closure to the department as required by section 33-24-05-64, the department will at the request of the owner or operator, notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for closure or postclosure care of that particular facility.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-79. Liability requirements.

1. **Coverage for sudden accidental occurrences.** An owner or operator of a hazardous waste treatment, storage, or disposal facility or a group of such facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least one million dollars per occurrence with an annual aggregate of at least two million dollars, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways as specified in subdivisions a, b, and c as follows:
 - a. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision.
 - (1) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by a certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in subsection 9 6 of section 33-24-05-81. The wording of the certificate of insurance must be identical to the wording specified in subsection 10 7 of section 33-24-05-81. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the department. If requested by the department the owner or operator shall provide a signed duplicate original of the insurance policy.

An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the department at least sixty days before the day on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

- (2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance ~~in this state~~ or eligible to provide insurance as an excess or surplus lines insurer in one or more states.
 - b. An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection 6.
 - c. An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amount of coverage demonstrated must total at least the minimum amounts required by this subsection.
2. **Coverage for nonsudden accidental occurrences.** An owner or operator of a surface impoundment landfill or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three million dollars per occurrence with an annual aggregate of at least six million dollars, exclusive of legal defense costs. This liability coverage may be demonstrated one of three ways as specified in subdivisions a, b, and c as follows:
- a. An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this subdivision.
 - (1) Each insurance policy must be amended by attachment of the hazardous waste facility liability endorsement or evidenced by certificate of liability insurance. The wording of the endorsement must be identical to the wording specified in subsection 9 6 of section 33-24-05-81. The wording of the certificate of insurance must be identical to the wording specified in subsection ~~10 7~~ 7 of section 33-24-05-81. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of

insurance to the department. If requested by the department, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the hazardous waste facility liability endorsement or the certificate of liability insurance to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance must be effective before this initial receipt of hazardous waste.

- (2) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance ~~in this state~~ or eligible to provide insurance as an excess or surplus lines insurer in one or more states.
 - b. An owner or operator may meet the requirements of this section by passing a financial test for liability coverage as specified in subsection 6.
 - c. An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this section. The amounts of coverage must total at least the minimum amounts required by this subsection.
3. **Request for variance.** If an owner or operator can demonstrate to the satisfaction of the department that the levels of responsibility required by subsection 1 or 2 are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the department. The request for a variance must be submitted to the department as part of the permit application under chapter 33-24-06 for a facility that does not have a permit or pursuant to the procedures for permit modification under chapter 33-24-07 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the department to determine a level of financial responsibility other than that required by subsection 1 or 2. Any request for a variance for a permitted facility will be treated as a request for permit modification under chapters 33-24-06 and 33-24-07.

4. **Adjustments by the department.** If the department determines that the levels of financial responsibility required by subsection 1 or 2 are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the department may adjust the level of financial responsibility required under subsection 1 or 2 as may be necessary to protect human health and the environment. This adjusted level will be based on the department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operation of a facility that is not a surface impoundment, landfill, or land treatment facility, it may require that an owner or operator of the facility comply with subsection 2. An owner or operator shall furnish to the department within a reasonable time any information which the department requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a type of facility that has a permit will be treated as a permit modification under chapters 33-24-06 and 33-24-07.
5. **Period of coverage.** An owner or operator shall continuously provide liability coverage for a facility as required by this section until certifications of closure of the facility as specified in section 33-24-05-64 are received by the department.
6. **Financial tests for liability coverage.**
 - a. An owner or operator may satisfy the requirements of this section by demonstrating that the owner or operator ~~meets the financial test for liability as specified in 40 CFR 264.147 of the federal hazardous waste regulations and submitting a copy of all documents required by that section to the department. Companies not required to submit audited financial statements to the United States securities and exchange commission must have the auditor's opinion prepared by an auditor licensed in this state.~~ passes a financial test as specified in this section. To pass this test the owner or operator must meet the criteria of paragraph 1 of subdivision a of subsection 6 or paragraph 2 of subdivision a of subsection 6:
 - (1) The owner or operator must have:
 - (a) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test;

- (b) Tangible net worth of at least ten million dollars; and
 - (c) Assets in the United States amounting to either: (1) at least ninety percent of the owner's or operator's total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.
- (2) The owner or operator must have:
 - (a) A current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's;
 - (b) Tangible net worth of at least ten million dollars;
 - (c) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and
 - (d) Assets in the United States amounting to either: (1) at least ninety percent of the owner's or operator's total assets; or (2) at least six times the amount of liability coverage to be demonstrated by this test.
- b. The phrase "amount of liability coverage" as used in subdivision a of subsection 6 refers to the annual aggregate amounts for which coverage is required under subsections 1 and 2.
- c. To demonstrate that the owner or operator meets this test, the owner or operator must submit the following three items to the department:
 - (1) A letter signed by the owner's or operator's chief financial officer and worded as specified in subsection 9 of section 33-24-05-81. If an owner or operator is using the financial test to demonstrate both assurance for closure or postclosure care, as specified by subsection 6 of section 33-24-05-77, and liability coverage, the owner or operator must submit the letter specified in subsection 9 of section 33-24-05-81 to cover both forms of financial responsibility; a separate letter as specified in subsection 8 of section 33-24-05-81 is not required.
 - (2) A copy of the independent certified public accountant's report on examination of the owner's or

operator's financial statements for the latest completed fiscal year.

(3) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(a) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, yearend financial statements for the latest fiscal year with the amounts of such financial statements; and

(b) In connection with that procedure, no matters came to the accountant's attention which cause the accountant to believe that the specified data should be adjusted.

d. An owner or operator of a new facility must submit the items specified in subdivision c of subsection 6 to the department at least sixty days before the date on which hazardous waste is first received for treatment, storage, or disposal.

e. After the initial submission of items specified in subdivision c of subsection 6, the owner or operator must send updated information to the department within ninety days after the close of each succeeding fiscal year. This information must consist of all three items specified in subdivision c of subsection 6.

f. If the owner or operator no longer meets the requirements of subdivision a of subsection 6, the owner or operator must obtain insurance for the entire amount of required liability coverage as specified in this section. Evidence of insurance must be submitted to the department within ninety days after the end of the fiscal year for which the yearend financial data shows that the owner or operator no longer meets the test requirements.

g. The department may disallow use of this test on the basis of qualifications and the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statement (see paragraph 2 of subdivision c of subsection 6). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of insurance for the entire amount of required liability coverage as specified in this section within thirty days after notification or disallowance.

h. Companies not required to submit an audited financial statement to the United States securities and exchange commission must have an auditor's opinion prepared by an auditor licensed in this state.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-81. Wording of the instruments.

1. Trust agreement and certification of acknowledgement.

- a. A trust agreement for a trust fund as specified in section 33-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT, the "AGREEMENT" entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate trustee], [insert "incorporated in the state of _____" or "a national bank"], the "TRUSTEE".

Whereas, the North Dakota State Department of Health, "DEPARTMENT" a regulatory agency of the state of North Dakota, has established certain regulations applicable to the GRANTOR requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure or postclosure, or both, care of the facility,

Whereas, the GRANTOR has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the GRANTOR acting through its duly authorized officers has selected the TRUSTEE to be the trustee under this agreement and the TRUSTEE is willing to act as trustee,

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

Section 1. Definitions. As used in this AGREEMENT:

- (a) The term GRANTOR means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.

(b) The term TRUSTEE means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

Section 2. Identification of Facilities and Cost Estimate.

This AGREEMENT pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A for each facility list the identification number, name, and the current closure or postclosure, or both, cost estimates or portions thereof for which financial assurance is demonstrated by this AGREEMENT].

Section 3. Establishment of Fund. The GRANTOR and the TRUSTEE hereby establish a trust fund, the FUND, for the benefit of the department. The GRANTOR and the TRUSTEE intend that no third party have access to the FUND, except as herein provided. The FUND is established initially as consisting of the property which is acceptable to the TRUSTEE and described in Schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND must be held by the TRUSTEE, IN TRUST, as herein provided. The TRUSTEE is not responsible, nor may it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

Section 4. Payment for Closure and Postclosure Care.

The TRUSTEE shall make payments from the FUND as the DEPARTMENT shall direct, in writing, to provide for the payment of the cost of closure, and or postclosure care of the facilities covered by this AGREEMENT. The TRUSTEE shall reimburse the GRANTOR or other persons as specified by the DEPARTMENT from the FUND for closure and postclosure expenditures in such amounts as the DEPARTMENT shall direct in writing. In addition, the TRUSTEE shall refund to the GRANTOR such amounts as the DEPARTMENT specifies in writing. Upon refund such funds no longer constitute part of the FUND as defined herein.

Section 5. Payments Comprising the FUND. Payments made to the TRUSTEE for the FUND must consist of cash or securities acceptable to the TRUSTEE.

Section 6. TRUSTEE Management. The TRUSTEE shall invest and reinvest the principle and interest of the FUND and keep the FUND invested as a single FUND

without distinction between principle and income in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject however to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the GRANTOR or any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be required or held unless they are securities or other obligations of a federal or state government;
- (b) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or state government; and
- (c) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The TRUSTEE is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund collected by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

Section 8. Express Powers of TRUSTEE. Without, in any way, eliminating the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE is bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE must at all times show that all such securities are part of the FUND;
- (d) To deposit any cash in the FUND in interest bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate capacity, or in any other banking institution affiliated with the TRUSTEE to the extent insured by an agency of the federal or state government; and
- (e) To comprise or otherwise adjust all claims in favor of or against the FUND.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect

of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this TRUST, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements of the TRUSTEE, must be paid from the FUND.

Section 10. Annual Valuation. The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the TRUST. Any securities in the FUND must be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT, constitutes a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected to the extent permitted by law in acting upon the advice of counsel.

Section 12. TRUSTEE Compensation. The TRUSTEE is entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

Section 13. Successor TRUSTEE. The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement is not effective until the GRANTOR has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successful trustee's acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the FUND. If for any reason, the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment

of a successor trustee or for instructions. The successor trustee shall specify the day on which it assumes administration of the TRUST in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section must be paid as provided in section 9.

Section 14. Instructions to the TRUSTEE. All orders, requests; and instructions by the GRANTOR to the TRUSTEE must be in writing, signed by such persons as are designated in the attached Exhibit A, or such other designees as the GRANTOR may designate by amendment to Exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR's orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE must be in writing, signed by an authorized DEPARTMENT representative and the TRUSTEE shall act and be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR or the DEPARTMENT, or both, except as provided for herein.

Section 15. Notice of Nonpayment. The TRUSTEE shall notify the GRANTOR and the DEPARTMENT by certified mail within ten days following the expiration of the thirty-day period after the anniversary of the establishment of the TRUST if no payment is received from the GRANTOR during that period. After the pay-in period is completed, the TRUSTEE is not required to send a notice of nonpayment.

Section 16. Amendment of AGREEMENT. This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this AGREEMENT as provided in section 16, this TRUST is irrevocable and continues until terminated at the written agreement of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or

by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the TRUST, all remaining trust property, less final trust administration expenses, must be delivered to the GRANTOR.

Section 18. Immunity and Indemnification. The TRUSTEE may not incur personal liability of any nature in connection with any act or commission made in good faith in the administration of this TRUST or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE must be indemnified and saved harmless by the GRANTOR or from the TRUST FUND, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

Section 19. Choice of Law. This AGREEMENT must be administered, construed, and enforced according to the laws of the state of [North Dakota].

Section 20. Interpretation. As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT do not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto fixed and attested as of the date first above written: The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subdivision a of subsection 1 of North Dakota Administrative Code section 33-24-05-81 as such regulation was constituted on the date first above written.

[Signature of GRANTOR]

[Title]

[Attest:]

[Title]

[Seal]

[Signature of TRUSTEE]

[Attest:]

[Title]

[Seal]

- b. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in subsection 1 of section 33-24-05-77.

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

2. A surety bond guaranteeing payment into a trust fund as specified in subsection 2 of section 33-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership" or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

Identification number, name, address, and closure or postclosure, or both, amount for each facility guaranteed by

this bond [indicate closure and postclosure amounts separately]: _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know all persons by these presents that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota State Department of Health (hereinafter called the department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assignors jointly and severally: provided that where the SURETY(IES) are corporations acting as cosureties, we, the SURETIES, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each SURETY by itself, jointly and severally with the PRINCIPAL, for the payment of such sum only as is set forth opposite the name of such SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23-20.3 to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure or closure and postclosure care as a condition of the permit, and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the PRINCIPAL shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amounts identified above for the facility,

Or, if the PRINCIPAL shall fund the standby trust fund in such amounts within fifteen days after an order to begin closure is issued by the DEPARTMENT or a state or other court of competent jurisdiction,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33-24-05, as applicable, and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date of notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES), then this

obligation shall be null and void, otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above. Upon notification by the DEPARTMENT that the PRINCIPAL has failed to perform as guaranteed by this bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The liability of the SURETY(IES) shall not be discharged by any payment or any succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required]

The PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or postclosure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In witness whereof, the PRINCIPAL and SURETY(IES) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 2 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)
[Name and address]
State of Incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and Title(s)]
[Corporate seal]

[For every cosurety, provide signature(s), corporate seal,
and other information in the same manner as for surety above.]

Bond premium: \$ _____

3. A surety bond guaranteeing performance of closure or postclosure care as specified in subsection 3 of section 33-24-05-77 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____

Effective Date: _____

PRINCIPAL: [Legal name and business address of owner or operator]

Type of organization: [Insert "Individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

SURETY(IES): [Name(s) and business address(es)]

Identification number, name, address and closure or postclosure, or both, amount(s) for each facility guaranteed by this bond.

[Indicate closure and postclosure amount separately]:

Total penal sum of bond: _____

Surety's bond number: _____

Know all persons by these presents, that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota State Department of Health (hereinafter called the DEPARTMENT), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally: Provided that, where the SURETY(IES) are corporations acting as cosureties, we the SURETIES bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and for all other purposes each SURETY binds itself jointly and severally with the PRINCIPAL for the payment of such sum only as is set forth opposite the name of each SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23-20.3 to have a permit to own or operate each hazardous waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure, or closure and postclosure care as a condition of the permit, and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are that if the PRINCIPAL shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And if the PRINCIPAL shall faithfully perform postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33-24-05 and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES) then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the closure requirements of North Dakota Administrative Code chapter 33-24-05 for a facility for which this bond guarantees performance of closure, the SURETY(IES) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the postclosure requirements of North Dakota Administrative Code chapter 33-24-05 for a facility for which this bond guarantees performance of postclosure care, the SURETY(IES) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility into a standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has failed to provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33-24-05 and obtain written approval of such assurance from the DEPARTMENT during the ninety days following receipt by both the PRINCIPAL and the DEPARTMENT of a notice of cancellation of the bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The SURETY(IES) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the SURETY(IES) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending the notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required].

PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or postclosure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In Witness Whereof, the PRINCIPAL and SURETY(IES) have executed this performance bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and the SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 3 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

[CORPORATE SURETY(IES)]
[Name and Address]
State of Incorporation: _____
Liability Limit: \$ _____
[Signature(s)]
[Name(s) and Title(s)]
Corporate Seal:
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above].

Bond Premium: \$ _____

4. A letter of credit as specified in subsection 4 of section 33-24-05-77 must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Chief, Environmental Health Section North Dakota State
Department of Health

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] United States Dollars \$ _____, available upon presentation by you of

- (1) You sight draft bearing reference to this letter of credit number _____, and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of North Dakota Century Code chapter 23-20.3".

This letter of credit is effective as of [date] and shall expire on [date] at least one year later, but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon ~~presentative~~ presentation of your sight draft for one hundred twenty days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in subsection 4 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date shown immediately below.

[Signature(s) and Title(s) of Official(s) of issuing institution] [Date]

This credit is subject to ["the most recent edition of the Uniform Customs and Practice for Documentary Credits,

published by the International Chamber of Commerce", or "the Uniform Commercial Code"]

5. A certificate of insurance as specified in subsection 5 of section 33-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

Name and address of insurer (hereinafter called the "INSURER"): _____

Name and address of Insured (hereinafter called the "INSURED"): _____

Facilities covered: [List for each facility: the identification number, name, address and amount of insurance for closure or the amount for postclosure care, or both. (These amounts for all facilities covered must cover the face amount shown below.)]

Face amount: _____

Policy Number: _____

Effective Date: _____

The INSURER hereby certifies that it has issued to the INSURED the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and postclosure care" or "postclosure care"] for the facilities identified above. The INSURER further warrants that such policy conforms in all respects with the requirements of subsection 5 of North Dakota Administrative Code section 33-24-05-77, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such rules is hereby amended to eliminate such inconsistency.

Whenever requested by the North Dakota State Department of Health (DEPARTMENT) the INSURER agrees to furnish to the DEPARTMENT a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in subsection 5 of North Dakota Administrative Code section 33-24-05-81 as such rule was constituted on the date shown immediately below.

[Authorized signature for INSURER]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

6. A hazardous waste facility liability endorsement as required in section 33-24-05-79 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the Insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-24-05-79. The coverage applies at [list identification number, name and address for each facility] for ["sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability] exclusive of legal defense costs.
2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):
 - (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
 - (b) The Insurer is liable for the payment of amounts within any deductible applicable to this policy with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33-24-05-79.

- (c) Whenever requested by the North Dakota State Department of Health (Department), the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of this endorsement, whether by the Insurer or the Insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the Department, as evidenced by the return receipt.
- (e) Any other termination of this endorsement will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the Department, as evidenced by the return receipt.

Attached to and forming part of policy number _____ issued by [name of Insurer] herein called the Insurer of [address of Insurer] to [name of Insured] of [address] this _____ day of _____, 19 _____. The effective date of said policy is _____ day of _____, 19 ____.

I hereby certify that the wording of this endorsement is identical to the wording specified in subsection 6 of North Dakota Administrative Code section 33-24-05-81, as such rule was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance in the State of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of Insurer]

[Type Name]

[Title], Authorized Representative of [name of Insurer]

[Address of representative]

- 7. A certificate of liability insurance as required in section 33-24-05-79 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

- 1. [Name of Insurer, (the "Insurer")] of [address of Insurer] hereby certifies that it has issued liability insurance

covering bodily injury and property damage to [name of Insured], (the "Insured"), of [address of Insured] in connection with the Insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33-24-05-79. The coverage applies at [list identification number, name and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences" or "sudden and nonsudden accidental occurrences"]; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number _____, issued on [date] the effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:
 - (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.
 - (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33-24-05-79.
 - (c) Whenever requested by the North Dakota State Department of Health (Department), the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.
 - (d) Cancellation of the insurance, whether by the Insured or the Insurer, will be effective only upon written notice, and only after expiration of sixty days after a copy of such written notice is received by the Department, as evidenced by the return receipt.
 - (e) Any other termination of the insurance will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the Department, as evidence by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in subsection 7 of North Dakota Administrative Code section 33-24-05-81, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, in the State of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of representative]

8. A letter from the chief financial officer, as specified in subsection 6 of section 33-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to North Dakota State Department of Health.]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in sections 33-24-05-74 through 33-24-05-82.

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include the state/environmental protection agency identification number, name, address, and current closure or postclosure, or both, cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-82. The current closure or postclosure, or both, cost estimates covered by the tests are shown for each facility:

_____.

2. This firm guarantees, through the corporate guarantee specified in sections 33-24-05-74 through 33-24-05-82, the

closure or postclosure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, yearend financial statements for the latest completed fiscal year, ended [date].

[Fill in alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-05-77 are used. Fill in alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-05-77 are used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the four paragraphs above].....\$ _____
- * 2. Total liabilities [if any portion of the closure or postclosure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]..... _____
- * 3. Tangible net worth..... _____
- * 4. Net worth..... _____
- * 5. Current assets..... _____
- * 6. Current liabilities..... _____
- * 7. Net working capital [line 5 minus line 6]..... _____
- * 8. The sum of net income plus depreciation, depletion, and amortization..... _____
- * 9. Total assets in United States (required only if less than ninety percent of firm's assets are located in the United States)..... _____

Yes No

-
10. Is line 3 at least ten million dollars?..... _____
 11. Is line 3 at least six times line 1?..... _____
 12. Is line 7 at least six times line 1?..... _____
 - *13. Are at least ninety percent of firm's assets located in the United States? If not, complete line 14..... _____
 14. Is line 9 at least six times line 1?..... _____
 15. Is line 2 divided by line 4 less than two?..... _____
 16. Is line 8 divided by line 2 greater than one-tenth?..... _____
 17. Is line 5 divided by line 6 greater than one and one-half?..... _____

ALTERNATIVE II

- 1. Sum of current closure and postclosure cost estimates [total of all cost estimates shown in the four paragraphs above].....\$ _____
- 2. Current bond rating of most recent issuance of this firm and name of rating service..... _____
- 3. Date of issuance of bond..... _____
- 4. Date of maturity of bond..... _____
- * 5. Tangible net worth (if any portion of the closure and postclosure cost estimates is included in the "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line)..... _____
- * 6. Total assets in United States (required only if less than ninety percent of firm's assets are located in the United States)..... _____

-
- | | | |
|--|-----|----|
| | Yes | No |
|--|-----|----|
-
- 7. Is line 5 at least ten million dollars?..... _____
 - 8. Is line 5 at least six times line 1?..... _____
 - * 9. Are at least ninety percent of firm's assets located in the United States? If not, complete line 10..... _____
 - 10. Is line 6 at least six times line 1?..... _____

I hereby certify that the wording of this letter is identical to the wording specified in subsection 8 of section 33-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

9. A letter from the chief financial officer, as specified in subsection 6 of section 33-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from chief financial officer (to demonstrate liability coverage or to demonstrate both liability coverage and assurance of closure and postclosure care).

[Address to North Dakota State Department of Health.]

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure or, or both, postclosure care" if applicable] as specified in sections 33-24-05-74 through 33-24-05-82.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its state/environmental protection agency identification number, name, and address.]

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-82:

_____.

[If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following four paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph write "none" in the space indicated. For each facility, include its state/environmental protection agency identification number, name, address, and current closure or postclosure, or both, cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

1. The owner or operator identified above owns or operates the following facilities for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in sections 33-24-05-74 through 33-24-05-82. The current closure or postclosure, or both, cost estimates covered by the tests are shown for each facility: _____.

2. The owner or operator identified above guarantees, through the corporate guarantee specified in sections 33-24-05-74 through 33-24-05-82, the closure and postclosure care of the following facilities owned or operated by its subsidiaries.

The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: _____.

3. In other states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR Part 264 and 265, this owner or operator is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantial equivalent to the financial test specified in sections 33-24-05-74 through 33-24-05-82. The current closure or postclosure, or both, cost estimates covered by such a test are shown for each facility: _____.

4. The owner or operator identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated either to the environmental protection agency or a state through the financial test or any other financial assurance mechanism specified in sections 33-24-05-74 through 33-24-05-82 or equivalent or substantially equivalent state mechanisms. The current closure or postclosure, or both, cost estimates not covered by such financial assurance are shown for each facility: _____.

This owner or operator [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, yearend financial statements for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-05-79 are used. Fill in alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-05-79 are used.]

ALTERNATIVE I

- 1. Amount of annual aggregate liability coverage to be demonstrated.....\$ _____
- * 2. Current assets _____
- * 3. Current liabilities..... _____
- 4. Net working capital (line 2 minus line 3)..... _____
- * 5. Tangible net worth..... _____
- * 6. If less than ninety percent of assets are located in the United States, give total United States assets _____

Yes No

- 7. Is line 5 at least ten million dollars?..... _____
- 8. Is line 4 at least six times line 1?..... _____
- 9. Is line 5 at least six times line 1?..... _____
- *10. Are at least ninety percent of assets located in the United States? If not, complete line 11 _____
- 11. Is line 6 at least six times line 1?..... _____

ALTERNATIVE II

- 1. Amount of annual aggregate liability coverage to be demonstrated.....\$ _____
- 2. Current bond rating of most recent issuance and name of rating service..... _____
- 3. Date of issuance of bond..... _____
- 4. Date of maturity of bond..... _____
- * 5. Tangible net worth..... _____
- * 6. Total assets in United States (required only if less than ninety percent of assets are located in the United States)..... _____

Yes No

- 7. Is line 5 at least ten million dollars?..... _____
- 8. Is line 5 at least six times line 1?..... _____
- * 9. Are at least ninety percent of assets located in the United States? If not, complete line 10..... _____
- 10. Is line 6 at least six times line 1?..... _____

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

PART B. CLOSURE OR POSTCLOSURE CARE AND LIABILITY COVERAGE

[Fill in alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33-24-05-77 is used. Fill in alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33-24-05-77 is used.]

ALTERNATIVE I

1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above).....\$ _____
2. Amount of annual aggregate liability coverage to be demonstrated..... _____
3. Sum of lines 1 and 2..... _____
- * 4. Total liabilities (if any portion of your closure or postclosure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)..... _____
- * 5. Tangible net worth..... _____
- * 6. Net worth..... _____
- * 7. Current assets..... _____
- * 8. Current liabilities..... _____
9. Net working capital (line 7 minus line 8)..... _____
- *10. The sum of net income plus depreciation, depletion, and amortization..... _____
- *11. Total assets in United States (required only if less than ninety percent of assets are located in the United States)..... _____

Yes No

-
12. Is line 5 at least ten million dollars?..... _____
 13. Is line 5 at least six times line 3?..... _____
 14. Is line 9 at least six times line 3?..... _____
 - *15. Are at least ninety percent of assets located in the United States? If not, complete line 16..... _____
 16. Is line 11 at least six times line 3?..... _____
 17. Is line 4 divided by line 6 less than two?..... _____

18. Is line 10 divided by line 4 greater than
one-tenth?..... _____
19. Is line 7 divided by line 8 greater than
one and one-half?..... _____

ALTERNATIVE II

- 1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above).....\$ _____
- 2. Amount of annual aggregate liability coverage to be demonstrated..... _____
- 3. Sum of lines 1 and 2..... _____
- 4. Current bond rating of most recent issuance and name of rating service..... _____
- 5. Date of issuance of bond..... _____
- 6. Date of maturity of bond.....:..... _____
- * 7. Tangible net worth (if any portion of the closure or postclosure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) _____
- * 8. Total assets in the United States (required only if less than ninety percent of assets are located in the United States)..... _____

Yes No

- 9. Is line 7 at least ten million dollars?..... _____
- 10. Is line 7 at least six times line 3?..... _____
- *11. Are at least ninety percent of assets located in the United States? If not, complete line 12..... _____
- 12. Is line 8 at least six times line 3?..... _____

I hereby certify that the wording of this letter is identical to the wording specified in subsection 9 of section 33-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

10. A corporate guarantee, as specified in subsection 6 of section 33-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POSTCLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the North Dakota State Department of Health, obligee, on behalf of our subsidiary [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 6 of section 33-24-05-77.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [list for each facility: state/environmental protection agency identification number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by sections 33-24-05-59 through 33-24-05-68 for the closure and postclosure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to North Dakota State Department of Health that in the event that [owner or operator] fails to perform [insert "closure," "postclosure care" or "closure and postclosure care"] of the facility(ies) in accordance with the closure or postclosure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in sections 33-24-05-74 through 33-24-05-82, as applicable, in the name of [owner or operator] in the amount of the current closure or postclosure cost estimates as specified in sections 33-24-05-74 through 33-24-05-82.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the North Dakota State Department of Health and to [owner or operator] that he intends to provide alternate financial assurance as specified in sections 33-24-05-74 through 33-24-05-82, as applicable, in

the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the North Dakota State Department of Health by certified mail, of a voluntary or involuntary proceeding under United States Code title 11 (bankruptcy) naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the North Dakota State Department of Health of a determination that guarantor no longer meets the financial test criteria or that guarantor is disallowed from continuing as a guarantor of closure or postclosure care, he or she shall establish alternate financial assurance as specified in sections 33-24-05-74 through 33-24-05-82, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to chapter 33-24-05.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of sections 33-24-05-74 through 33-24-05-82 for the above listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the North Dakota State Department of Health and to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by both North Dakota State Department of Health and [owner or operator], as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in sections 33-24-05-74 through 33-24-05-82, as applicable, and obtain written approval of such assurance from the North Dakota State Department of Health within ninety days after a notice of cancellation by the guarantor is received by the North Dakota State Department of Health from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the department or by [owner or operator].

Guarantor also expressly waives notice of amendments or modifications of the closure or postclosure, or both, plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 10 of section 33-24-05-81 as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-94. Containment.

1. Container storage areas must have a containment system that is designed and operated in accordance with subsection 2, except as provided otherwise in subsection 3.
2. The containment system must be designed and operated as follows:
 - a. A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.
 - b. The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.
 - c. The containment system must have sufficient capacity to contain ten percent of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquid need not be considered in this determination.
 - d. Run-on into the containment system must be prevented, unless the collection system has sufficient excess capacity in addition to that required in subdivision c to contain any run-on which might enter the system.

- e. Spilled or leaked waste and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.
3. Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by subsection 2, except as provided by subsection 4 or provided that:
 - a. The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or
 - b. The containers are elevated or are otherwise protected from contact with accumulated liquid.
 4. Storage areas that store containers holding the wastes listed below that do not contain free liquids must have a containment system defined by subsection 2:
 - a. F020, F021, F022, F023, F026, and F027.
 - b. [Reserved]

History: Effective January 1, 1984; amended effective October 1, 1986.
General Authority: NDCC 23-20.3-03
Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-106. Inspections.

1. The owner or operator shall inspect:
 - a. Overfilling control equipment, e.g., waste feed cutoff systems and bypass systems, at least once each operating day to ensure that it is in good working order.
 - b. Data gathered from monitoring equipment (e.g., pressure and temperature gauges) where present, at least once each operating day to ensure that the tank is being operated according to its design.
 - c. For uncovered tanks, the level of waste in the tank, at least once each operating day, to ensure compliance with subdivision b of subsection 2 of section 33-24-05-105.
 - d. The construction materials of the aboveground portions of the tank, at least weekly to detect corrosion or erosion and leaking of fixtures and seams.

- e. The area immediately surrounding the tank, at least weekly, to detect obvious signs of leakage, e.g., wet spots or dead vegetation.
2. As part of the inspection schedule required in subsection 2 of section 33-24-05-06 and in addition to the specific requirements of subsection 1 of this section, the owner or operator shall develop a schedule and procedure for assessing the condition of the tank. The schedule and procedure must be adequate to detect cracks, leaks, corrosion, or erosion which may lead to cracks or leaks, or wall thinning to less than the thickness required under section 33-24-05-104. Procedures for emptying a tank to allow entry and inspection of the interior must be established when necessary to detect corrosion or erosion of the tank sides and bottom. The frequency of these assessments must be based on the material of construction of the tank, type of corrosion or erosion protection used, rate of corrosion or erosion observed during previous inspections, and the characteristics of the waste being treated or stored.
3. As part of the contingency plan required under chapter 33-24-05, the owner or operator shall specify the procedures the owner or operator intends to use to respond to tank spills or leakage, including procedures and timing for expeditious removal of leaked or spilled waste and repair of the tank.
4. For hazardous waste numbers F020, F021, F022, F023, F026, and F027, the contingency plan must also include the procedures for responding to a spill or leak of these wastes from tanks into the containment system. These procedures must include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-110. {Reserved} Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027. In addition to the other requirements of sections 33-24-05-103 through 33-24-05-114, the following requirements apply to tanks storing or treating hazardous wastes F020, F021, F022, F023, F026, and F027:

1. Tanks must have systems designed and operated to detect and adequately contain spills or leaks. The design and operation of any containment system must reflect consideration of all relevant factors, including:
 - a. Capacity of the tank.
 - b. Volumes and characteristics of wastes stored or treated in the tank.

- c. Method of collection of spills or leaks.
 - d. The design and construction materials of the tank and containment system.
 - e. The need to prevent precipitation and run-on from entering into the system.
2. As part of the contingency plan required by sections 33-24-05-26 through 33-24-05-31, the owner or operator must specify such procedures for responding to a spill or leak from the tank into the containment system as may be necessary to protect human health and the environment. These procedures must include measures for immediate removal of the waste from the system and replacement or repair of the leaking tank.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-116. Design and operating requirements.

- i. A surface impoundment (except for an existing portion of a surface impoundment which qualifies for an exemption in accordance with subsection 3) must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. At a minimum:
 - a. The impoundment (including its underlying liners) must be located entirely above the seasonal high water table.
 - b. The impoundment must be underlain by two liners which are designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. Each liner must meet all specifications of subdivision d.
 - c. A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquids into the space between the liners.
 - d. The liners may be constructed of materials that may allow waste to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided, that the impoundment

is closed in accordance with subdivision a of subsection 1 of section 33-24-05-119. For impoundments that will be closed in accordance with subdivision b of subsection 1 of section 33-24-05-119 the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liners must be-

- (1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces); physical contact with the waste or leachate to which they are exposed; climatic conditions; the stress of installation; and the stress of daily operation.
- (2) Placed upon a foundation or base capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift.
- (3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

e. If liquid leaks into the leak detection system, the owner or operator shall-

- (1) Notify the department of the leak in writing within seven days after detecting the leak.
- (2) Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a qualified engineer that to the best of the engineer's knowledge and opinion, the leak has been stopped.

1. A surface impoundment that is not covered by subsection 3 must have a liner for all portions of the impoundment (except for existing portions of such impoundment which qualify for an exemption in accordance with subsection 2). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment.

The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with subdivision a of subsection 1 of section 33-24-05-119. For impoundments that will be closed in accordance with subdivision d of subsection 1 of section 33-24-05-119, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

- a. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation.
- b. Placed upon a foundation or base capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift.
- c. Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

- 2- The owner or operator will be exempted from the requirements of subsection 1 if the department finds, based on a demonstration by the owner or operator that alternate design or operating practices, together with location characteristics will prevent the migration of any hazardous constituents (see section 33-24-05-50) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the department will consider:
 - a- The nature and quantity of the waste,
 - b- The proposed alternate design and operation,
 - c- The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water, and
 - d- All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

- 3- 2. The department, on a case-by-case basis, may exempt an existing portion of a hazardous waste ~~surface~~ impoundment from subsection 1 if the owner or operator demonstrates that the owner's or operator's existing design and operating practices, together with the location of his facility and the nature and quantity of waste, will prevent migration of any hazardous constituents into the ground water or surface water:
- a. During the active life of the facility (including the closure period), if the owner or operator closes the existing surface impoundment in accordance with subdivision a of subsection 1 of section 33-24-05-119.
 - b. During the active life (including the closure period) and the postclosure care period, if the owner or operator closes the existing surface impoundment in accordance with subdivision b of subsection 1 of section 33-24-05-119.
3. The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit, must install two or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this section apply with respect to all waste received after the issuance of the permit. The requirement for installation of two or more liners in this section may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner is deemed to satisfy such requirement if it is constructed of at least a three-foot [.91-meter] thick layer of recompactd clay or other natural material with a permeability of no more than one times ten to the minus seven centimeters per second.
4. The owner or operator will be exempted from the requirements of subsection 3 if the department finds, based on a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics will prevent the migration of any hazardous constituents (see section 33-24-05-50) into the ground water or surface water at least as effectively as such liners and leachate collection systems.
- 4- 5. A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from

normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers; alarms and other equipment; and human error.

- 5- 6. A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.
- 6- 7. The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.
8. Any new surface impoundment (including its underlying liners) must be located entirely above the seasonal high water table.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-117. Monitoring and inspection.

1. During construction and installation, liners (except in the case of existing portions of surface impoundments exempt from subsection 1 of section 33-24-05-116) and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections, e.g., holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:
 - a. Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and
 - b. Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural or other nonuniformities that may cause an increase in the permeability of the liner or cover.

These inspections must be conducted by an independent, a qualified professional (i.e. registered professional engineer).

2. While a surface impoundment is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:
 - a. Deterioration, malfunctions, or improper operation of overtopping control systems.

- b. Sudden drops in the level of the impoundments contents.
 - c. The presence of liquids in leak detection systems.
 - d. Severe erosion or other signs of deterioration in dikes or other containment devices.
3. Prior to the issuance of a permit, and after any period of time greater than six months during which the impoundment was not in service, the owner or operator shall obtain a certification from a qualified engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification must establish, in particular, that the dike:
- a. Will withstand the stress of the pressure exerted by the types and amounts of waste to be placed in the impoundment.
 - b. Will not fail due to scouring and piping, without dependence on any liner system included in the surface impoundment construction.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-118. Emergency repairs - Contingency plans.

- 1. A surface impoundment must be removed from service in accordance with subsection 2 when:
 - a. The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or
 - b. The dike leaks.
- 2. When a surface impoundment must be removed from service as required by subsection 1, the owner or operator shall:
 - a. Immediately shut off the flow or stop the addition of wastes into the impoundment.
 - b. Immediately contain any surface leakage which has occurred or is occurring.
 - c. Immediately stop the leak.
 - d. Take any other necessary steps to stop or prevent catastrophic failure.

- e. If a leak cannot be stopped by any other means, empty the impoundment.
 - f. Notify the department of the problem in writing within seven days after detecting the problem.
3. As part of the contingency plan required in sections 33-24-05-26 through 33-24-05-36, the owner or operator shall specify a procedure for complying with the requirements of subsection 2.
 4. No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:
 - a. If the impoundment was removed from service as the result of actual or imminent dike failure, the dikes structural integrity must be recertified in accordance with subsection 3 of section 33-24-05-117.
 - b. If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:
 - (1) For any existing portion of the impoundment ~~which is not equipped with a liner system~~, a liner must be installed in compliance with subsection 1 of section 33-24-05-116; and
 - (2) For any other portion of the impoundment, the repaired liner system must be certified by a qualified engineer as meeting the design specifications approved in the permit.
 5. A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired must be closed in accordance with the provisions of section 33-24-05-119.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-119. Closure and postclosure care.

1. At closure, the owner or operator shall:
 - a. Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with

waste and leachate, and manage them as hazardous waste unless subsection 4 of section 33-24-02-03 applies; or

b. Comply with the following:

- (1) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues.
- (2) Stabilize remaining wastes to a bearing capacity sufficient to support final cover.
- (3) Cover the surface impoundment with a final cover designed and constructed to:
 - (a) Provide long-term minimization of the migration of liquids through the closed impoundment.
 - (b) Function with minimum maintenance.
 - (c) Promote drainage and minimize erosion or abrasion of the final cover.
 - (d) Accommodate settling and subsidence so that the cover's integrity is maintained.
 - (e) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

2. If some waste residues or contaminated materials are left in place at final closure, the owner or operator shall comply with all postclosure requirements contained in sections 33-24-05-65 through 33-24-05-68, including maintenance and monitoring throughout the postclosure care period (specified in the permit under section 33-24-05-65). The owner or operator shall:

- a. Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events.
- b. ~~Maintain and monitor the leak detection system in accordance with section 33-24-05-116.~~
- e- Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of sections 33-24-05-47 through 33-24-05-58.

~~d-~~ c. Prevent run-on and runoff from eroding or otherwise damaging the final cover.

3. The owner or operator shall also meet the following requirements:

a. If an owner or operator plans to close a surface impoundment in accordance with subdivision a of subsection 1, and the impoundment does not comply with the liner requirements of subsection 1 of section 33-24-05-116 and is not exempt from them in accordance with subsection 2 of that section, then:

(1) The closure plan for the impoundment under section 33-24-05-61 must include both a plan for complying with subdivision a of subsection 1 of this section and a contingent plan for complying with subdivision b of subsection 1 of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The owner or operator shall prepare a contingent postclosure plan under section 33-24-05-66 for complying with subsection 2 of this section in case not all contaminated subsoils can be practicably removed at closure.

b. The cost estimates calculated under section 33-24-05-76 for closure and postclosure care of an impoundment subject to this section must include the cost of complying with the contingent closure plan and the contingent postclosure plan in addition to the cost of expected closure under subdivision a of subsection 1 of this section.

4. ~~During the postclosure care period, if liquids leak into a leak detection system, the owner or operator shall notify the department of the leak in writing within seven days after detecting the leak.~~

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-122. {Reserved} Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this section, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

- a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or volatilize or escape into the atmosphere.
 - b. The attenuative properties of underlying and surrounding soils or other materials.
 - c. The mobilizing properties of other materials codisposed with these wastes.
 - d. The effectiveness of additional treatment, design, or monitoring techniques.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-136. ~~{Reserved}~~ Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in waste piles that are not enclosed (as defined in subsection 3 of section 33-24-05-130) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this section and in accord with all other applicable requirements of this chapter. The factors to be considered are:
 - a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
 - b. The attenuative properties of underlying and surrounding soils or other materials.
 - c. The mobilizing properties of other materials codisposed with these wastes.
 - d. The effectiveness of additional treatment, design, or monitoring techniques.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and

F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-144. Applicability of incinerator requirements.

1. Sections 33-24-05-144 through 33-24-05-159 apply to owners and operators of facilities that incinerate hazardous waste, except as section 33-24-05-01 provides otherwise. The following facility owners or operators are considered to incinerate hazardous waste:
 - a. Owners or operators of hazardous waste incinerators (as defined in chapter 33-24-01).
 - b. Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy the wastes.
2. After consideration of the waste analysis included with the permit application, and unless the department finds that the waste will pose a threat to human health or the environment when burned in an incinerator, the department may on a case-by-case basis exempt the applicant from some or all of the requirements of sections 33-24-05-144 through 33-24-05-159, except 33-24-05-145 and 33-24-05-151 if:
 - a. The waste to be burned is hazardous (either listed in or fails the characteristic tests in chapter 33-24-02) solely because it is:
 - (1) Ignitable, or corrosive, or both; or
 - (2) Reactive for characteristic other than those in subdivisions d and e of subsection 1 of section 33-24-02-13, and will not be burned when other hazardous wastes are present in the combustion zone; and
 - b. The waste contains insignificant concentrations of the hazardous constituents listed in Appendix V of chapter 33-24-02.
3. The owner or operator of an incinerator may conduct trial burns subject only to the requirements of subsection 2 of section 33-24-06-19.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-147. Performance standards. An incinerator burning hazardous waste must be designed, constructed, and maintained so that when operated in accordance with operating requirements specified under section 33-24-05-149 it will meet the following performance standards:

1. a. An Except as provided in subdivision b, an incinerator burning hazardous waste must achieve a destruction and removal efficiency of ninety-nine and ninety-nine one hundredths percent for each principle organic hazardous constituent designated (under section 33-24-05-146) in its permit for each waste feed. The destruction and removal efficiency is determined for each principle organic hazardous constituent from the following equation:

$$DRE = \frac{W_{IN} - W_{OUT}}{W_{IN}} \times 100\%$$

Where:

W_{IN} = mass feed rate of one principle organic constituent in the waste stream feeding the incinerator, and

W_{OUT} = mass emission rate of the same principle organic hazardous constituent present in exhaust emissions prior to release to the atmosphere.

- b. An incinerator burning wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency of ninety-nine and nine thousand nine hundred and ninety-nine ten thousandths percent for each principle organic hazardous constituent designated (under section 33-24-05-146) in its permit. This performance must be demonstrated on principle organic hazardous constituents that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. Destruction and removal efficiency is determined for each principle organic hazardous constituent from the equation in subdivision a of subsection 1 of section 33-24-05-147. In addition, the owner or operator of the incinerator must notify the department of his or her intent to incinerate hazardous wastes F020, F021, F022, F023, F026, and F027.
2. An incinerator burning hazardous waste and producing stack emissions of more than one and eight-tenths kilograms per hour [4 pounds per hour] of hydrogen chloride must control hydrogen chloride emissions such that the rate of emission is no greater than the larger of either one and eight-tenths kilograms per hour or one percent of the hydrogen chloride in

the stack gas prior to entering any pollution control equipment.

3. An incinerator burning hazardous waste must not emit particulate matter in excess of one hundred eighty milligrams per dry standard cubic meter [0.08 grains per dry standard cubic foot] when corrected for the amount of oxygen in the stacks according to the formula:

$$P_C = P_M \times \frac{14}{21-Y}$$

Where:

P_C = the corrected concentration of particulate matter

P_M = the measured concentration of particulate matter, and

Y = the measured concentration of oxygen in the stack gas using the Orsat method for oxygen analysis of dry flue gas presented in 40 CFR, Part 60, Appendix A (method 3) of the federal air pollution control regulations. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities the department will select an appropriate correction procedure to be specified in the facility permit.

4. For purposes of permit enforcement, compliance with the operating requirements specified in the permit under section 33-24-05-149 will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under section 33-24-06-12.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-170. {Reserved} Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

1. F020, F021, F022, F023, F026, and F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this section, and in accord with all other applicable requirements of this chapter. The factors to be considered are:

- a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
 - b. The attenuative properties of underlying and surrounding soils or other materials.
 - c. The mobilizing properties of other materials codisposed with these wastes.
 - d. The effectiveness of additional treatment, design, or monitoring techniques.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-177. Design and operating requirements.

- 1. A landfill (except for an existing portion of a landfill which qualifies for an exemption in accordance with subsection 6) must be designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the landfill:
 - a. The landfill (including its underlying liners) must be located entirely above the seasonal high water table.
 - b. The landfill must be underlain by two liners which are designed and constructed in a manner to prevent the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications of subsection 2.
 - c. A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquid into the space between the liners.

- d. The landfill must have a leachate collection and removal system above the top liner that is designed, constructed, maintained, and operated in accordance with subsection 3.
2. The liners must be constructed of materials that prevent waste from passing into the liners during the active life of the facility. The liners must be:
- a. Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation.
 - b. Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift.
 - c. Installed to cover all surrounding earth likely to be in contact with the waste or leachate.
3. A leachate collection and removal system immediately above the liner must be designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty centimeters (one foot). The leachate collection and removal system must be:
- a. Constructed of materials that are:
 - (1) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated.
 - (2) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials and by any equipment used at the landfill.
 - b. Designed and operated to function without clogging through the scheduled closure of the landfill.

4. If liquid leaks into the leak detection system the owner or operator shall:
 - a. Notify the department of the leak in writing within seven days after detecting the leak.
 - b. Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a qualified engineer that to the best of his knowledge and opinion the leak has been stopped.

5. The owner or operator will be exempted from the requirements of subsection 1 if the department finds, based on a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see section 33-24-05-50) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the department will consider:
 - a. The nature and quantity of the wastes.
 - b. The proposed alternate design and operation.
 - c. The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and ground water or surface water.
 - d. All of the factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

1. Any landfill that is not covered by subsection 3 must have a liner system for all portions of the landfill (except for existing portions of such landfill which qualifies for an exemption in accordance with subsection 5). The liner system must have:

- a. A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation.

(2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift.

(3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

b. A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The department will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed thirty centimeters [one foot]. The leachate collection and removal system must be:

(1) Constructed of materials that are:

(a) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated.

(b) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill.

(2) Designed and operated to function without clogging through the scheduled closure of the landfill.

2. The owner or operator will be exempted from the requirements of subsection 1 if the department finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see section 33-24-05-50) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

a. The nature and quantity of the waste.

b. The proposed alternate design and operation.

- c. The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and ground water and surface water.
- d. All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.
3. The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two or more liners and a leachate collection system above and between the liners. The liners and leachate collection systems must protect human health and the environment. The requirement for the installation of two or more liners in this section may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner is deemed to satisfy such requirement if it is constructed of at least a three-foot [.91-meter] layer of recompacted clay or other natural material with a permeability of no more than one times ten to the minus seven centimeters per second.
4. Subsection 3 will not apply if the owner or operator demonstrates to the department, and the department finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.
- 6- 5. The department, on a case-by-case basis, may exempt an existing portion of a hazardous waste landfill from subsection 1 if the owner or operator demonstrates that the owner's or operator's existing design and operating practices, together with the location of the facility, will prevent migration of any hazardous constituents into the ground water or surface water during the active life of the facility (including the closure period) and the postclosure care period.
- 7- 6. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a twenty-five-year storm.

- ~~8-~~ 7. The owner or operator shall design, construct, operate, and maintain a runoff management system to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.
- ~~9-~~ 8. Collection and holding facilities (e.g., tanks or basins) associated with run-on and runoff control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of this system.
- ~~10-~~ 9. If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the landfill to control wind dispersal.
- ~~11-~~ 10. The department will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-178. Monitoring and inspection.

1. During construction or installation, the liners (except in the case of existing portions of landfills exempt from subsection 1 of section 33-24-05-177) and cover systems (e.g., membranes, sheets or coating) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials) immediately after construction or installation:
 - a. Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
 - b. Soil based and admixed liners and covers must be inspected for imperfections, including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the permeability of the liner or cover.
- These inspections must be conducted by an independent, a qualified professional (i.e., registered professional engineer).
2. While a landfill is in operation it must be inspected weekly and after storms to detect evidence of any of the following:
 - a. Deterioration, malfunctions, or improper operation of run-on and runoff control systems.

- ~~b.~~ **The presence of liquids in leak detection systems where installed.**
- e- b. Proper functioning of wind dispersal control systems where present.
- ~~d.~~ c. The presence of leachate in and proper functioning of leachate collection and removal systems where present.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-180. Closure and postclosure care.

1. At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:
 - a. Provide long-term minimization of migration of liquids through the closed landfill.
 - b. Function with minimum maintenance.
 - c. Promote drainage and minimize erosion or abrasion of the cover.
 - d. Accommodate settling and subsidence so that the cover's integrity is maintained.
 - e. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.
2. After final closure the owner or operator shall comply with all postclosure requirements contained in sections 33-24-05-65 through 33-24-05-68 including maintenance and monitoring throughout the postclosure care period (specified in the permit under section 33-24-05-65). The owner or operator shall:
 - a. Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events.
 - ~~b.~~ **Maintain and monitor the leak detection system where such a system is present.**
 - e- b. Continue to operate the leachate collection and removal system until leachate is no longer detected.

- ~~d~~ c. Maintain and monitor the ground water monitoring system and comply with all other applicable requirements of sections 33-24-05-47 through 33-24-05-58.
 - ~~e~~ d. Prevent run-on and runoff from eroding or otherwise damaging the final cover.
 - ~~f~~ e. Protect and maintain surveyed benchmarks used in complying with section 33-24-05-179.
- 3- During the postclosure care period if liquid leaks into a leak detection system, the owner or operator shall notify the department of the leak in writing within seven days after detecting the leak.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-183. Special requirements for liquid wastes bulk and containerized waste.

- 1- Bulk or noncontainerized liquid waste or waste containing free liquids may not be placed in a landfill unless:
 - a- The landfill has a liner and leachate collection and removal system that meets the requirements of section 33-24-05-177, or
 - b- Before disposal the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically, e.g., by mixing with an absorbent solid, so that free liquids are no longer present.
1. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.
 2. Containers holding free liquids may not be placed in a landfill unless:
 - a. All free standing liquid has been removed by decanting or other methods; has been mixed with absorbent or solidified so that free standing liquid is no longer observed; or has been otherwise eliminated;
 - b. The container is very small, such as an ampule;
 - c. The container is designed to hold free liquids for use other than storage such as a battery or capacitor; or

- d. The container is a lab pack as defined in section 33-24-05-185 and is disposed of in accordance with section 33-24-05-185.
3. To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (paint filter liquids test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (environmental protection agency publication number SW-846).
4. The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such a landfill demonstrates to the department or the department determines, that:
- a. The only reasonable available alternative to the placement in such landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and
- b. Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

History: Effective January 1, 1984; amended effective October 1, 1986.
General Authority: NDCC 23-20.3-03
Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-186. ~~Reserved~~ Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

1. Hazardous wastes F020, F021, F022, F023, F026, and F027 may not be placed in a landfill unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the department pursuant to the standards set out in this section and in accord with all other applicable requirements of this chapter. The factors to be considered are:
- a. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere.
- b. The attenuative properties of underlying and surrounding soils or other materials.
- c. The mobilizing properties of other materials codisposed with these wastes.

- d. The effectiveness of additional treatment, design, or monitoring requirements.
2. The department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-201. Applicability to recyclable materials used in a manner constituting disposal.

1. Sections 33-24-05-201 through 33-24-05-204 apply to recyclable materials that are applied to or placed on the land:
 - a. Without mixing with any other substance;
 - b. After mixing with any other substance, unless the recyclable material undergoes a chemical reaction so as to become inseparable from the other substance by physical means; or
 - c. After combination with any other substance if the resulting combined material is not produced for the general public's use. These materials will be referred to throughout this chapter as "materials used in a manner that constitutes disposal".
2. Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing a product so as to become inseparable by physical means. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-202. Standards applicable to generators and transporters of materials used in a manner that constitutes disposal. Generators and transporters of materials that are used in a manner that constitutes

disposal are subject to the applicable requirements of chapters 33-24-03 through 33-24-04 and the notification requirements.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.2-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-203. Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users. Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the material, are regulated under all applicable provisions of chapters 33-24-05 through 33-24-07 and the notification requirements.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-204. Standards applicable to users of materials that are used in a manner that constitutes disposal.

1. Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of chapters 33-24-05 through 33-24-07 and the notification requirements. (These requirements do not apply to products which contain these recyclable materials under the provisions of subsection 2 of section 33-24-05-201.)
2. The use of waste oil or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-205. [Reserved]

33-24-05-206. [Reserved]

33-24-05-207. [Reserved]

33-24-05-208. [Reserved]

33-24-05-209. [Reserved]

33-24-05-210. Applicability to hazardous waste burned for energy recovery.

1. Sections 33-24-05-210 through 33-24-05-216 apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under sections 33-24-05-144 through 33-24-05-159, except as provided by subsection 2. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel". However, hazardous waste fuels produced from hazardous wastes by blending or other treatment by a person who neither generated the waste nor burns the fuel, are not subject to regulation at the present time.
2. The following hazardous wastes are not regulated under sections 33-24-05-210 through 33-24-05-216:
 - a. Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in chapter 33-24-02. Such used oil is subject to regulation under sections 33-24-05-219 through 33-24-05-229 rather than sections 33-24-05-210 through 33-24-05-216.
 - b. Hazardous wastes that are exempt from regulation under the provisions of section 33-24-02-04 and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of section 33-24-02-05.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.2-03, 23-20.3-04

33-24-05-211. Prohibitions.

1. [Reserved]
2. Except as provided in subdivision b:
 - a. No fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations under this chapter that are applicable to incinerators.
 - b. This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes are generated, unless the resulting coke product would

exceed one or more of the characteristics of hazardous waste in sections 33-24-02-10 through 33-24-02-14.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-212. Standards applicable to generators of hazardous waste fuel.

1. Generators of hazardous waste fuel are subject to the requirements of chapter 33-24-03 except that section 33-24-05-216 exempts certain spent materials and byproducts from these provisions.
2. Generators who are marketers also must comply with section 33-24-05-214.
3. Generators who are burners also must comply with section 33-24-05-215.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-213. Standards applicable to transporters of hazardous waste fuel.

1. Transporters of hazardous waste fuel from generator to marketer, or from a generator to a burner are subject to the requirements of chapter 33-24-04, except that section 33-24-05-216 exempts certain spent materials and byproducts from these provisions.
2. Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous waste fuels from marketers, who are not also the generators of the waste, to burners or other marketers.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-214. Standards applicable to marketers of hazardous waste fuel. Persons who market hazardous waste fuel are called "marketers". Marketers include generators who market hazardous waste fuel directly to a burner, and persons who receive hazardous wastes from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes. Persons who distribute but do not process or blend hazardous waste fuel are also marketers, but are not presently

subject to regulation. Marketers (other than distributors) are subject to the following requirements and prohibitions:

1. [Reserved]

2. [Reserved]

3. Storage.

a. Marketers who are generators are subject to the requirements of section 33-24-05-214, or to chapters 33-24-05 through 33-24-07, except as provided by section 33-24-05-216 for certain spent materials and byproducts.

b. Marketers who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes, are subject to regulation under all applicable provisions of chapters 33-24-05 through 33-24-07, except as provided by section 33-24-05-216 for certain spent materials and byproducts.

4. Labeling.

a. Except as provided in subdivisions b, c, and d of subsection 4, it is unlawful for any person who produces, distributes, or markets any fuel that contains a hazardous waste to distribute or market such fuel if the invoice or the bill of sale fails:

(1) To bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTE", and

(2) To list the hazardous wastes contained therein. Such statement must be located in a conspicuous place on every such invoice or bill of sale and must appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the invoice or bill of sale.

b. This requirement does not apply to fuels produced from petroleum refining hazardous waste containing oil if:

(1) Such materials are generated and reinserted onsite into the refining process;

(2) Contaminants are removed; and

(3) Such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the

office of management and budget Standard Industrial Classification Manual.

c. This requirement does not apply to fuels produced from oily materials resulting from normal petroleum refining production and transportation practices if:

(1) Contaminants are removed; and

(2) Such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the office of management and budget Standard Industrial Classification Manual.

d. This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in sections 33-24-02-10 through 33-24-02-14.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-215. Standards applicable to burners of hazardous waste fuel.

1. [Reserved]

2. Notification. [Reserved]

3. Burners that store hazardous waste fuel prior to burning are subject to the requirements of section 33-24-05-214, or all applicable requirements in chapter 33-24-05 with respect to such storage, except as provided by section 33-24-05-216 for certain spent materials and byproducts.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-216. Conditional exemption for spent materials and byproducts exhibiting a characteristic of hazardous waste.

1. Except as provided in subsection 2, hazardous waste fuels that are spent materials and byproducts and that are hazardous only because they exhibit a characteristic of hazardous waste are

not subject to the notification requirements, the generator, transporter, or storage requirements of chapters 33-24-03 through 33-24-07.

2. This exemption does not apply when the spent material or byproduct is stored in a surface impoundment prior to burning.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-217. [Reserved]

33-24-05-218. [Reserved]

33-24-05-219. Used oil burned for energy recovery. [Reserved]

33-24-05-220. [Reserved]

33-24-05-221. [Reserved]

33-24-05-222. [Reserved]

33-24-05-223. [Reserved]

33-24-05-224. [Reserved]

33-24-05-225. [Reserved]

33-24-05-226. [Reserved]

33-24-05-227. [Reserved]

33-24-05-228. [Reserved]

33-24-05-229. [Reserved]

33-24-05-230. Applicability and requirements for recyclable materials utilized for precious metal recovery.

1. Sections 33-24-05-230 through 33-24-05-234 apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, irridium, osmium, rhodium, ruthenium, or any combination of these.
2. Persons who generate, transport, or store recyclable materials that are regulated under sections 33-24-05-230 through 33-24-05-234 are subject to the following requirements:
 - a. Notification requirements.

- b. Chapter 33-24-03 (for generators), sections 33-24-04-04 and 33-24-04-05 (for transporters), and sections 33-24-05-38 and 33-24-05-39 (for persons who store).
3. Persons who store recycled materials that are regulated under this chapter must keep the following records to document that they are not accumulating these materials speculatively (as defined in subsection 3 of section 33-24-02-01 of chapter 33-24-02):
- a. Records showing the volume of these materials stored at the beginning of the calendar year.
 - b. The amount of these materials generated or received during the calendar year.
 - c. The amount of materials remaining at the end of the calendar year.
4. Recyclable materials that are regulated under this chapter that are accumulated speculatively (as defined in subsection 3 of section 33-24-02-01) are subject to all applicable provisions of chapters 33-24-03 through 33-24-07.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-231. [Reserved]

33-24-05-232. [Reserved]

33-24-05-233. [Reserved]

33-24-05-234. [Reserved]

33-24-05-235. Applicability and requirements of spent lead acid batteries being reclaimed.

1. Sections 33-24-05-235 through 33-24-05-240 apply to persons who reclaim spent lead acid batteries that are recyclable materials ("spent batteries"). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them are not subject to regulation under chapters 33-24-03 through 33-24-07, and also are not subject to the notification requirements.
2. Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:
 - a. Notification requirements.

b. All applicable provisions in sections 33-24-05-01 through 33-24-05-09 (but not section 33-24-05-04 (waste analysis)), and sections 33-24-05-15 through 33-24-05-44 (but not section 33-24-05-38 or 33-24-05-39 (dealing with the use of the manifest and manifest discrepancies)), and sections 33-24-05-47 through 33-24-05-136.

c. All applicable provisions in chapters 33-24-06 and 33-24-07.

History: Effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-30.3-03, 23-20.3-04

33-24-05-236. [Reserved]

33-24-05-237. [Reserved]

33-24-05-238. [Reserved]

33-24-05-239. [Reserved]

33-24-05-240. [Reserved]

33-24-06-01. Application for a permit.

1. **Permit application.** Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the department as described in this section and section 33-24-06-16. Persons currently authorized with interim status shall apply for permits when required by the department. Persons covered by permits by rule need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in section 33-24-06-19. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in section 33-24-06-20.
2. **Who must have a permit?** North Dakota Century Code chapter 23-20.3 requires that a permit be obtained for the treatment, storage, or disposal of any hazardous waste as identified in chapter 33-24-02. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, during any compliance period specified under section 33-24-05-53, including any extension of that period under subsection 3 of section 33-24-05-53 and, for any unit which closes after January 26, 1983, during any postclosure care period required under section 33-24-05-65.

a. **Specific inclusions.** Hazardous waste permits are required for:

- (1) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see section 33-24-06-20). However, the owner or operator with an underground injection control permit will be deemed to have a hazardous waste permit for the injection well itself if the owner or operator complies with requirements of subsection 2 of section 33-24-06-18.
- (2) Treatment, storage, or disposal of hazardous waste at facilities requiring a North Dakota pollutant discharge elimination system permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a hazardous waste permit for that waste if the owner or operator complies with the requirements of subsection 3 of section 33-24-06-18.

b. **Specific exclusions.** Hazardous waste permits are not required for:

- (1) Generators who accumulate hazardous waste onsite for less than ninety days, as provided in section 33-24-03-12.
- (2) Farmers who dispose of hazardous waste pesticides from their own use as provided in section 33-24-03-18.
- (3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation by section 33-24-02-04 or 33-24-02-05.
- (4) Owners or operators of totally enclosed treatment facilities as defined in section 33-24-01-04.
- (5) Owners or operators of elementary neutralization units as defined in section 33-24-01-04.
- (6) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of section 33-24-03-08 at a transfer facility for a period of ten days or less.
- (7) Persons mixing absorbent material and waste in a container, provided this mixing occurs at the time waste is first placed in the container, and the person complies with sections 33-24-05-90 and 33-24-05-91, and subsection 2 of section 33-24-05-08.

(8) Immediate response activities.

(a) A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

[1] A discharge of a hazardous waste.

[2] An imminent and substantial threat of a discharge of hazardous waste.

[3] A discharge of a material which, when discharged, becomes a hazardous waste.

(b) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

3. **Who applies?** When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, however, the owner must also sign the permit application.

4. **Completeness.** The department will not issue a permit before receiving a complete application for a permit, except for permits by rule, or emergency permits. An application for a permit is complete when the department receives an application form and any supplemental information which is completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection 10.

5. **Information requirements.** All applicants for hazardous waste permits shall provide the information required by section 33-24-06-17 to the department.

6. **Recordkeeping.** Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this chapter for a period of at least three years from the date the application is signed.

7. **When to apply for a permit.**

a. **Existing hazardous waste management facilities.**

(1) Owners and operators of existing hazardous waste management facilities shall submit part A of their

permit application (see subsection 1 of section 33-24-06-17) to the department no later than:

- (a) Six months after the date of publication of rules which first require them to comply with the standards set forth in chapter 33-24-05; or
- (b) Thirty days after the date they first become subject to the standards set forth in chapter 33-24-05,

whichever occurs first.

- (2) The department may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit part A of their permit application if it finds that:
 - (a) There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and
 - (b) Such confusion is attributable to ambiguities in the department's rules in chapters 33-24-01 through 33-24-05.
- (3) The department may, by compliance order, extend the date by which the owner or operator of an existing hazardous waste management facility must submit part A of the permit application.
- (4) The owner and operator of an existing hazardous waste management facility may be required to submit part B of the permit application at any time. Any owner or operator must be allowed at least six months from the date of request to submit the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit an application at any time.
- (5) Failure to furnish a requested permit application on time or to furnish in full the information required by the application is grounds for termination of the facility's operating status under the procedures of chapter 33-24-07.

b. **New hazardous waste management facilities.**

- (1) **Except as provided in paragraph 3 no person may begin physical construction of a new hazardous waste management facility without having submitted a complete permit**

application and having received a finally effective hazardous waste permit. No person may begin physical construction of a new hazardous waste management facility without having submitted a complete permit application (including both part A and part B) and having received a finally effective hazardous waste permit.

- (2) An application for a permit for a new hazardous waste management facility may be filed at any time. Except as provided in paragraph 3, all applications must be submitted at least one hundred eighty days before physical construction is expected to commence (including both part A and part B) may be filed any time after promulgation of those standards in sections 33-24-05-89, et seq. applicable to such facility. The application must be submitted to the department at least one hundred eighty days before physical construction is expected to commence.

(3) Prior to the effective date of sections 33-24-05-89 et seq. which are applicable to the facility, a person may begin physical construction of a new hazardous waste management facility, except for landfills, injection wells, land treatment facilities, or surface impoundments without having received a finally effective hazardous waste permit if, prior to beginning physical construction, the person has:

- (a) Obtained the federal, state, and local approvals or permits necessary to begin physical construction;
- (b) Submitted part A of the permit application; and
- (c) Made a commitment to complete physical construction of the facility within a reasonable time.

The person may continue physical construction of the new hazardous waste management facility after the effective date of sections 33-24-05-89 et seq. which are applicable to this facility, if that person submits the permit application on or before the effective date of such standards (or on some later date specified by the department). Such persons may not operate the new hazardous waste management facility

without having received a finally effective hazardous waste permit.

8. Updating permit applications.

a. If any owner or operator of a hazardous waste management facility has filed part A of a permit application and has not yet filed part B, the owner or operator shall amend part A of the application with the department:

(1) No later than the effective date of regulatory provisions listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those listed or designated wastes; or

(2) As necessary to comply with the provisions of section 33-24-06-16 for changes prior to the department making final administrative disposition of the application.

b. The owner or operator of a facility who fails to comply with the updating requirements of subdivision a of this subsection is not authorized to treat, store, dispose of those wastes not covered by a duly filed part A of the application.

9. Reapplications. Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has been granted by the department (the department shall not grant permission for applications to be submitted later than the expiration date of the existing permit).

10. Exposure information.

a. Any permit part B applications submitted by an owner or an operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit.

(2) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1).

(3) The potential magnitude and nature of the human exposure resulting from such releases.

b. Owners and operators of a landfill or surface impoundment who have already submitted a part B application must submit the exposure information required in subdivision a of subsection 10.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-06-03. Signatories to permit applications and reports.

1. Applications. All hazardous waste permit applications must be signed as follows:
 - a. For a corporation: by a principle executive officer of at least the level of vice president- responsible corporate officer. For the purpose of this section a responsible corporate officer means:
 - (1) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation; or
 - (2) The manager of one or more manufacturing, production, or operating facilities employing more than two hundred fifty persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - c. For a municipality, state, federal, or other public agency: by either a principle executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:
 - (1) The chief executive officer of the agency; or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. **Reports.** All reports required by permits, and other information requested by the department must be signed by a person described in subsection 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described in subsection 1;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
 - c. The written authorization is submitted to the department.
3. **Changes to authorization.** If an authorization under subsection 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection 2 must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. **Certification.** Any person signing a document under subdivision a or b of subsection 1 or 2 of this section shall make the following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment this document and all attachments were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons to manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief,

true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-06-04. Conditions applicable to permits. The following conditions apply to all hazardous waste permits. All conditions applicable to permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this article must be given in the permit.

1. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the North Dakota Century Code and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. However, the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See section 33-24-06-19.)
2. **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.
3. **Need to halt or reduce activity not a defense.** It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
4. **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit. In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent any adverse impacts on human health or the environment.
5. **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance include effective performance, adequate funding, adequate operator staffing and training, and adequate

laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

6. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
7. **Property rights.** This permit does not convey any property rights of any sort or any exclusive privilege.
8. **Duty to provide information.** The permittee shall furnish to the department, within a reasonable time, any relevant information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.
9. **Inspection and entry.** The permittee shall allow the department, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - b. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized, any substances or parameters at any location.
10. **Monitoring and records.**
 - a. Samples and measurements taken for the purposes of monitoring must be representative of the monitoring activity.

- b. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by subdivision i of subsection 2 of section 33-24-05-40, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application. This period may be extended by the request of the department at any time.
 - c. Records of monitoring information must include:
 - (1) The date, exact place, and time of sampling or measurements.
 - (2) The individuals who performed the sampling or measurements.
 - (3) The dates analyses were performed.
 - (4) The individuals who performed the analyses.
 - (5) The analytical techniques or methods used.
 - (6) The results of such analyses.
 - d. The permittee shall maintain records from all ground water monitoring wells and associated ground water surface elevations for the active life of the facility, and, for disposal facilities, for the postclosure care period as well.
11. **Signatory requirement.** All applications, reports, or information submitted to the department must be signed and certified. (See section 33-24-06-03.)
12. **Reporting requirements.**
- a. **Planned changes.** The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. For a new hazardous waste management facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:
 - (1) The permittee has submitted to the department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer

stating that the facility has been constructed or modified in compliance with the permit; and

(2) Either of the following:

(a) The department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(b) Within fifteen days of the date of submission of the letter in paragraph 1, the permittee has not received notice from the department of its intent to inspect. If so, prior inspection by the department is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

b. **Anticipated noncompliance.** The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. **Transfers.** This permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See section 33-24-06-11; in some cases, modification or revocation and reissuance is mandatory.)

d. **Monitoring reports.** Monitoring results must be reported at the intervals specified elsewhere in this permit.

e. **Compliance schedules.** Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than fourteen days following each schedule date.

f. **Twenty-four-hour reporting.**

(1) The permittee shall report any noncompliance which may endanger health or the environment.

(2) Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which must be reported orally:

(a) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies.

- (b) Any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste management facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause must include:
- [1] Name, address, and telephone number of the owner or operator.
 - [2] Name, address, and telephone number of the facility.
 - [3] Date, time, and type of incident.
 - [4] Name and quantity of materials involved.
 - [5] The extent of injuries, if any.
 - [6] An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable.
 - [7] Estimated quantity and disposition of recovered material that resulted from the incident.
- (3) A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- (4) The department may waive the five-day written notice requirement in favor of a written report within fifteen days.
- g. **Other noncompliance.** The permittee shall report all instances of noncompliance not reported under subdivisions a, d, e, and f, at the time monitoring reports are submitted. The reports must contain the information listed in subdivision f.
- h. **Manifest discrepancy reports.** If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee shall submit a

letter report, including a copy of the manifest to the department.

- i. **Unmanifested waste report.** An unmanifested waste report must be submitted to the department within fifteen days of receipt of unmanifested waste.
- j. **Annual report.** An annual report must be submitted by March first of each calendar year covering facility activities during the previous calendar year.
- k. **Other information.** Where the permittee becomes aware that the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, the permittee shall promptly submit such facts or information.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-06-10. Effect of a permit.

1. Compliance with a permit during its term constitutes compliance for purposes of enforcement, with North Dakota Century Code chapter ~~33-20-3~~ 32-20.3. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in sections 33-24-06-12 and 33-24-06-13.
2. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
3. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-06-12. Major modification or revocation and reissuance of permits. When the department receives any information [e.g., inspects the facility, receives information submitted by the permittee as required in the permit (see section 33-24-06-04), receives a request for modification or revocation and reissuance, or conducts a review of the permit file] it may determine whether or not one or more of the causes listed in subsections 1 and 2 for modification, or revocation and reissuance, or both, exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations

of subsection 3, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See subdivision b of subsection 3 of section 33-24-07-03. If cause does not exist under this section or section 33-24-06-14, the department may not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in section 33-24-06-14 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise a draft permit must be prepared and other procedures in chapter 33-24-07 followed.

1. **Causes for modifications.** The following are causes for modification, but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:

a. **Alterations.** There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

b. **Information.** The department has received information that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

c. **New regulation.** The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(1) For promulgation of amended standards or regulations, when:

(a) The permit condition requested to be modified was based on an effective rule in chapters 33-24-01 through 33-24-05;

(b) The department has revised, withdrawn, or modified that portion of the rule on which the permit condition was based; and

(c) A permittee requests modification in accordance with section 33-24-07-03 within ninety days after the department's action on which the request is based.

- (2) For judicial decisions, a court of competent jurisdiction has remanded and stayed effective regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with section 33-24-07-03 within ninety days of judicial remand.
- d. Compliance schedules. The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.
- e. The department may modify a permit:
- (1) When modification of a closure plan is required under subsection 2 of section 33-24-05-61 or subsection 2 of section 33-24-05-66.
 - (2) After the department receives the notification of expected closure under section 33-24-05-62, when the department determines that extension of the ninety- or one hundred eighty-day periods under section 33-24-05-62, modifications of the thirty-year postclosure period under subsection 1 of section 33-24-05-65, continuation of security requirements under subsection 2 of section 33-24-05-65, or permission to disturb the integrity of the containment system under subsection 3 of section 33-24-05-65 are unwarranted.
 - (3) When the permittee has filed a request under subsection 3 of section 33-24-05-79 for a variance to the level of financial responsibility or when the department demonstrates under subsection 4 of section 33-24-05-79 that an upward adjustment of the level of financial responsibility is required.
 - (4) When the corrective action program specified in the permit under section 33-24-05-57 has not brought the regulated unit into compliance with the ground water protection standard within a reasonable period of time.
 - (5) To include a detection monitoring program meeting the requirements of section 33-24-05-55 when the owner or operator has been conducting a compliance monitoring program under section 33-24-05-56 or a corrective action program under section 33-24-05-57 and the compliance period ends before the end of the postclosure care period for the unit.

- (6) When a permit requires a compliance monitoring program under section 33-24-05-56, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the ground water protection standard.
- (7) To include conditions applicable to units at a facility that were not previously included in the facility's permit.
- (8) When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

f. Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the department when it comes up for reissuance in accordance with section 33-24-06-06, the department shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in chapters 33-24-01 through 33-24-07.

2. **Causes for modification or revocation and reissuance.** The following are causes to modify or, alternatively, revoke and reissue a permit:
 - a. Cause exists for termination under section 33-24-06-13, and the department determines that modification or revocation and reissuance is appropriate.
 - b. The department has received notification (as required in the permit, see subsection 4 of section 33-24-06-14) of a proposed transfer of the permit.
3. **Facility siting.** Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-06-16. Operating status prior to final administrative disposition of the permit application.

1. **Qualifying for such status.** Any person who owns or operates an existing hazardous waste management facility shall be treated as having been issued a permit to the extent that person has:

- a. Complied with section 3010(a) of the Resource Conservation and Recovery Act by filing a notification of hazardous waste activity form with the department.
 - b. Complied with the requirements of subsections 7 and 8 of section 33-24-06-01 governing submission of part A of the application.
2. When the department determines on examination or reexamination of part A of the application that it fails to meet the standards of these rules, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to such status. The owner or operator will then be subject to enforcement for operating without a permit. Failure to qualify for such status. If the department has reason to believe upon examination of a part A application that it fails to meet the requirements of subsection 1 of section 33-24-06-17, it shall notify the owner or operator in writing of the apparent deficiency. Such notice must specify the grounds for the department's belief that the application is deficient. The owner or operator has thirty days from receipt to respond to such a notification and to explain or cure the alleged deficiency in its part A application. If, after such notification and opportunity for response, the department determines that the application is deficient it may take appropriate enforcement action.
3. Coverage. During the period of such status, the facility may not:
- a. Treat, store, or dispose of hazardous waste not specified in part A of the permit application;
 - b. Employ processes not specified in part A of the permit application; or
 - c. Exceed the design capacities specified in part A of the permit application.
4. Changes during such status.
- a. New hazardous waste not previously identified in part A of the permit application may be treated, stored, or disposed of at a facility if the owner or operator submits a revised part A of the permit application prior to such a change.
 - b. Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised part A of the permit application prior to such a change (along with a justification explaining the need for

the change) and the department approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities.

- c. Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised part A of the permit application prior to such a change (along with a justification explaining the need for the change) and the department approves the change because:
 - (1) It is necessary to prevent a threat to human health or the environment because of an emergency situation; or
 - (2) It is necessary to comply with federal, state, or local laws or regulations.
 - d. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised part A of the permit application no later than ninety days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of sections 33-24-05-74 through 33-24-05-88 (financial requirements) until the new owner or operator has demonstrated to the department that it is complying with those sections. All other duties during such status are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with the financial requirements, the department shall notify the old owner or operator in writing that it no longer needs to comply with those regulations as of the date of demonstration.
 - e. In no event may changes be made to a hazardous waste management facility during such status which amounts to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new hazardous waste management facility.
5. During such status, owners or operators shall comply with the federal interim status standards, 40 CFR Part 265.
6. Such status terminates when:
- a. Final administrative disposition of a permit application is made; or

- b. Such status is terminated as provided in paragraph 5 of subdivision a of subsection 7 of section 33-24-06-01.

7. Subsection 1 does not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under article 33-24 has been previously terminated.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-06-17. Contents of a permit application.

1. Part A of the application must include the following information:
 - a. The activities conducted by the applicant which require it to obtain a permit.
 - b. Name, mailing address, and location of the facility for which the application is submitted.
 - c. Up to four standard industrial codes which best reflect the principle products or services provided by the facility.
 - d. The operator's name, address, telephone number, ownership status and status as a federal, state, private, public, or other entity.
 - e. A listing of all permits or construction approvals at all governmental levels received or applied for under any of the following programs:
 - (1) Hazardous waste management program under the Resource Conservation and Recovery Act.
 - (2) Underground injection control program under the Safe Drinking Water Act.
 - (3) North Dakota pollutant discharge elimination system program under the Clean Water Act.
 - (4) Prevention of significant deterioration program under the Clean Air Act.
 - (5) Nonattainment program under the Clean Air Act.
 - (6) National emissions standards for hazardous air pollutants preconstruction approval under the Clean Air Act.

(7) Dredge or fill permits under section 404 of the Clean Water Act.

(8) Other relevant environmental permits.

- f. A topographic map (or other map if a topographic map is unavailable), extending one mile [1.61 kilometers] beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those well springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.
 - g. A brief description of the nature of the business.
 - h. The latitude and longitude of the facility.
 - i. The name, address, and telephone number of the owner of the facility.
 - j. An indication of whether the facility is new or existing and whether it is a first or revised application.
 - k. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal area.
 - l. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and types of future treatment, storage, and disposal areas.
 - m. A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.
 - n. A specification of the hazardous wastes listed or designated under chapter 33-24-02 to be treated, stored, or disposed at the facility; an estimate of the quantity of such waste to be treated, stored, or disposed annually; and a general description of the processes to be used for such wastes.
2. The information requirements for part B of the permit application presented below reflect the standards in chapter 33-24-05. These information requirements are necessary in order for the department to determine compliance with chapter 33-24-05 standards. If owners and operators of hazardous waste management facilities can demonstrate that the information required for part B of the application cannot be

provided to the extent required, the department may make allowances for submission of such information on a case-by-case basis. Information required for part B of the application must be submitted to the department and signed in accordance with requirements in section 33-24-06-03. Certain technical data, such as design drawings and specifications, and engineering studies must be certified by a registered professional engineer. Part B of the application includes the following (information in subdivisions a through r is required for all hazardous waste management facilities except as section 33-24-05-01 provides otherwise; that in subdivisions s through y is additional information required for specific types of facilities; and that in subdivisions z through gg is additional information regarding protection of ground water, and is required for surface impoundments, piles, land treatment units, and landfills, except as otherwise provided in subsection 2 of section 33-24-05-47):

- a. General description of the facility.
- b. Chemical and physical analyses of the hazardous waste to be handled at the facility. At a minimum, these analyses must contain all the information which must be known to treat, store, or dispose of the waste properly in accordance with chapter 33-24-05.
- c. A copy of the waste analysis plan required by subsection 2 of section 33-24-05-04 and, if applicable, subsection 3 of section 33-24-05-04.
- d. A description of the security procedures and equipment required by section 33-24-05-05, or a justification demonstrating the reason for requesting a waiver of this requirement.
- e. A copy of the general inspection schedule required by subsection 2 of section 33-24-05-06; include, where applicable, as part of the inspection schedule, specific requirements in sections 33-24-05-93, 33-24-05-106, 33-24-05-117, 33-24-05-132, 33-24-05-163, and 33-24-05-178.
- f. A justification of any request for waivers of the preparedness and prevention requirements of sections 33-24-05-15 through 33-24-05-25.
- g. A copy of the contingency plan required by sections 33-24-05-26 through 33-24-05-36. Include, where applicable, as part of the contingency plan, specific requirements in ~~section~~ sections 33-24-05-110 and 33-24-05-118.

- h. A description of procedures, structures, or equipment used at the facility to:
 - (1) Prevent hazards in unloading operations, e.g., ramps and special forklifts;
 - (2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, e.g., berms, dikes, and trenches;
 - (3) Prevent contamination of water supplies;
 - (4) Mitigate effects of equipment failure and power outages; and
 - (5) Prevent undue exposure of personnel to hazardous waste, e.g., protective clothing.
- i. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with section 33-24-05-08, including documentation demonstrating compliance with subsection 3 of section 33-24-05-08.
- j. Traffic pattern, estimated volume (number, type of vehicles) and control (e.g., show turns across traffic lanes and stacking lanes, if appropriate); describe access road, surfacing and load-bearing capacity; show traffic control signals.
- k. [Reserved]
- l. An outline of both the introductory and continuing programs by owners or operators to prepare persons to operate and maintain a hazardous waste management facility in a safe manner as required to demonstrate compliance with section 33-24-05-07. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in subdivision c of subsection 1 of section 33-24-05-07.
- m. A copy of the closure plan and where applicable, the postclosure plan required by sections 33-24-05-61 and 33-24-05-66. Include where applicable, as part of the plans, specific requirements in sections 33-24-05-97, 33-24-05-107, 33-24-05-119, 33-24-05-135, 33-24-05-167, 33-24-05-180, and 33-24-05-151.
- n. For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by section 33-24-05-68.

- o. The most recent closure and, where applicable, postclosure cost estimate for the facility prepared in accordance with section 33-24-05-76 plus a copy of the financial assurance mechanisms adopted in compliance with section 33-24-05-77.
- p. Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of section 33-24-05-79. For a new facility, documentation showing the amount of insurance meeting the specification of subsection 1, and subsection 2 if applicable, of section 33-24-05-79, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in subsection 3 of section 33-24-05-79.
- q. A topographic map showing a distance of one thousand feet [304.8 meters] around the facility at a scale of two and five-tenths centimeters [1 inch] equal to not more than sixty-one meters [200 feet]. (The department may allow the use of other scales on a case-by-case basis.) Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of one and five-tenths meters [5 feet], if relief is greater than six and one-tenth meters [20 feet], or an interval of six-tenths meter [2 feet], if relief is less than six and one-tenth meters [20 feet]. Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of the facilities. The map must clearly show the following:
 - (1) Map scale and date.
 - (2) One hundred-year floodplain area.
 - (3) Surface waters including intermittent streams.
 - (4) Surrounding land uses (residential, commercial, agricultural, recreational).
 - (5) A wind rose, i.e., prevailing wind speed and direction.
 - (6) Orientation of the map (north arrow).
 - (7) Legal boundaries of the hazardous waste management facility site.
 - (8) Access control (fences, gates).

- (9) Injection and withdrawal wells, both onsite and offsite.
 - (10) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and processed sewerage systems, loading and unloading areas, fire control facilities, etc.).
 - (11) Barriers for drainage or flood control.
 - (12) Location of operational units within the hazardous waste management facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).
- r. Applicants may be required to submit such information as may be necessary to enable the department to carry out its duties under federal or other state laws as required in section 33-24-06-09.
- s. For facilities that store containers of hazardous waste, except as otherwise provided in section 33-24-05-89:
- (1) A description of the containment system to demonstrate compliance with section 33-24-05-94. Show at least the following:
 - (a) Basic design parameters, dimensions, and materials of construction.
 - (b) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
 - (c) Capacity of the containment system relative to the number and volume of containers to be stored.
 - (d) Provisions for preventing or managing run-on.
 - (e) How accumulated liquids can be analyzed and removed to prevent overflow.
 - (2) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with subsection 3 of section 33-24-05-94, including:
 - (a) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

- (b) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.
 - (3) Sketches, drawings, or data demonstrating compliance with section 33-24-05-95 (location of buffer zone and containers holding ignitable or reactive wastes) and subsection 3 of section 33-24-05-96 (location of incompatible wastes), where applicable.
 - (4) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with subsections 1 and 2 of section 33-24-05-96 and subsections 2 and 3 of section 33-24-05-08.
- t. For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in section 33-24-05-103, description of design and operation procedures which demonstrate compliance with the requirements of sections 33-24-05-104, 33-24-05-105, 33-24-05-108, and 33-24-05-109, including:
- (1) References to design standards or other available information used (or to be used) in design and construction of the tank.
 - (2) A description of design specifications, including identification of construction materials and lining materials (include pertinent characteristics such as corrosion or erosion resistance).
 - (3) Tank dimensions, capacity, and shell thickness.
 - (4) A diagram of piping, instrumentation, and process flow.
 - (5) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).
 - (6) Description of procedures for handling incompatible, ignitable, or reactive wastes, including the use of buffer zones.
 - (7) Where applicable, a description of the containment and detection systems to demonstrate compliance with subsection 1 of section 33-24-05-110 must include at least the following:
 - (a) Drawings and a description of the basic design parameters, dimensions, and materials of construction of the containment system.

(b) Capacity of the containment system relative to the design capacity of the tank or tanks within the system.

(c) Description of the system to detect leaks and spills, and how precipitation and run-on will be prevented from entering into the detection system.

u. For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in section 33-24-05-01:

(1) A list of the hazardous wastes placed or to be placed in each surface impoundment.

(2) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-116. This submission must address the following items as specified in that section.

(a) The liner system. Submit detailed plans and an engineering report explaining the location of the saturated zone in relation to the surface impoundment, and the design of the double-liner system that incorporates a leak detection system between the liners. If an exemption from the requirement for a liner system is sought as provided by subsection 2 of section 33-24-05-116, submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time. If an exemption is sought from the design and operating requirements for an existing portion of the surface impoundment as provided by subsection 3 of section 33-24-05-116, the owner or operator shall submit detailed plans and engineering and hydrogeologic reports as appropriate, describing how the existing design and operating practices, together with the location of the facility will prevent migration of any hazardous constituents into the ground water or surface water during the active life of the facility (for impoundments to be closed in accordance with subdivision a of subsection 1 of section 33-24-05-119), or the active life and the postclosure care period (for impoundments to

be closed in accordance with subdivision b of subsection 1 of section 33-24-05-119).

- (b) Prevention of overtopping.
- (c) Structural integrity of dikes.
- (3) A description of how each surface impoundment, including the liner and cover systems and appurtenances for control of overtopping will be inspected in order to meet the requirements of subsections 1 and 2 of section 33-24-05-117. This information should be included in the inspection plan submitted under subdivision e of subsection 2 of this section.
- (4) A certification by a qualified engineer which attests to the structural integrity of each dike as required under subsection 3 of section 33-24-05-117. For new units, the owner or operator must submit a statement by a qualified engineer that the engineer will provide such a certification upon completion of construction in accordance with the plans and specifications.
- (5) A description of the procedure to be used for removing a surface impoundment from service as required under subsections 2 and 3 of section 33-24-05-118. This information should be included in the contingency plan submitted under subdivision g of subsection 2 of this section.
- (6) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure as required under subdivision a of subsection 1 of section 33-24-05-119. For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how subsection 2 and subdivision b of subsection 1 of section 33-24-05-118 will be complied with. This information should be included in the closure plan and where applicable, the postclosure plan submitted under subdivision m of subsection 2 of this section.
- (7) If ignitable or reactive wastes are to be placed in a surface impoundment an explanation of how section 33-24-05-120 will be complied with.
- (8) If incompatible wastes or incompatible wastes and materials will be placed in the surface impoundment, an explanation of how section 33-24-05-121 will be complied with.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-122. This submission must address the following items as specified in section 33-24-05-122:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

v. For facilities that treat or store hazardous waste in waste piles, except as otherwise provided in section 33-24-05-01:

(1) A list of hazardous wastes placed, or to be placed, in each waste pile.

(2) If an exemption is sought to section 33-24-05-131 and sections 33-24-05-47 through 33-24-05-58, as provided by subsection 3 of section 33-24-05-130 or subdivision b of subsection 2 of section 33-24-05-47, an explanation of how the requirements of subsection 3 of section 33-24-05-130 will be complied with or detailed plans and an engineering report describing how the requirements of subdivision b of subsection 2 of section 33-24-05-47 will be met.

(3) Detailed plans and an engineering report describing how the pile is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-131. This submission must address the following items as specified in that section:

(a) The liner system. If an exemption is sought from the design and operating requirements as provided by subsection 5 of section 33-24-05-131, the owner or operator shall submit detailed plans and engineering and hydrogeologic reports as appropriate describing alternate design and operating practices that will, in conjunction with location aspects, prevent the

migration of any hazardous constituents into the ground water or surface water at any future time. If an exemption from the design and operating requirements is sought for an existing portion of a pile as provided by subsection 6 of section 33-24-05-131, the owner or operator shall submit detailed plans and engineering and hydrogeologic reports as appropriate describing how the existing design and operating practices, together with the location of the facility, will prevent migration of any hazardous constituents into the ground water or surface water during the active life of the facility (including the closure period).

- (b) The location of the seasonal high water table.
 - (c) If applicable, a description of how the wastes will be periodically removed and the liner inspected in accordance with subdivision b of subsection 1 of section 33-24-05-131.
 - (d) Control of run-on.
 - (e) Control of runoff.
 - (f) Management of collection and holding units associated with run-on and runoff control systems.
 - (g) Control of wind dispersal of particulate matter, where applicable.
- (4) A description of how each waste pile, including the liner and appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of subsections 1 and 2 of section 33-24-05-132. This information should be included in the inspection plan submitted under subdivision e of subsection 2 of this section.
 - (5) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals.
 - (6) If ignitable or reactive wastes are to be placed in a waste pile an explanation of how the requirements of section 33-24-05-133 will be complied with.
 - (7) If incompatible wastes or incompatible wastes and materials will be placed in a waste pile, an explanation of how section 33-24-05-134 will be complied with.

(8) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at the closure, as required under subsection 1 of section 33-24-05-135. For any wastes not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how subsections 1 and 2 of section 33-24-05-180 will be complied with. This information should be included in the closure plan and where applicable, the postclosure plan, submitted under subdivision m of subsection 2 of this section.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a waste pile that is not enclosed (as defined in subsection 3 of section 33-24-05-130) is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-136. This submission must address the following items as specified in section 33-24-05-136:

(a) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

w. For facilities that incinerate hazardous waste, except as section 33-24-05-144 provides otherwise, the applicant must fulfill the requirements of paragraph 1, 2, or 3.

(1) When seeking an exemption in accordance with subsection 1 of section 33-24-05-144, submit a demonstration that the waste to be burned:

(a) Is hazardous (either listed in or fails the characteristic tests in chapter 33-24-02) solely because it is:

[1] Ignitable, or corrosive, or both; or

[2] Reactive for characteristics other than those in subdivisions d and e of subsection 1 of section 33-24-02-13, and

will not be burned when other hazardous wastes are present in the combustion zone; and

- (b) Contains insignificant concentrations of the hazardous constituents listed in Appendix V of chapter 33-24-02.
- (2) Submit a trial burn plan or the results of a trial burn including all required determinations in accordance with subsection 2 of section 33-24-06-19.
 - (3) In lieu of a trial burn, the applicant may submit the following information:
 - (a) An analysis of each waste or mixture of wastes to be burned including:
 - [1] Heat value of the waste in the form and composition in which it will be burned.
 - [2] Viscosity (if applicable), or description of physical form of the waste.
 - [3] An identification of any hazardous organic constituents listed in chapter 33-24-02, Appendix V of this article which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in chapter 33-24-02, Appendix V, of this article which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference, see section 33-24-01-05), or their equivalent.
 - [4] An approximate quantification of the hazardous constituent identified in the waste, within the precision specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference, see section 33-24-01-05).
 - [5] A quantification of those hazardous constituents in the waste which may be designated as principle organic hazardous

constituents based on data submitted from the other trial or operational burns which demonstrate compliance with the performance standard in section 33-24-05-147.

(b) A detailed engineering description of the incinerator, including:

[1] Manufacturer's name and model number of incinerator.

[2] Type of incinerator.

[3] Linear dimension of incinerator unit including cross-sectional area of combustion chamber.

[4] Description of auxiliary fuel system (type/feed).

[5] Capacity of prime mover.

[6] Description of automatic waste feed cutoff systems.

[7] Stack gas monitoring and pollution control monitoring system.

[8] Nozzle and burner design.

[9] Construction materials.

[10] Location and description and temperature, pressure, and flow indicating devices and control devices.

(c) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in subparagraph a of paragraph 3 of subdivision w. This analysis should specify the principle organic hazardous constituents which the applicant has identified in the waste for which a permit is sought and any differences from the principle organic hazardous constituents in the waste for which burn data are provided.

(d) The design and operating conditions of the incinerator unit to be used, compared with that for which comparable burn data are available.

(e) A description of the results submitted from any previously conducted trial burns including:

[1] Sampling and analysis techniques used to calculate performance standards in section 33-24-05-147.

[2] Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

[3] The certification and results required by paragraph 7 of subdivision b of subsection 2 of section 33-24-06-19.

(f) The expected incinerator operation information to demonstrate compliance with sections 33-24-05-147 and 33-24-05-149 including:

[1] Expected carbon monoxides level in the stack exhaust gas.

[2] Waste feed rate.

[3] Combustion zone temperature.

[4] Indication of combustion gas velocity.

[5] Expected stack gas volume, flow rate, and temperature.

[6] Computed residence time for waste in the combustion zone.

[7] Expected hydrochloric acid removal efficiency.

[8] Expected fugitive emissions and their control procedures.

[9] Proposed waste feed cutoff limits based on the identified significant operating parameters.

(g) Such supplemental information as the department finds necessary to achieve the purposes of this subdivision.

(h) Waste analysis data, including that submitted in subparagraph a of paragraph 3 of subdivision w,

sufficient to allow the department to specify as permit principle organic hazardous constituents those constituents for which destruction and removal efficiencies will be required.

- (4) The department shall approve a permit application without a trial burn if it finds that:
 - (a) The wastes are sufficiently similar; and
 - (b) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under section 33-24-05-149) operating conditions that will ensure that the performance standards in section 33-24-05-147 will be met.
- x. For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in section 33-24-05-01:
 - (1) A description of plans to conduct a treatment demonstration as required under section 33-24-05-162. The description must include the following information:
 - (a) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste.
 - (b) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data.
 - (c) Any specific laboratory or field test that will be conducted, including:
 - [1] The type of test, e.g., column leaching, degradation.
 - [2] Materials and methods, including analytical procedures.
 - [3] Expected time for completion.
 - [4] Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices.
 - (2) A description of a land treatment program as required under section 33-24-05-161. This information must be submitted with the plans for the treatment

demonstration and updated following the treatment demonstration. The land treatment program must address the following items:

- (a) The wastes to be land treated.
- (b) Design measures and operating practices necessary to maximize treatment in accordance with subsection 1 of section 33-24-05-163, including:
 - [1] Waste application method and rate.
 - [2] Measures to control soil pH.
 - [3] Enhancement of microbial or chemical reactions.
 - [4] Control of moisture content.
- (c) Provisions for unsaturated zone monitoring, including:
 - [1] Sampling equipment, procedures, and frequency.
 - [2] Procedures for selecting sampling locations.
 - [3] Analytical procedures.
 - [4] Chain of custody control.
 - [5] Procedures for establishing background values.
 - [6] Statistical methods for interpreting results.
 - [7] Justification for any hazardous constituents recommended for selection as principle hazardous constituents in accordance with the criteria for such selection in subsection 1 of section 33-24-05-165.
- (d) A list of hazardous constituents reasonably expected to be in or derived from the waste to be land treated based on waste analysis performed pursuant to section 33-24-05-04.
- (e) The proposed dimensions of the treatment zone.

- (3) A description of how the unit is, or will be designed, constructed, operated, and maintained in order to meet the requirements of section 33-24-05-163. This submission must address the following items:
 - (a) Control of run-on.
 - (b) Collection and control of runoff.
 - (c) Minimization of runoff of hazardous constituents from the treatment zone.
 - (d) Management of collection and holding facilities associated with run-on and runoff control systems.
 - (e) Periodic inspection of the unit. This information should be included in the inspection plan submitted under subdivision e.
 - (f) Control of wind dispersal of particulate matter, if applicable.
- (4) If food chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under subsection 1 of section 33-24-05-164 will be conducted including:
 - (a) Characteristics of the food chain crop for which the demonstration will be made.
 - (b) Characteristics of the waste treatment zone and waste application method and rate to be used in the demonstration.
 - (c) Procedures for crop growth, sample collection, sample analysis, and data evaluation.
 - (d) Characteristics of the comparison crop, including the location and conditions under which it was or will be grown.
- (5) If food chain crops are to be grown and cadmium is present in the land treated waste, a description of how the requirements of subsection 5 of section 33-24-05-164 will be complied with.
- (6) A description of the vegetative cover to be applied to closed portions of the facility and a plan for maintaining such cover during the postclosure care period as required under subdivision h of

subsection 1 and subdivision b of subsection 3 of section 33-24-05-167. This information should be included in the closure plan and where applicable, the postclosure care plan submitted under subdivision m.

- (7) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of section 33-24-05-168 will be complied with.
 - (8) If incompatible wastes or incompatible wastes or materials will be placed in or on the same treatment zone, an explanation of how section 33-24-05-169 will be complied with.
 - (9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-170. This submission must address the following items as specified in section 33-24-05-170:
 - (a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.
 - (b) The attenuative properties of underlying and surrounding soils or other materials.
 - (c) The mobilizing properties of other materials codisposed with these wastes.
 - (d) The effectiveness of additional treatment, design, or monitoring techniques.
- y. For facilities that dispose of hazardous waste in landfills, except as otherwise provided in section 33-24-05-01:
- (1) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell.
 - (2) Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and maintained to comply with the requirements of section 33-24-05-177. This submission must address the following items as specified in that section:

- (a) The liner system and leachate collection and removal system. If an exemption from the design and operating requirements for the landfill is sought as provided by subsection 5 of section 33-24-05-177 submit detailed plans and engineering and hydrogeologic reports as appropriate describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituent into the ground water or surface water at any future time. If an exemption from the design and operating requirements is sought for an existing portion of a landfill as provided by subsection 6 of section 33-24-05-177, the owner or operator shall submit detailed plans and engineering and hydrogeologic reports as appropriate describing how the existing design and operating practices, together with the location of the facility, will prevent migration of any hazardous constituents into the ground water or surface water during the active life of the facility (including the closure period) and the postclosure care period.
 - (b) Control of run-on.
 - (c) Control of runoff.
 - (d) Management of collection and holding facilities associated with run-on and runoff control systems.
 - (e) Control of wind dispersal of particulate matter where applicable.
- (3) Detailed plans and an engineering report explaining the location of the saturated zone in location to the landfill. The design of the double-liner system that incorporates a leak detection system between the liners, and a leachate collection and removal system above the liner.
 - (4) A description of how each landfill, including the liner and cover systems will be inspected in order to meet the requirements of subsections 1 and 2 of section 33-24-05-178. This information should be included in the inspection plan submitted under subdivision e.
 - (5) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with subsection 1 of section 33-24-05-180 and a

description of how each landfill will be maintained and monitored after closure in accordance with subsection 2 of that section. This information should be included in the closure and postclosure plans submitted under subdivision m.

(6) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of section 33-24-05-181 will be complied with.

(7) If incompatible wastes or incompatible wastes and materials will be landfilled an explanation of how section 33-24-05-182 will be complied with.

~~(8) If bulk or noncontainerized liquid waste or waste containing free liquids is to be landfilled an explanation of how the requirements of section 33-24-05-183 will be complied with.~~

~~(9)~~ (8) If containers of hazardous waste are to be landfilled an explanation of how the requirements of section 33-24-05-184 or 33-24-05-185, as applicable, will be complied with.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of section 33-24-05-186. This submission must address the following items as specified in section 33-24-05-186:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

z. A summary of the ground water monitoring data obtained during the federal interim status period under 40 CFR Part 265.90 through 265.94, were applicable, or during the period of operating status prior to final administrative approval of the permit application under section 33-24-06-16.

- aa. Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground water flow direction and rate, and the basis for such identification, i.e., the information obtained from hydrogeologic investigations of the facility area.
- bb. On the topographic map required under subdivision q a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under section 33-24-05-52, the proposed location of ground water monitoring wells as required under section 33-24-05-54 and, to the extent possible, the information required in subdivision aa.
- cc. A description of any plume of contamination that has entered the ground water from a regulated unit at the time the application is submitted that:
 - (1) Delineates the extent of the plume on the topographic map required under subdivision q.
 - (2) Identifies the concentration of each chapter 33-24-02, Appendix V, constituent throughout the plume or identifies the maximum concentrations of each Appendix V constituent in the plume.
- dd. Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of section 33-24-05-54.
- ee. If the presence of hazardous constituents has not been detected in the ground water at the time of permit application the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of section 33-24-05-55. This submission must address the following items as specified under that section:
 - (1) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of hazardous constituents in the ground water.
 - (2) A proposed ground water monitoring system.
 - (3) Background values for each proposed monitoring parameter or constituent or procedures to calculate such values.
 - (4) A description of proposed sampling analysis and statistical comparison procedures to be utilized in evaluating ground water monitoring data.

ff. If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of section 33-24-05-56. The owner or operator shall also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of section 33-24-05-57, except as provided in subdivision e of subsection 8 of section 33-24-05-55. To demonstrate compliance with section 33-24-05-56 the owner or operator shall address the following items:

- (1) A description of the wastes previously handled at the facility.
- (2) A characterization of the contaminated ground water, including concentrations of hazardous constituents.
- (3) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with sections 33-24-05-54 and 33-24-05-56.
- (4) Proposed concentration limits for each hazardous constituent based on the criteria set forth in subsection 1 of section 33-24-05-51, including a justification for establishing any alternate concentration limits.
- (5) Detailed plans and an engineering report describing the proposed ground water monitoring system in accordance with the requirements of section 33-24-05-54.
- (6) A description of proposed sampling analysis and statistical comparison procedures to be utilized in evaluating ground water monitoring data.

gg. If hazardous constituents have been measured in the ground water which exceed the concentration limits established under Table 1 of section 33-24-05-51, or if ground water monitoring conducted at the time of permit application under sections 33-24-05-47 through 33-24-05-51 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of section 33-24-05-57. However, an owner or operator is not required to submit information to establish a corrective action program if the owner or operator demonstrates to the department that alternate

concentration limits will protect human health and the environment after considering the criteria listed in subsection 2 of section 33-24-05-51. An owner or operator who is not required to establish a corrective action program for this reason shall instead submit sufficient information to establish a compliance monitoring program which meets the requirements of section 33-24-05-56 and subdivision ee of subsection 2 of this section. To demonstrate compliance with section 33-24-05-57 the owner or operator shall address, at a minimum, the following items:

- (1) A characterization of the contaminated ground water, including concentrations of hazardous constituents.
- (2) The concentration limit for each hazardous constituent found in the ground water as set forth in section 33-24-05-51.
- (3) Detailed plans and an engineering report describing the corrective action to be taken.
- (4) A description of how the ground water monitoring program will assess the adequacy of the corrective action.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

33-24-06-18. Permits by rule. Notwithstanding any other provision of this chapter or chapter 33-24-07, the following are deemed to have a hazardous waste permit if the conditions listed are met:

1. **Injection wells.** The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:
 - a. Has a permit for underground injection issued under 40 CFR Part 144 or 145; and
 - b. Complies with the conditions of that permit and the requirements of section 33-25-01-18 (requirements for wells managing hazardous waste) of article 33-25 (underground injection control).
 - c. Complies with section 33-24-05-58.
2. **Publicly owned treatment works.** The owner or operator of a publicly owned treatment works which accepts for treatment hazardous waste, if the owner or operator:

- a. Has a North Dakota pollutant discharge elimination system permit;
- b. Complies with the conditions of that permit; and:
- c. Complies with the following:
 - (1) Section 33-24-05-02, identification number.
 - (2) Section 33-24-05-38, use of manifest system.
 - (3) Section 33-24-05-39, manifest discrepancies.
 - (4) Subsection 1 and subdivision a of subsection 2 of section 33-24-05-40, operating record.
 - (5) Section 33-24-05-42, annual report.
 - (6) Section 33-24-05-43, unmanifested waste report.
 - (7) If the waste meets all state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the publicly owned treatment works through a sewer, pipe, or similar conveyance. Section 33-24-05-58, corrective action for solid waste management units.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-30.3-04, 23-20.3-05

33-24-06-20. Interim permits for underground injection control wells- The department may issue a permit under this chapter to any Class I underground injection control well injecting hazardous wastes within this state until an underground injection control program has been approved or promulgated. Any such permit must apply and ensure compliance with all applicable requirements of chapter 33-24-05, and must be for a term not to exceed two years. No such permit may be issued after approval or promulgation of an underground injection control program in this state. Any permit under this section must contain a condition providing that it will terminate upon final action by the department under an underground injection control program to issue or deny an underground injection control permit for the facility. Research, development, and demonstration permits.

1. The department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process

for which permit standards for such experimental activity have not been promulgated under chapter 33-24-05. Any such permit must include such terms and conditions as will assure protection of human health and the environment. Such permits:

- a. Must provide for the construction of such facilities as necessary, and for operation of a facility for not longer than one year unless renewed as provided in subsection 4;
 - b. Must provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the department deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology on human health and the environment; and
 - c. Must include such requirements as the department deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the department deems necessary regarding testing and providing of information to the department with respect to the operation of the facility.
2. For the purpose of expediting review and issuance of permits under this section, the department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in chapters 33-24-06 and 33-24-07 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
 3. The department may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.
 4. Any permit issued under this section may be renewed not more than three times. Each such renewal is for a period of not more than one year.

History: Effective January 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04, 23-20.3-05

TITLE 38
Highway Patrol

JUNE 1986

STAFF COMMENT: Article 38-05 contains all new material but is not underscored so as to improve readability.

ARTICLE 38-05

FLAGGING AND LIGHTING REQUIREMENTS FOR VEHICLES
AND LOADS EXEMPT FROM WIDTH LIMITATIONS

Chapter	
38-05-01	Definitions
38-05-02	Standards for Marking Vehicles and Loads
38-05-03	Lighting Requirements

CHAPTER 38-05-01
DEFINITIONS

Section	
38-05-01-01	Definitions

38-05-01-01. Definitions. In this article, unless the context or other subject matter requires:

1. "Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry.

2. "Construction and building contractors' equipment" means vehicles and equipment used in the construction or improvement of buildings, highways, bridges, or other structures and also including housemovers' equipment and vehicles, and specialized oilfield vehicles commonly referred to as rig-up trucks or gin trucks.
3. "Hay grinder" means a self-propelled or towed implement of husbandry used commercially for grinding hay or straw.
4. "Self-propelled fertilizer spreader" means a factory-built vehicle or a truck converted with equipment mounted for the purpose of spreading liquid or dry fertilizer commercially on farm or ranch fields.

History: Effective June 1, 1986.

General Authority: NDCC 39-12-04

Law Implemented: NDCC 39-12-04

CHAPTER 38-05-02 STANDARDS FOR MARKING VEHICLES AND LOADS

Section

38-05-02-01

Standards for Marking Vehicles and Loads

38-05-02-01. Standards for marking vehicles and loads.

1. Any vehicle or load exempt from width limitations as provided for in North Dakota Century Code section 39-12-04 must display red or bright orange flags that shall be mounted on the most practical outside dimension on the traffic side of the overwidth vehicle or load, front and rear. If one flag is visible from both the front and rear, only one flag would be required. All flags shall be made of red or bright orange cloth or other suitable material and shall be at least eighteen inches [45.72 centimeters] by eighteen inches [45.72 centimeters] in size.
2. In lieu of the flagging requirements in subsection 1:
 - a. Overwidth movements may be followed by a vehicle with lighted flashing lights that are visible from the rear for a minimum five hundred feet [152.4 meters]; or
 - b. The overwidth vehicle itself, or vehicle towing or hauling an overwidth load, may be equipped with a lighted rotating or flashing amber light or lights that are visible from the rear for a minimum five hundred feet [152.4 meters].

3. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width are exempted from the above flagging requirements, however:
 - a. All movements shall then be preceded and followed by pilot cars equipped with a lighted rotating or flashing amber light mounted on top of the highest part of the vehicles that is visible for a minimum five hundred feet [152.4 meters];
 - b. Vehicles, or vehicles towing or hauling loads, that exceed fourteen feet six inches [441.96 centimeters] in overall width shall be equipped with a lighted rotating or flashing amber light or lights that are visible from the front and rear for a minimum five hundred feet [152.4 meters]; or
 - c. Movements that exceed fourteen feet six inches [441.96 centimeters] in overall width shall have a red or bright orange flag that is at least eighteen inches [45.72 centimeters] by eighteen inches [45.72 centimeters] in size mounted on a pole showing the extreme outside width and height on the traffic side of the load. If one flag is not clearly visible from the front and rear of the vehicle, then flags must be mounted on both the front and rear of the vehicle.

History: Effective June 1, 1986.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

CHAPTER 38-05-03 LIGHTING REQUIREMENTS

Section
38-05-03-01 Lighting Requirements

38-05-03-01. Lighting requirements. All vehicles and loads exempt from width limitations that are authorized to travel between sunset and sunrise shall meet the lighting requirements as provided for in North Dakota Century Code chapter 39-21. Every vehicle used for towing or hauling an implement of husbandry and every self-propelled implement of husbandry may, in addition to the lighting requirements, be equipped with a lighted rotating or flashing amber light or lights that are clearly visible from the front and rear for a minimum five hundred feet [152.4 meters].

History: Effective June 1, 1986.
General Authority: NDCC 39-12-04
Law Implemented: NDCC 39-12-04

TITLE 43
Industrial Commission

AUGUST 1986

43-02-01-14. **Method of plugging.** Before any testhole is abandoned, all of the cuttings possible must be returned to the testhole, and it shall be plugged with some device set three feet [-9] meters below the surface and covered with cuttings in a manner approved by the state geologist. The plugging shall be such as to prevent caving around the top of the testhole and in such a manner as to prevent the intrusion of any foreign material. Any cuttings not returned to the hole must be spread at the surface, if approved by the landowner, or properly disposed of off the testhole site, if approved by the owner of the disposal site. The plugging shall be accomplished immediately when all desired information has been obtained.

If a testhole penetrates water bearing sands it shall be plugged with cement or some other method approved by the state geologist, in such a manner as to permanently confine the water to its original stratum.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12.1-04

Law Implemented: NDCC 38-12.1-04

43-02-02-01. **Definitions.** The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-12.1, except:

1. "Completion" means when the well is capable of producing subsurface minerals through wellhead equipment from the ultimate producing zone after casing has been run.
2. "Deep well" means any hole drilled below one thousand feet [304.8 meters] to explore for, develop, or produce subsurface minerals.

3. "Deposit" means an underground concentration containing a common accumulation of subsurface minerals.
4. "Field" means the general area underlaid by a concentration of subsurface minerals. Field also includes the geological formation containing such subsurface minerals.
5. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, and includes commercial electrical logs and similar records.
6. "Nonhydrocarbon gas" means all naturally occurring gaseous elements and compounds except hydrocarbons and carbon dioxide as regulated under North Dakota Century Code chapter 38-08.
7. "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.
- ~~7-~~ 8. "Owner" means the person who has the right to drill into and produce from a mineral-bearing formation and to appropriate the subsurface minerals the person produces therefrom either for that person or others or for that person and others.
- ~~8-~~ 9. "Producer" means the owner of a well or wells capable of producing subsurface minerals.
- ~~9-~~ 10. "Product" means any commodity made from any subsurface mineral.
- ~~10-~~ 11. "Shallow well" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of developing or producing subsurface minerals.
- ~~11-~~ 12. "Testhole" means any hole drilled to a total depth of less than one thousand feet [304.8 meters] for the purpose of gathering information on subsurface minerals.
- ~~12-~~ 13. "Waste" means and includes (a) physical waste, (b) operations which cause or tend to cause unnecessary or excessive surface loss, and (c) operations that do not recover all of the mineral being mined that is technically and economically possible.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-02. **Scope of chapter.** This chapter is of statewide application and has been adopted by the industrial commission to conserve the natural resources of North Dakota to prevent waste and to provide for operation in a manner as to protect correlative rights of

all owners of subsurface minerals. Special rules, field rules, and regulations and orders have been and will be issued when required and shall prevail as against this chapter if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and operation in a manner to protect correlative rights.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-06. United States government leases. The commission recognizes that all persons drilling on United States government land or United States minerals shall comply with the federal regulations. Such persons shall also comply with all applicable state rules and regulations which are not in conflict with federal regulations, ~~except that no fee shall be required by the state for a permit to drill or explore on United States government land or for United States government minerals. Data obtained from such drilling or exploration.~~ Copies of the sundry notices and reports on wells and the well log of the wells on United States government land or minerals shall be furnished to the state geologist at no expense to the state geologist.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-11. Bond. Before any person receives a permit to explore for or produce subsurface minerals, the person shall submit to the commission and obtain its approval of a bond, in a form approved by the commission, conditioned as provided by law. Each such bond shall be executed by a responsible surety company, authorized to transact business in North Dakota.

The amount of the bond shall be commensurate with the number of wells and the type of project. The amount of a bond shall be as follows:

1. Single shallow well or testhole - ~~one~~ five thousand dollars.
2. Blanket bond for ~~two or more~~ fifty or less shallow wells or testholes - ~~fifteen~~ fifty thousand dollars.
3. Single deep well - ~~five~~ twenty-five thousand dollars.
4. Blanket bond for ~~two or more~~ ten or less deep wells - ~~twenty-five~~ one hundred thousand dollars.

5. Bond for strip mining - two thousand dollars per acre [.40 hectare].

Liability on the bond is conditioned on compliance with North Dakota Century Code chapter 38-12 and the rules and orders of the commission, and continues until either of the following occurs:

1. The testholes or wells have been satisfactorily plugged as provided in this chapter, the sites restored and approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.
2. The mined lands or lands disturbed by any method of exploration or production of subsurface minerals have been restored and approved by the state geologist.
3. The liability on the bond has been transferred to another bond and such transfer approved by the commission. The transferee of any well or the operator of any well is responsible for the plugging of any such well and for that purpose shall submit a new bond or produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. The original or prior bond may not be released as to the plugging responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such well. All liability on bonds continues until the plugging of such well or wells and the restoration of the surface is completed and approved.

The commission shall advise the surety and the principal when liability on a bond is terminated.

The state geologist is vested with the power to act for the commission as to all matters within this section.

~~Any state or federal agency engaged in subsurface mineral exploration or evaluation shall be exempt from providing such bond, also, the one hundred dollar fee required by section 43-02-02-12 shall be waived.~~

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-17. Casing and tubing requirements. All wells drilled for subsurface minerals shall be completed with strings of casing which shall be properly cemented at sufficient depths adequately to protect the subsurface mineral-bearing strata to be produced.

Sufficient cement shall be used on surface casing to fill the annular space back of the casing to the bottom of the cellar or to the

surface of the ground. All strings of casing shall stand cemented under pressure for at least twelve hours before drilling plug or initiating tests. The term under pressure as used herein will be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other method approved by the commission.

All production wells shall be equipped with tubing and packer and the annulus pressure must be monitored to detect leaks or breaks in the casing or tubing, unless the entire casing string is cemented to surface when initially set in place.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-21. Well and lease equipment. Wellhead ~~connections~~ equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment ~~will~~ may be subjected shall be installed and maintained in first-class condition so that tests may be made easily. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-22.1. Determination of well potential. After the completion or recompletion of a nonhydrocarbon gas well, the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analysis of the gas must be reported to the state geologist within thirty days after completion of the well.

Operators shall conduct tests to determine the daily open flow potential volumes of gas wells from which gas is being used or marketed in accordance with an order of the commission or at the request of the state geologist. Test procedures must be those commonly used in the industry unless otherwise approved by the state geologist.

History: Effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-24. Method of plugging. Before any well or testhole is abandoned, it shall be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in

combination as may be approved by the state geologist. Casing shall be cut off three feet [.91 meters] below the surface of the ground. The top plug in any hole shall be set at least three feet [.91 meters] below ground level, and the land surface shall be restored as nearly as possible to its original condition.

A well may be abandoned temporarily upon approval of the state geologist. In such event, casing may not be pulled and a plug must be placed at the top of the casing, in such manner as to prevent the intrusion of any foreign matter into the well.

When drilling or production operations have been suspended for six months, wells must be plugged and abandoned in accordance with regulations of the commission unless a permit for temporary abandonment has been obtained from the state geologist.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-25. Wells to be used for freshwater. When the well to be plugged may safely be used as a freshwater well and such utilization is desired by the landowner, the well need not be filled above a sealing plug set below the freshwater formation. However, if written authority and assumption of liability for such plugging shall be secured from the landowner and filed with the state geologist, the operator shall be relieved of the operator's responsibility under this chapter.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

Repealed effective August 1, 1986.

43-02-02-31. Report of water injected. The operator of each and every injection well, ~~not including wells in a solution mining operations,~~ shall, on or before the tenth day of the second month following the month in which injection occurs, file with the state geologist a sworn statement showing the amount of liquid injected, the composition of the liquid, and the source thereof.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-02-38. Application for hearing. In any proceeding instituted upon motion of the commission application, the application shall be signed by at least two members of the

commission, and any other application shall be signed by the person filing same the applicant or by the person's applicant's attorney. An application shall state (1) the name and general description of the common source or sources of supply affected by the order, rule, or regulation sought, if any, unless same is intended to apply to and affect the entire state, in which event the application shall so state, and such statement shall constitute sufficient description; and (2) briefly the general nature of the order, rule, or regulation sought in the proceedings.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02-42. Burden of proof. In any proceeding instituted before the commission which requires a hearing, the burden of proof shall be upon the one having the affirmative in such proceeding.

General Authority: NDEC 38-12-04

Law Implemented: NDEC 38-12-04

Repealed effective August 1, 1986.

43-02-02-43. Designation of examiners. The commission shall may by motion designate and appoint not more than four qualified individuals to be serve as examiners. Each examiner so appointed shall be a member of the staff of the North Dakota geological survey or of the industrial commission. The commission may, by motion, designate and appoint a successor to any person whose status as an examiner is terminated for any reason. Each individual designated and appointed as an examiner must be a geologist, petroleum engineer, or licensed lawyer, with at least two years of such experience and a college degree in geology, engineering, or law. However, nothing contained in this section shall prevent any member of the commission from being designated as, or serving as, an examiner. The commission may refer any matter or proceeding to any legally designated and appointed examiner for hearing in accordance with this chapter.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02-44. Matters to be heard by examiner. The commission may refer any matter or proceeding to any legally designated and appointed examiner and alternate examiner for hearing in accordance with this chapter. The examiner and alternate

examiner appointed to hear any specific case shall be designated by name-

General Authority: NBCC 38-12-04

Law Implemented: NBCC 38-12-04

Repealed effective August 1, 1986.

43-02-02-45. Powers and duties of examiner. The commission may by motion limit the powers and duties of the examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient. However, only to such limitation as may be ordered by the commission, the examiner to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of the hearing, including the swearing of witnesses and receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceedings to be made and transcribed and shall certify same to the commission as provided in section 43-02-02-48 retained.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02-46. Matters heard by commission. Notwithstanding any other provision of this chapter, the hearing on any matter or proceeding shall be held before the commission (1) if the commission in its discretion desires to hear the matter, (2) if the application or motion so requests, (3) if the matter initiated on a motion of the commission for the enforcement of any rule, regulation, order, or statutory provision, (4) if any party who may be affected by the matter or proceeding files with the commission more than three days prior to the date set for the hearing on the matter or proceeding a written objection to such matter or proceeding being heard before a trial examiner, or (5) if the matter or proceeding is for the purpose of amending, removing, or adding a statewide rule-

General Authority: NBCC 38-12-04

Law Implemented: NBCC 38-12-04

Repealed effective August 1, 1986.

43-02-02-48. Report of examiner. Upon the conclusion of any hearing before an examiner, the examiner shall promptly consider the proceedings in such hearings, and based upon the record of such hearing, the examiner shall prepare the examiner's written a report and recommendations for the disposition of the matter or proceeding by the commission. The report and recommendations shall either be accompanied by a proposed order or shall be in the form of a proposed order, and shall be submitted to the commission with the certified record of the hearing.

History: Amended effective August 1, 1986.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

43-02-02-50. Hearing de novo before commission. When any order has been entered by the commission pursuant to any hearing held by an examiner, any party adversely affected by the order shall have the right to have such matter or proceeding heard de novo before the commission, provided that within thirty days from the date such order is rendered the party files with the commission a written application for such hearing before the commission. If such application is filed, the matter or proceeding shall be set for hearing before the commission at the next regular hearing date following the expiration of fifteen days from the date such application is filed with the commission. Any person affected by the order or decision rendered by the commission after hearing before the commission may apply for rehearing pursuant to and in accordance with section 43-02-02-41, and that section, together with the law applicable to rehearings and appeals in matters and proceedings before the commission, shall thereafter apply to the matter of proceeding.

General Authority: NDCC 38-12-04

Law Implemented: NDCC 38-12-04

Repealed effective August 1, 1986.

STAFF COMMENT: Chapter 43-02-08 contains all new material but is not underscored so as to improve readability.

CHAPTER 43-02-08 STRIPPER WELL PROPERTY DETERMINATION

Section

43-02-08-01

Definitions

43-02-08-02

Application for Stripper Well Property Determination

43-02-08-03

Enforcement Officer Shall Determine Stripper Well
Property Status

43-02-08-04	Applicant Adversely Affected May Submit Amended Application - Procedure
43-02-08-05	Person Adversely Affected May Petition the Commission - Procedure
43-02-08-06	Expiration Date

43-02-08-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Condensate recovered in nonassociated production" means a liquid hydrocarbon recovered from a well classified as a gas well by the commission.
2. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent operations, using sound engineering practices, without loss of ultimate recovery.
3. "Operator" means any person who owns a fee interest or an interest in an oil and gas leasehold, and has the right to produce oil therefrom.
4. "Qualifying period" means any preceding consecutive twelve-month period beginning after December 31, 1972, that oil production from a property did not exceed an average of ten barrels of oil per day per well.

History: Effective August 1, 1986.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02. Application for stripper well property determination. Any operator desiring to classify a property as a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1, shall file an application for stripper well property determination with the enforcement officer and obtain a determination certifying the property as a stripper well property.

The application must include, but is not limited to the following:

1. A fee in an amount to be set by the commission.
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. The legal description of the property for which a determination is requested.

4. The well name and number and legal description of each oil-producing well on the property during the qualifying period and at the time of application.
5. Certification from the state tax commissioner that the property the applicant desires to classify as a stripper well property constitutes a property as specified under subsection 3 of North Dakota Century Code section 57-51.1-01.
6. The monthly production of each oil-producing well on the property during the qualifying period.
7. An affidavit stating that all working interest owners of the property, and all purchasers of the crude oil produced from the property have been notified of the application by certified or registered mail.

If the application does not contain sufficient information to make a determination, the enforcement officer may require the applicant to submit additional information.

History: Effective August 1, 1986.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. Enforcement officer shall determine stripper well property status.

1. Upon receipt of an application for stripper well property determination, the enforcement officer shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period.
3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the enforcement officer shall either grant or deny the application.
4. If an application for stripper well property status is denied, the enforcement officer shall in writing enter a determination denying the application and specify the basis for the denial. If an application for stripper well property status is granted, the enforcement officer shall in writing enter a

determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the enforcement officer by mail to the applicant, the state tax commissioner, and all other persons submitting written comments. It is the obligation of the applicant to notify and advise all other operators in the property and the purchaser of the crude oil of the determination of the enforcement officer.

History: Effective August 1, 1986.
General Authority: NDCC 38-08-04(5)
Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-04. Applicant adversely affected may submit amended application - Procedure. Any applicant adversely affected by a determination of the enforcement officer made under this chapter may within thirty days after the entry of such a determination submit an amended application. If an amended application is submitted, the enforcement officer shall issue a determination of stripper well property status within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective August 1, 1986.
General Authority: NDCC 38-08-04(5)
Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-05. Person adversely affected may petition the commission - Procedure. Any person adversely affected by a determination of the enforcement officer of either an application or an amended application for stripper well property status made under this chapter may within thirty days after the entry of such a determination petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and North Dakota Administrative Code chapter 43-02-03.

History: Effective August 1, 1986.
General Authority: NDCC 38-08-04(5)
Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-06. Expiration date. This chapter is effective through June 30, 1989, and after that date is ineffective.

History: Effective August 1, 1986.
General Authority: NDCC 38-08-04(5)
Law Implemented: NDCC 38-08-04(4), 57-51.1-01

TITLE 45
Insurance, Commissioner of

JULY 1986

45-02-02-14. Excessive or unnecessary coverage --When presumed a violation.

1. When presumed a violation. An agent or broker is presumed to have violated subsection ~~13~~ 8 of North Dakota Century Code section 26.1-26-42 when the agent or broker knowingly solicits, procures, or sells a medicare supplement policy containing both A and B coverage to any person who has such a medicare supplement policy in force unless the insured is informed by the agent and understands, there is to be a replacement of the existing policy and there is an indication in writing or on the face of the application that the new policy is intended to replace the existing policy. It is not presumed to be a violation to solicit and sell a second policy which provides only B coverage. A violation may occur in other situations where there is the sale or solicitation of unnecessary or excessive coverage, even though no presumption has been established under this section.
2. Suitability. In recommending the purchase of any accident and health, health service, annuity, or nursing home policy to any consumer over age sixty-five, or medicare supplement policy to any consumer, an agent shall have reasonable grounds for believing that the recommendation is suitable for the consumer, and shall make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by examination of the totality of the particular consumer's circumstances, including, but not limited to the following:
 - a. The consumer's income;
 - b. The consumer's need for insurance; and

c. The values, benefits, and costs of the consumer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

History: Effective October 1, 1984; amended effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-42

STAFF COMMENT: Chapter 45-02-04 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-02-04 CONTINUING EDUCATION AND PRELICENSURE EDUCATION

Section	Purpose
45-02-04-01	Purpose
45-02-04-02	Definitions
45-02-04-03	General Rules
45-02-04-04	General Powers of Commissioner
45-02-04-05	Course Coordinator
45-02-04-06	Instructors
45-02-04-07	Prohibited Practices
45-02-04-08	Extension of Time
45-02-04-09	Licensee Report of Compliance
45-02-04-10	License Revocation

45-02-04-01. Purpose. Insurance education courses must promote educational activities that advance one's professional expertise and keep the individual abreast with the insurance industry. Routine meetings, luncheons, and gatherings not advertised and developed as insurance education events will not qualify for insurance education credit.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent or licensee" means a natural person licensed by this state for the type and kind of insurance being marketed and for which licensing examinations are required.
2. "Commissioner" means the commissioner of the insurance department.
3. "Continuing education" means an accredited educational experience derived from participation in approved lectures,

seminars, and correspondence courses in areas related to insurance. This education shall be designed to improve the professional skills of the participant and upgrade the standard of all insurance licensees to better serve the public.

4. "Coordinator" means an individual who is responsible for monitoring insurance education offerings and who serves as the liaison for students, instructors, and the commissioner.
5. "Instructor" means an individual who teaches, lectures, or otherwise instructs an insurance education offering.
6. "Insurance education" means prelicensure education and continuing education.
7. "Insurance lines" for insurance education purposes include life insurance, accident and health insurance, property insurance, and casualty insurance.
8. "License" means the authorization issued to an individual by the commissioner of insurance to act as an insurance agent.
9. "License applicant" means a person not currently licensed or an agent seeking a license for a line or lines of insurance for which the person is not currently licensed.
10. "National insurance education program" means a curriculum dedicated to the continuance of insurance education, leading to a nationally accepted insurance designation, such as a chartered property casualty underwriter (CPCU), a chartered life underwriter (CLU), or a registered health underwriter (RHU).
11. "Prelicensure education" means approved classroom education taken prior to sitting for the state licensing examination and completed within six months of filing the license application.
12. "Sponsor" means a natural person, firm, institution, partnership, corporation, or association offering or providing insurance education.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-03. General rules.

1. **Course requirements.** The continuing education course requirements include an educational presentation involving insurance fundamentals, policies, laws, risk management, or other courses which are offered in a process of instruction

approved by the commissioner as expanding skills and developing knowledge to better serve the insurance buying public.

2. **Nonapproved courses.** The following course content will not qualify for continuing education credit:
 - a. Prelicensure training.
 - b. Prospecting.
 - c. Recruiting.
 - d. Sales skills and promotions.
 - e. Motivation.
 - f. Psychology.
 - g. Communication skills.
 - h. Supportive office and machine skills.
 - i. Personnel management.

The above listing does not limit the commissioner's authority to disapprove any application which fails to meet the standards for course approval.

3. **Prelicensure course.** A prelicensure course means a classroom program consisting of at least eight credit hours, per line of insurance, with course content including:
 - a. For property or casualty insurance, or both:
 - (1) North Dakota laws, rules, and regulations relating to property and casualty insurance;
 - (2) Insurance and insurance-related concepts;
 - (3) Policy provisions;
 - (4) Types of policies;
 - (5) Perils, exclusions, deductibles, and liability;
 - (6) Prospecting and evaluating needs;
 - (7) Serving clients; and
 - (8) Presentation and acceptance of the policy.
 - b. For life or accident and health insurance, or both:

- (1) North Dakota laws, rules, and regulations relating to life or accident and health insurance;
 - (2) Types of policies and coverages;
 - (3) Policy provisions, options, and benefits;
 - (4) Completing the application and delivering the policy;
 - (5) Taxes, retirement, and other insurance concepts;
 - (6) Group insurance; and
 - (7) Other provisions affecting insurance benefits.
4. **License applicant responsibility.** All license applicants shall present to the proctor, prior to sitting for insurance licensing examinations, a valid copy of the prelicensure report of compliance.
 5. **Licensee responsibility.** Each licensee shall be responsible for maintaining original records of the licensee's continuing education certificates of attendance for a period of one year from the last reporting deadline. Such records shall be made available to the commissioner upon request.
 6. **Licensee seeking additional lines.** Effective January 1, 1986, prelicensure education will be required of a current resident agent, broker, or consultant seeking authority in a line of insurance for which he or she is not currently licensed.
 7. **Correspondence course credit.** Credit received by an agent for a correspondence course must be based on successful completion of the course as prescribed by the sponsor and approved by the insurance commissioner.
 8. **Reciprocity.** The commissioner may approve credit for insurance-related courses approved by the North Dakota real estate commission and the North Dakota state bar association for continuing education purposes.
 9. **Credit hour.** A credit hour means sixty minutes of time, of which at least fifty minutes must be instruction, with a maximum of ten minutes break.
 - a. Credit hours for insurance education will not be approved in increments of less than one-half hour.
 - b. Neither students nor instructors may earn credit for attending or instructing at any subsequent offering of a continuing education course more than once during a reporting period.

10. **Course audit.** The commissioner of an authorized representative reserves the right to audit insurance education offerings with or without notice to the sponsor.
11. **National insurance education independent study.** A licensee who passes a national examination by way of independent study may receive up to fifteen hours of continuing education credit, of which seven and one-half hours will be considered as classroom.
12. **Class attendance.**
 - a. No certificate of attendance will be issued to a continuing education participant who is absent for more than ten percent of the classroom hours.
 - b. Prelicensure courses must be attended in their entirety.
13. **Examinations.** Course examinations will not be required for insurance education courses, unless required by the sponsor.
14. **Textbooks.** Textbooks are not required for continuing education courses. All course materials must contain accurate and current information relating to the subject matter being taught.
15. **Approval of course offerings.** The commissioner of insurance requires sponsors of insurance education courses to provide the following:
 - a. To the commissioner prior to course offerings:
 - (1) An application for course approval of an insurance education course (10920) (in duplicate) ninety days prior to course offering.
 - (2) A complete course outline designating individual topics and the amount of time devoted to each area being taught. (NOTE: Prelicensure course outlines must include a copy of all textbooks, handouts, etc., excluding Pictorial, R & R Newkirk, and Educational Training Systems, Inc., which are on file at the insurance department).
 - (3) An application for coordinator approval (10921) (in duplicate).
 - (4) An application for instructor approval (10921) (in duplicate).
 - (5) A fifty dollar per course filing fee.

- b. A class roster (10922) to the commissioner fifteen days subsequent to completion of all insurance education course. This requirement may be waived for nationally designated independent study courses.
- c. To course participants subsequent to course offerings:
 - (1) A course attendance certificate (10923) and a summary report of compliance (10924) to all students successfully completing an approved continuing education course.
 - (2) A prelicensure report of compliance (10925) to all students successfully completing an approved prelicensure course.

Upon review by the commissioner, sponsors will receive a copy of the course application indicating approval or denial, credit hours assigned, and a course certification number. Course certification numbers must be used on all insurance education certificates, correspondence, and advertisements.

- 16. **Sponsor management responsibility.** Sponsors of insurance education courses are responsible for the actions of their respective instructors and coordinators.
- 17. **Course approval "after the fact".** Credit may be granted for a course "after the fact" provided such courses are properly submitted and approved by the commissioner. Subsequent approval depends on course content and is not automatic or guaranteed.
- 18. **Advertising.** Courses may not be advertised in any manner unless approval has been granted, in writing, by the commissioner.
 - a. All advertising relating to approved course offerings shall contain the following statement: "This course has been approved by the commissioner of insurance for (insert hours) of insurance education credit".
 - b. Advertising must be truthful, clear, and not deceptive or misleading.
- 19. **Approval of subsequent offerings.** After approval has been granted for the initial offering of a course, approval for subsequent offerings will be granted without the necessity of a new application if a "notice of subsequent offering" is filed with the commissioner at least fifteen days before the date the course is to be held.
- 20. **Fees.** Fees for courses must be reasonable and clearly identifiable to students. If a course is canceled for any

reason, all fees must be returned within thirty days of cancellation.

21. **Adequate facility.** Each course of study must be conducted in a classroom or other facility which will adequately and comfortably accommodate the faculty and the number of students enrolled. The sponsor may limit the number of students enrolled in a course.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-04. General powers of commissioner. The commissioner may deny, censure, suspend, or revoke the approval of a sponsor, coordinator, instructor, or course if it is determined not to be in compliance with the statute or rules governing the offering of insurance education courses. The commissioner may also refuse to approve courses conducted by specific sponsors if he determines that past offerings have not been in compliance with insurance education laws and rules.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-05. Course coordinator.

1. **General requirement.** Each course of study must have at least one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with the statutes and rules governing the offering of insurance education courses.
2. **Qualifications.** Course coordinators shall possess the following qualifications:
 - a. A minimum of five years experience during the immediately preceding five-year period as an active licensed insurance agent; or
 - b. At least three years full-time experience during the immediately preceding five-year period in the administration of an education program; or
 - c. A degree in education plus at least two years insurance experience during the immediately preceding five-year period.
3. **Forms.** Applications for coordinator approval must be submitted on forms prescribed by the commissioner.

4. **Responsibilities.** Coordinators shall be responsible for, but not limited to, the following:
- a. Assuring compliance with all laws and rules pertaining to insurance education.
 - b. Notifying the commissioner of any material change in applications of course instructors or course content.
 - c. Assuring that students are provided with current, accurate information, and classroom facilities conducive to a sound learning environment.
 - d. Evaluation of courses and instructors. The commissioner may request written evaluations of courses and instructors either by students or coordinators.
 - e. Investigating complaints relating to course offerings and instructors, and forwarding all written complaints to the insurance department.
 - f. Maintaining accurate records relating to course offerings, instructors, and student attendance for a period of five years from the date the course was completed.
 - g. Being available to instructors and students by providing the name of the coordinator and a telephone number at which the coordinator can be reached.
 - h. Providing students with course attendance certificates on a form prescribed by the commissioner, within thirty days of course completion.
 - i. Notifying the commissioner, fifteen days in advance, of any changes in course offering dates and subsequent offering dates of an approved course.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-06. Instructors.

1. **General requirement.** Failure to have approved instructors teaching an approved insurance education offering will result in loss of course approval.
2. **Qualifications.** Instructors shall possess the following qualifications:
 - a. Three years of recent experience in the subject area being taught;

- b. A degree related to the subject area being taught; or
 - c. Two years of recent experience in the subject area being taught and sixty hours of coursework in the subject area being taught.
3. **Responsibilities.** Instructors shall be responsible for, but not limited to, the following:
- a. Complying with all laws and rules pertaining to insurance education;
 - b. Providing students with current and accurate information;
 - c. Providing a classroom atmosphere conducive to learning; and
 - d. Assisting students and responding to questions relating to course material.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-07. Prohibited practices. Sponsors, coordinators, and instructors are prohibited from misrepresenting any material submitted to the commissioner.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

45-02-04-08. Extension of time. The commissioner may grant an extension of time, not to exceed one year, for completion of the requirements for continuing education. Such requests must be in writing and received by the commissioner thirty days prior to the ending date of the period for which the extension is requested. Extensions may be granted for health, disability, or other extenuating circumstances.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.5

45-02-04-09. Licensee report of compliance. Reports of compliance for continuing education credit must be submitted with a fee of twenty-five dollars at the end of each four-year period following licensure, except as provided below at the inception of the program. Persons licensed prior to January 1, 1986, with surnames beginning with:

1. A-F shall report fifteen hours or more of approved continuing education coursework within thirty days of January 1, 1987.
2. G-K shall report thirty hours or more of approved continuing education coursework within thirty days of January 1, 1988.
3. L-R shall report forty-five hours or more of approved continuing education coursework within thirty days of January 1, 1989.
4. S-Z shall report sixty hours or more of approved continuing education coursework within thirty days of January 1, 1990.

A newly licensed agent shall have the remainder of the calendar year in which initially licensed, plus the next calendar year, to comply with the first year of continuing education requirements. New agents shall report these credits, and subsequent credits for each calendar year thereafter, in the above-listed sequence.

Agents licensed exclusively for the sale of title insurance are exempt from continuing education requirements.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.1(2), 26.1-26-31.4

45-02-04-10. License revocation. Persons subject to revocation of license for falsification of certificates or noncompliance of insurance education statutes shall, when seeking recertification, be subject to the requirements of a new license applicant unless otherwise waived by the commissioner.

History: Effective July 1, 1986.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-49

TITLE 69
Public Service Commission

JUNE 1986

69-05.2-01-02. Definitions. The definitions contained in North Dakota Century Code section 38-14.1-02 shall apply to this article and, as used throughout this article, the following terms have the specified meaning except where otherwise indicated:

1. "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.
4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing and watering of livestock, and the cropping, cultivation and harvesting of plants.

5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
6. "Best technology currently available" means equipment, devices, systems, methods, or techniques which will:
 - a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.
 - b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable.
 - c. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
 - d. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds.
 - e. The commission shall have the discretion to determine the best technology currently available on a case-by-case basis.
7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.
8. "Cash" means:
 - a. All cash items except cash:
 - (1) Restricted by an agreement.
 - (2) Described as earmarked for a particular purpose.
 - b. Short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to sell them in the near future is established by the permittee.
9. "Cemetery" means any area of land where human bodies are interred.

10. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
11. "Coal processing plant" means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads, and other transport facilities.
12. "Coal processing waste" means earth materials which are combustible, physically unstable, or toxic-forming, which are wasted or otherwise separated from product coal and slurried or otherwise transported from coal preparation plants after physical or chemical processing, cleaning, or concentrating of coal.
13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank organized or transacting business in the state of North Dakota or a perfected lien or security interest in real property.
14. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process (oxidation), accompanied by the evolution of heat and a significant temperature rise.
15. "Common-size comparative balance sheet" means item amounts from a number of the permittee's or permit applicant's successive yearly balance sheets arranged side by side in a single statement followed by common-size percentages whereby:
 - a. The asset total is assigned a value of one hundred percent.
 - b. The total of liabilities and owner equity is also assigned a value of one hundred percent.
 - c. Each individual asset, liability and owner equity item is shown as a fraction of one of the one hundred percent totals.

16. "Common-size comparative income statement" means a permittee's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by common-size percentages whereby net sales are assigned a one hundred percent value, and then each statement item is shown as a percentage of net sales.
17. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
18. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
19. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
20. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.
21. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies and interprets for use the soils in a given area. Such survey must meet the standards of the national cooperative soil survey and is the type of survey that is usually made for counties by the United States department of agriculture soil conservation service in cooperation with agencies of the state and, in some cases, other federal agencies. If such survey is not available and a permit applicant is required to cause such a soil survey to be made, the scale of the soils map produced shall be 1:20,000.

22. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
23. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
24. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.
25. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by North Dakota Century Code chapter 38-14.1 and this article is released.
26. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
27. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
28. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
29. "Employee" means, for purposes of restrictions on financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, commission members, or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; and members of advisory boards or commissions established in accordance with state laws or regulations to

represent multiple interests, such as the North Dakota reclamation advisory committee.

30. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

31. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
 - a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.
 - b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water, holding moisture in soils, and holding ground water in porous materials.
 - c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel floodplain and adjacent low terraces.
 - d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
 - e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of floodplains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.

32. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.
33. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
34. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.
35. "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow, or the diversion of flows in which the surface of the soil is largely covered by a sheet of water.
36. "Fragile lands" means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.
37. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
38. "General area" means, with respect to hydrology, the topographic and ground water basin surrounding an extended mining plan area or permit area which is of sufficient size, including areal extent and depth, to include one or more

watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.

39. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
40. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
41. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.
42. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
43. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.
44. "Historic lands" means historic or cultural districts, places, structures, or objects, including archaeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on the state historic sites registry or the national register of historic places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.
45. "Historically used for cropland" means:
 - a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
 - b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of

cropland history only to increase the prime farmland acreage to be preserved; or

- c. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.
- 46. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.
 - 47. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
 - 48. "Important farmland inventory map" means the map published by the soil conservation service, as required by 7 CFR 657, that identifies and locates prime farmland and other farmlands of statewide or local importance.
 - 49. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
 - 50. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.
 - 51. "Industrial and commercial" means, for land use purposes, land used for:
 - a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these

operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.

- b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.
- 52. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
- 53. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.
- 54. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur.
- 55. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
- 56. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.
- 57. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
- 58. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
- 59. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production.

Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.

60. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
61. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
62. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
63. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal mining operations proposed to be conducted during the term of the permit within the proposed permit area.
64. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
65. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.
66. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.
67. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
68. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
69. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
 - a. Any person who uses any resource of economic, recreational, esthetic, or environmental value that may be

adversely affected by surface coal mining and reclamation operations or any related action of the commission.

- b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
- c. Any federal, state, or local governmental agency.

- 70. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.
- 71. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
- 72. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.
- 73. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
- 74. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel conditions; and the aquatic habitat on the permit area and adjacent areas.
- 75. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
- 76. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
- 77. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
- 78. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
- 79. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use,

whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

80. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.
81. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
82. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
83. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
84. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
85. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.
86. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
87. "Residential" means, for land use purposes, single- and multiple-family housing, mobile home parks and other residential lodgings. Land used for facilities in support of

residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

88. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.
89. "Road" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and such contiguous appendages as are necessary for the total structure.

The term does not include:

- a. Temporary nonsurfaced trails used for vehicle access or suitable plant growth material transport where such trails do not appreciably alter the original contour.
 - b. Coal haulage ramps within the pit area.
 - c. Public roads.
90. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.
91. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with this article and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.
92. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:
- a. An environmental harm is any adverse impact on land, air, or water resources, including but not limited to plant and animal life.
 - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any

time before the end of the reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.

- c. An environmental harm is significant if that harm is appreciable and not immediately reparable.
93. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.
 - b. Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce.
 - c. Scenic, historic, archaeological, esthetic, fish, wildlife, plants, or cultural interests.
94. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
95. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.
 - b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
 - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
96. "Spoil" means overburden that has been disturbed during surface coal mining operations.

97. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
98. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
 - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
 - c. Mottling of the soils in the root zones;
 - d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
 - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
99. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities.
100. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
101. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.
102. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
103. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.

104. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
105. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
106. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
107. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
108. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
109. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
110. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.
111. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all floodplains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meters] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.
112. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.
113. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial

fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

114. "Valid existing rights" means:

a. Except for roads:

- (1) Those property rights in existence on ~~July 17, 1979~~ August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the permit applicant to produce coal by a surface coal mining operation; and
- (2) The person proposing to conduct surface coal mining operations on such lands either:
 - (a) Had been validly issued or had made a good faith attempt to obtain, on or before ~~July 17, 1979~~ August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or
 - (b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to ~~July 17, 1979~~ August 3, 1977.

b. For roads:

- (1) A recorded right of way, recorded easement, or a permit for a road recorded as of ~~July 17, 1979~~ August 3, 1977; or
- (2) Any other road in existence as of ~~July 17, 1979~~ August 3, 1977.

c. Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same surface mining activities for which the applicant claims a valid existing right.

d. "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.

115. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the soil conservation service that has been historically used for cropland.
116. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.
117. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.
118. "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions, committed by a person who intends the result which actually occurs.
119. "Woodland" means land where the primary vegetation is trees or shrubs. This includes both natural wooded areas and shelterbelts and other woody plantings made by man.
120. "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-04-01. Areas unsuitable for mining - Permit application review procedures.

1. Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the commission shall review the application to determine whether surface coal mining operations are limited or prohibited under North Dakota Century Code section 38-14.1-07 on the lands which would be disturbed by the proposed operation.
2. Where the proposed operation would be located on any lands listed in subsections 1 through 5 of North Dakota Century Code section 38-14.1-07, the commission shall reject the application if the permit applicant had no valid existing rights for the area on ~~July 1, 1979~~ August 3, 1977, or if the operation did not exist on that date.
3. Where the proposed operation would include federal lands within the boundaries of any national forest, and the permit applicant seeks a determination that mining is permissible under subsection 2 of North Dakota Century Code

section 38-14.1-07, the permit applicant shall submit a permit application to ~~the regional director of~~ the office of surface mining reclamation and enforcement of the United States department of the interior for processing under 30 CFR subchapter D.

4. Where the proposed mining operation is to be conducted within one hundred feet [30.48 meters] measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the permit applicant proposes to relocate any public road, the commission shall:
 - a. Require the permit applicant to obtain necessary approvals of the authority with jurisdiction over the public road.
 - b. Provide for the following, as appropriate, if not included in the approval process by the authority with jurisdiction over the public road:
 - (1) An opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected.
 - (2) Notice in a newspaper of general circulation in the affected locale of a public hearing at least two weeks before the hearing.
 - (3) Make a written finding based upon information received at the public hearing within thirty days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.
5. Where the proposed surface coal mining operations would be conducted within five hundred feet [152.40 meters] measured horizontally of any occupied dwelling or farm building, the permit applicant shall submit with the application:
 - a. If within five hundred feet [152.40 meters] of any occupied dwelling, a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.
 - (1) Where the applicant for a permit after ~~July 17~~ 1979 August 3, 1977, had obtained a valid waiver prior to ~~July 17~~ 1979 August 3, 1977, from the owner of an occupied dwelling to mine within five

hundred feet [152.40 meters] of such dwelling, a new waiver shall not be required.

- (2) Where the applicant for a permit after ~~July 1, 1979~~ August 3, 1977, had obtained a valid waiver as required under this subsection from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual knowledge or constructive notice of the existing waiver at the time of purchase.
 - b. If within five hundred feet [152.40 meters] of a farm building, documentation showing that the provisions of North Dakota Century Code chapter 38-18 have been complied with.
6. Where the proposed surface coal mining operation is proposed to come within three hundred feet [91.44 meters] of any public park or any places listed on the national register of historic places or the state historic sites registry, the commission shall transmit to the federal, state, or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:
 - a. A request for that agency's approval or disapproval of the operations.
 - b. A notice to the appropriate agency that it must respond within thirty days from receipt of the request.
7. A determination by the commission that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on ~~July 1, 1979~~ August 3, 1977, shall be subject to administrative review under North Dakota Century Code section 38-14.1-30 and judicial review under North Dakota Century Code section 38-14.1-35.

History: Effective August 1, 1980; amended effective June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-06-02. Permit applications - Compliance information. In addition to the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each permit application shall contain:

1. A statement of any current or previous coal mining permits in North Dakota any state held by the permit applicant subsequent to 1970 during the five years preceding the date of the application and by any person identified in paragraph 3 of subdivision e of subsection 1 of North Dakota Century Code section 38-14.1-14, and of any pending permit

application to conduct surface coal mining operations in ~~North Dakota~~ any state. The information shall be listed by permit and each pending permit application number for each of those coal mining operations.

2. The explanation required by subdivision h of subsection 1 of North Dakota Century Code section 38-14.1-14 shall include:
 - a. Identification number and date of issuance of the permit or date and amount of bond or similar security.
 - b. Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action.
 - c. The current status of the permit, bond, or similar security involved.
 - d. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.
 - e. The current status of these proceedings.
3. The statement regarding each violation notice listed under subdivision g of subsection 1 of North Dakota Century Code section 38-14.1-14 shall include:
 - a. The date of issuance and identity of the issuing regulatory authority, department, or agency.
 - b. A brief description of the particular violation alleged in the notice.
 - c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations.
 - d. The current status of the proceedings and of the violation notice.
 - e. The actions, if any, taken by the permit applicant to abate the violation.
 - f. The final resolution of each violation notice, if any.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-03. Permit applications - Permit area - Description of the cultural and historic resources. Each permit application shall include-

- 1- A cultural resource inventory covering the proposed permit and adjacent area conducted in accordance with inventory guidelines developed by the state historic preservation office and the superintendent of the state historical board.
- 2- An evaluation of all cultural resources which will be affected by any surface coal mining and reclamation operation. The evaluation must determine if the cultural resource is significant in accordance with national register criteria {36 CFR 60.6} and guidelines established by the superintendent of the state historical board.
- 3- An appropriately sealed map identifying the location of all significant known cultural resources within the proposed permit area and the adjacent area.

History: Effective August 17, 1980, amended effective June 17, 1983.

General Authority: NDEC 38-14-1-03

Law Implemented: NDEC 38-14-1-14, 38-14-1-21

Repealed effective June 1, 1986.

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each permit application shall contain an appropriate combination of 1:4,800 topographic maps, planimetric maps, and plans of the proposed permit area and adjacent areas as follows:

1. The maps shall show the scale, date, boundaries of the permit area, company name, legal subdivision boundaries, and an appropriate legend.
2. The maps and plans shall show the lands proposed to be affected throughout the surface coal mining and reclamation operation and any change in a facility or feature to be caused by the proposed operations, if the existing facility or feature was shown under chapter 69-05.2-08.
3. The boundary of all areas proposed to be affected over the term of the permit according to the sequence of mining and reclamation operations with a description of size and timing of operations for each coal removal subarea.
4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall

areas proposed to be backslowed, and areas proposed for stockpiling suitable plant growth material or other suitable strata.

5. Location of all proposed sedimentation ponds, other water diversion, collection, conveyance, treatment, storage and discharge facilities, identification of permanent water impoundments or stream channel alignments.
6. Location of all coal processing waste dams and embankments in accordance with section 69-05.2-09-09, and fill area for the disposal of initial cut spoil and other excess spoil in accordance with section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other facilities used to support the surface coal mining and reclamation operation.
8. Each coal storage, cleaning and loading area, coal waste and noncoal waste storage area.
9. Each explosive storage and handling facility.
10. Each air pollution collection and control facility.
11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.
12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.
13. Each area of land within the permit area for which a performance bond or other equivalent guarantee will be posted under chapter 69-05.2-12 scheduled according to the proposed sequence of mining and reclamation operations. Include the bond or guarantee amount for each respective area.
14. Maps and plans required under subsections 5, 6, and 12 shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist, with assistance from experts in related fields **such as land surveying and landscape architecture**, except that maps, plans, and cross sections submitted in accordance with section 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-08. Permit applications - Operation plans - Protection of public parks and significant cultural resources.

- 1- For any public parks or significant cultural resources as determined in section 69-05.2-08-03 that may be adversely affected by the proposed operations, each plan shall provide a description of the type and extent of effect and the measures to be used to minimize or prevent adverse impacts.
- 2- Each plan shall include a statement that the permittee will inform the superintendent of the state historical board of the state historical society of North Dakota and the commission of any discovery within the permitted area of previously unrecorded archaeological, cultural, or historic materials and allow reasonable time for either agency to investigate the discovery.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each permit application shall include a surface water management plan describing each sedimentation pond, impoundment, dam, embankment, diversion, or other water management structure proposed for the permit area to meet the requirements of chapter 69-05.2-16. Each surface water management plan shall:
 - a. Delineate the watershed boundaries within the proposed permit area, adjacent area, and general area.
 - b. Identify by watershed and delineate each proposed surface mining activity along with an estimate of the affected area associated with each disturbance type.
 - c. Identify the locations of all proposed sedimentation ponds or water impoundments, whether temporary or permanent, and include a plan containing, at a minimum, the following information:
 - (1) A statement of the purpose for which the structure will be used.
 - (2) The name and size in acres [hectares] of the watershed affecting the structure.

- (3) A statement of the runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. Baseflow should be specified if appropriate.
 - (4) A statement of the estimated sediment yield of the contributing watershed calculated according to the requirements of subsection 2 of section 69-05.2-16-09.
 - (5) Proposed operations and maintenance of the structure.
 - (6) Preliminary plan view and cross section of the proposed structure, to an appropriate scale, including anticipated spillway types and relative locations.
 - (7) Graphs showing elevation - area - capacity curves.
 - (8) Proposed detention time to meet the criteria of subsection 3 of section 69-05.2-16-09, if applicable, including supporting calculations.
 - (9) A certification statement which includes a schedule setting forth the dates that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:
 - (a) Detailed design plans for structures scheduled for construction within the first year of the permit term shall be submitted with the permit application.
 - (b) Detailed design plans for a structure shall be approved by the commission prior to construction.
 - (10) Contain any other preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
- d. Identify the location of all proposed diversions along with the detailed design specifications, including maps, cross sections and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with sections 69-05.2-16-06 and 69-05.2-16-07.
 - e. Include a schedule setting forth the approximate dates of construction for each water management structure.

- f. Identify the location of any proposed temporary coal processing waste disposal areas, along with the design specifications of such structures to meet the requirements set forth in section 69-05.2-19-03.
 - g. Identify the location of any proposed coal processing waste dams and embankments along with the design specifications of such structures to meet the requirements set forth in chapter 69-05.2-20, including at a minimum, the results of a geotechnical investigation of each proposed coal dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:
 - (1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) The character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.
 - (3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.
 - (4) Consideration shall be given to the possibility of mudflows or other landslides into the dam, embankment, or impounded material.
 - h. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.
2. Detailed design plans shall be submitted for each structure identified in subdivision c of subsection 1. These design plans shall, at a minimum:
- a. Meet all applicable requirements of sections 69-05.2-16-08, 69-05.2-16-09, 69-05.2-16-10, and 69-05.2-16-12.
 - b. Include, at an appropriate scale, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the

impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, outlets, instrument locations, and slope protection, in addition to the measurement of the minimum vertical distance between the crest of the impounding structure and the reservoir surface at present and under design storm conditions, sediment or slurry level, water level, and other information pertinent to the impoundment itself.

- c. Include graphs showing elevation - area - capacity curves.
- d. Include a description of the spillway features and capacities and calculations used in their determination.
- e. Include the computed minimum factor of safety range for the slope stability of each impounding structure which meets or exceeds the size criteria of subsection 15 of section 69-05.2-16-09.
- f. Demonstrate that detention time criteria of section 69-05.2-16-09 can be met, if applicable.
- g. Describe any geotechnical investigations, design, and construction requirements of the structure including compaction procedures and testing.
- h. Describe the maintenance and operation requirements of each structure.
- i. Describe the timetable and plans to remove each structure, if appropriate.
- j. Include such additional information as may be necessary to enable the commission to make a complete evaluation of the structure.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. If the commission determines from either the schedule submitted as part of the permit application or from other available information, that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of any law or rule of this state, or of any law or rule in ~~this~~ any state enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection or surface coal mining and reclamation, the

commission shall require the permit applicant, before the issuance of the permit, to either:

- a. Submit to the commission proof which is satisfactory to the regulatory authority, department, or agency which has jurisdiction over such violation, that the violation:
 - (1) Has been corrected; or
 - (2) Is in the process of being corrected; or
 - b. Establish to the commission that the permit applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any surface coal mining operations being conducted under permit issued according to this section shall be immediately terminated, unless and until the provisions of subdivision a are satisfied.
2. Before any final determination by the commission that the permit applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of North Dakota Century Code chapter 38-14-1 any law or rule of this state, or of any law or rule in any state enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection or surface coal mining and reclamation of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of North Dakota Century Code chapter 38-14-1 those laws, rules, or regulations, the permit applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination. Such hearing shall be conducted pursuant to North Dakota Century Code section 38-14.1-30.
3. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit application shall be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the permit applicant, that:
- a. The proposed permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or such permit areas have met the permit application review procedures of section 69-05.2-04-01.

b. For alluvial valley floors:

- (1) The permit applicant has obtained either an alluvial valley floor negative determination or if the proposed permit area or adjacent area contains lands identified as an alluvial valley floor:
 - (a) The proposed operations would be conducted in accordance with chapter 69-05.2-25 and all other applicable requirements of North Dakota Century Code chapter 38-14.1.
 - (b) Any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
- (2) The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
- (3) Criteria for determining whether a surface coal mining operation will materially damage the quantity or quality of waters shall include, but are not limited to:
 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the permit applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
 - (b) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of the threshold value at which crop yields decrease shall not be allowed unless the permit applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases

in total dissolved solids that will result in crop yield decreases.

- (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration shall be made of any observed correlation between total dissolved solid concentrations in water and crop yield declines, taking into account the extent of the correlation.
 - (d) Potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigated land compared to premining conditions.
 - (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.
 - (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.
- (4) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.
- c. The permit applicant has, with respect to prime farmland obtained either a negative determination or if the proposed permit area contains prime farmlands:
- (1) The proposed postmining land use of these prime farmlands will be cropland.
 - (2) The permit incorporates as specific conditions the contents of the plan submitted under section 69-05.2-09-15 after consideration of any revisions to that plan suggested by the United States soil conservation service under subsection 3 of section 69-05.2-10-01.
 - (3) The proposed operations will be conducted in compliance with the requirements of chapter

69-05.2-26 and other environmental protection performance and reclamation standards for mining required by this article and North Dakota Century Code chapter 38-14.1.

- d. The surface coal mining and reclamation operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.
 - e. The permit applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
4. If the commission finds that surface coal mining and reclamation operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places, the commission may make such changes in the permit as it may deem necessary to avoid the adverse affect. Surface coal mining and reclamation operations that may adversely affect such parks or historic sites shall not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or historic site agrees, in writing, that mining may be permitted.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-13-12. Performance standards - General requirements - Auger mining.

- 1. Auger mining must be conducted so as to maximize the utilization and conservation of the coal resources in accordance with subsection 1 of North Dakota Century Code section 38-14.1-24.
- 2. The surface coal mining operator who conducts augering operations shall:
 - a. Prevent subsidence to the extent technologically and economically feasible by one of the following methods:
 - (1) Backfilling the auger holes with material sufficient to assure the long-term stability of the site.
 - (2) Utilizing measures consistent with known technology which assure the long-term structural stability of the augered area; or

- b. Adopt mining technology which provides for planned subsidence in a predictable and controlled manner.
3. The operator shall correct any material damage caused to surface lands by reclaiming the land surface in accordance with the appropriate requirements of North Dakota Century Code chapter 38-14.1 and this article.
4. The operator shall, to the extent required under state law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage, or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium-prepaid insurance policy.
5. All auger holes must be sealed with an impervious noncombustible material as contemporaneously as practicable to prevent pollution of surface and ground water.
- ~~5~~ 6. All drainage from auger holes must be contained and treated to meet water quality standards and effluent limitations of section 69-05.2-16-04.
- ~~6~~ 7. Auger holes shall not come within five hundred feet [152.4 meters] of any underground mine workings, except as approved in accordance with section 69-05.2-13-06.

History: Effective September 1, 1984; amended effective June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds shall be used individually or in series and shall:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
 - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds shall provide a minimum sediment storage volume equal to the accumulated

sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume shall be determined using the Universal Soil Loss Equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.

3. Detention time. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time shall be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times shall be included in the permit application.
4. Dewatering. The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the operator from compliance with applicable effluent limitations as contained in section 69-05.2-16-04, subject to the exemption contained therein.
7. There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the ten-year, twenty-four-hour precipitation event or lesser events through the sedimentation pond.
8. Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to sixty percent of the design sediment volume or sooner if required by the commission.
9. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a twenty-five-year, twenty-four-hour precipitation event, or larger event specified by the commission. Emergency spillway grades and allowable velocities shall be approved by the commission.

10. The minimum elevation at the top of the settled embankment shall be one foot [30.48 centimeters] above the surface water in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one foot [30.48 centimeters] minimum elevation requirement shall apply at all times, including the period after settlement.
11. The constructed height of the dam shall be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against all settlement.
12. The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The combined upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.
14. The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified.
15. The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thicknesses as are required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the commission.
17. If a proposed impoundment can impound water to an elevation of five feet [1.52 meters] or more above the upstream toe of the structure and can have a storage volume greater than twenty acre-feet [24,669.64 cubic meters], or can impound water to an elevation of twenty feet [6.10 meters] or more above the upstream toe of the structure, the following additional requirements shall be met:
 - a. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a one hundred-year, six-hour precipitation event, or a larger event as specified by the commission.

- b. The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the commission to ensure stability.
 - c. Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 shall be met.
18. Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer, upon construction, be certified by a qualified registered professional engineer as having been constructed as designed and as approved in the mining and reclamation plan. In addition, all dams and embankments meeting the criteria of subsection 15 17 shall be certified annually as having been maintained to comply with the approved plan. The certification shall meet all applicable requirements of the state engineer.
19. The entire embankment including the surrounding areas and diversion ditches disturbed or created by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with section 69-05.2-15-06.
20. All ponds, including those not meeting the criteria of subsection 17 shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made in accordance with 30 CFR 77.216-3, except that dams not meeting the criteria of subsection 17 may be examined on a semiannual basis.
21. Plans for any enlargement, reduction in size, reconstruction, or other modification of dams or impoundments shall be submitted to the commission. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety, or the environment, the commission shall approve the plans before modification begins.
22. Sedimentation ponds shall not be removed until the disturbed area has been restored, the vegetation requirements of chapter 69-05.2-22 are met, and the drainage entering the pond has met the applicable state water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded, respread with suitable plant

growth material, and revegetated in accordance with chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22, unless the pond has been approved by the commission for retention as being compatible with the approved postmining land use under chapter 69-05.2-23. If the commission approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

JULY 1986

69-09-03-01. Safety. Gas transmission and distribution piping systems subject to the jurisdiction of the commission shall be designed, fabricated, installed, inspected, tested, operated, and maintained in a safe, proper, and careful manner. It shall be the policy of the commission to accept systems that conform to the current minimum safety standards for transportation of natural and other gas by pipeline as adopted by the United States department of transportation. Gas pipeline facilities used for the intrastate distribution and transmission of gas shall be designed, constructed, and operated to meet the safety standards as set forth in the current regulations adopted by the United States department of transportation. The commission may require such proof of compliance as it deems necessary.

History: Amended effective July 1, 1986.

General Authority: NDCC 28-32-02, 49-02-04

Law Implemented: NDCC 49-02-01.2, 49-02-04

69-09-03-02. Adoption of regulations. The following parts of Title 49, Code of Federal Regulations, effective March 1, 1984, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 195 - Minimum Federal Safety Standards for

Liquid Pipelines-

History: Effective June 1, 1984; amended effective July 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

STAFF COMMENT: Chapter 69-10-05 contains all new material but is not underscored so as to improve readability.

CHAPTER 69-10-05 METERING SYSTEMS

Section	
69-10-05-01	Applicability of Chapter
69-10-05-02	Inventory Filing Requirements
69-10-05-03	Meter Availability for Testing
69-10-05-04	Location of Meter
69-10-05-05	Security Seals
69-10-05-06	Accuracy Tests
69-10-05-07	Producer Testing Equipment Required Unless Third Party Performs Test - Equipment Standards
69-10-05-08	Calibration Requirements
69-10-05-09	Frequency of Accuracy Tests - Filing Test Results
69-10-05-10	Accuracy Test Upon Request
69-10-05-11	Provisions of Chapter 69-10-04 Applicable
69-10-05-12	Establishing Oil Meter Factor
69-10-05-13	Oil Meter Tolerance
69-10-05-14	Oil Meter Factor Repeatability
69-10-05-15	Gas Meter Tolerance
69-10-05-16	American Petroleum Institute and American Gas Association Specifications

69-10-05-01. Applicability of chapter. The requirements of this chapter apply to any producer commingling production from two or more oil or gas wells with diverse ownership and measuring the production from each well by meters approved by the industrial commission as provided in North Dakota Century Code section 38-08-20. The requirements of this chapter apply only to the metering systems used to measure commingled production from wells of diverse ownership for the purpose of allocation.

History: Effective July 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 64-02-15.1

69-10-05-02. Inventory filing requirements. Within sixty days of July 1, 1986, an inventory of the metering equipment used to measure

production from oil or gas wells with diverse ownership shall be filed with the department of weights and measures of the public service commission by each producer or meter owner. The inventory shall include the location of the wells on which the meters are being used as well

as the make, type, and model of each meter. Serial numbers shall be included only for meters used to measure oil production.

History: Effective July 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 64-02-15.1

69-10-05-03. Meter availability for testing. All meters must be available during normal working hours for inspection or testing, or both, by a representative of the public service commission. For safety reasons, the commission representative shall arrange for a production company representative to be present during the inspection or test.

History: Effective July 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 64-02-15.1

69-10-05-04. Location of meter. No meter may be installed in any location where it may be unnecessarily exposed to weather or other possible cause of damage which could significantly affect its accuracy. Each meter shall be installed in a reasonably accessible location for purposes of testing and inspection.

History: Effective July 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 64-02-15.1

69-10-05-05. Security seals. A security seal is a lead and wire, pressure sensitive seal sufficiently permanent to indicate its removal, or a similar device attached to a metering or measuring device for protection against or to indicate access to adjustment. Provision shall be made for affixing a security seal on each oil meter and the primary element of each gas meter in a manner that requires the seal to be broken before an adjustment can be made that affects the performance of the metering system. Each security seal must indicate the year and month that it was affixed.

History: Effective July 1, 1986.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 64-02-15.1

69-10-05-06. Accuracy tests. Tests to determine the accuracy of a meter shall be by a meter proving method or a gas meter test calibration method. The accuracy of an oil meter shall be determined by

testing at the approximate operating flow rate, temperature, and pressure at which the meter is being used for production purposes.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-07. Producer testing equipment required unless third party performs test - Equipment standards. Each producer or meter owner shall maintain equipment and facilities necessary for accurately testing all types and sizes of meters used by the producer or meter owner unless the producer or meter owner has arranged to have the testing done by a third party approved by the public service commission.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-08. Calibration requirements. Any person using a proving or test calibration system to determine the accuracy of meters must have the system calibrated at least once every two years by a competent testing agency or public service commission approved company with equipment traceable to the national bureau of standards. All equipment used in the testing or calibration of metering systems must be maintained to ensure that the metering system under test will comply with public service commission accuracy standards. The repeatability of the proving or test calibration system must be within two one-hundredths of one percent with the single exception of test tanks. Test tanks shall be calibrated in a manner consistent with chapter 2 of the American Petroleum Institute Manual of Petroleum Measurement Standards. Test tanks shall be strapped and gauged when a representative of the public service commission determines upon inspection that strapping and gauging is warranted.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-09. Frequency of accuracy tests - Filing test results. All meters used to measure oil production shall be tested for accuracy at least once every three months, and a meter system accuracy report sent to the public service commission within thirty days after testing. All primary elements used for gas measurement shall be physically inspected at intervals not to exceed two years with the exception of orifice plates which shall be inspected at least every six months. All secondary elements used for gas measurement shall be tested and, if necessary, adjusted at least once every six months or in accordance with

a plan approved by the public service commission. Tests shall be performed in accordance with manufacturer's recommendations.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-10. Accuracy test upon request. The public service commission will test any production meter as soon as practicable upon written request from a person having a material and direct interest in the accuracy of a meter. If the meter meets public service commission accuracy standards, the cost of the test shall be paid by the person requesting the test. In all other cases, the cost of the test shall be paid by the producer or meter owner.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-11. Provisions of chapter 69-10-04 applicable. Persons engaged in the testing, installation, maintenance, and inspection of metering systems as provided in this chapter shall comply with the applicable provisions of chapter 69-10-04.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-12. Establishing oil meter factor. Any newly installed or repaired meter used to determine the production of oil shall be proved by an in-place test and a meter factor established within seventy-two hours of placing the meter in service.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-13. Oil meter tolerance. The meter factor of any meter used to determine the production of oil may not deviate more than plus or minus two percent from the original meter factor or it will be considered out of tolerance. If a meter does not prove or will not calibrate within tolerance, the meter must be adjusted, repaired, or replaced within the time limitation prescribed by the public service commission meter specialist or the independent contractor.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-14. Oil meter factor repeatability. All tests conducted in determining meter factors for oil production meters must repeat within plus or minus one percent before an average meter factor can be established.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-15. Gas meter tolerance. Any meter used to measure gas production shall be correct to within plus or minus two percent of full scale at any point along the scale.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

69-10-05-16. American petroleum institute and American gas association specifications. The technical requirements for metering devices as published by the American petroleum institute and the American gas association shall be the specifications, tolerances, and other technical requirements for metering devices in North Dakota, except as modified or changed by public service commission rule or state law.

History: Effective July 1, 1986.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 64-02-15.1

TITLE 70
Real Estate Commission

MAY 1986

70-01-02-08. Hearings.

1. Proceedings going to the revocation or suspension of licenses may be initiated by a verified complaint of an individual or an individual's representative. Proceedings requesting the promulgation, amendment, or repeal of any rules of the commission may be initiated on a verified petition by an individual, or an individual's representative.
2. The commission may in its discretion initiate proceedings to revoke or suspend a license whenever an investigation by the commission or its employees discloses probable grounds therefore. No hearings shall be initiated ~~on the commission's own motion~~ until a ~~resolution~~ motion duly authorizing the hearing has been recommended by the commission.

History: Amended effective May 1, 1986.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-11.1(3)

70-01-02-09. Service of process. Complaints, notices, orders or other processes of the commission shall be served personally, or by registered or certified mail, as the real estate commission may direct. Time for answering, or time required on other motions, shall be ~~these~~ as prescribed by the commission by rule, or in the absence of such rule, as prescribed by the district courts of North Dakota.

History: Amended effective May 1, 1986.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-11.1(2), (3)

70-02-01-02. Application for license.

1. No application for either a broker or salesman's license will be accepted from a person under the age of eighteen years.
2. All applications must be filed with the commission at least twenty days before an examination date complete in every detail and every question answered and correct fees sent with the application before the deadline date.
3. It shall be incumbent upon the applicant for a real estate broker's license to submit the applicant's proofs of qualification pursuant to subsection 2 of North Dakota Century Code section 43-23-08. Broker applicants wishing to qualify under the ~~one-year~~ two-year experience requirement shall be required to submit to the commission a letter from said applicant's broker or brokers that the applicant has been actively engaged in the real estate business as a salesman for at least ~~one year~~ two years.

"Actively engaged" means that the applicant must have devoted the applicant's full time as a licensed real estate salesman. The foregoing shall be certified by a licensed real estate broker.

4. Each application for license shall be made on application forms provided by the real estate commission and are to be filled in personally by, or under the supervision of, the applicant.
5. After an application is filed and examination scheduled, no refund of application fee will be made to any applicant in the event of withdrawal.
6. The commission may deny any application for license when one or more of the following conditions are present:
 - a. The application contains any false statement.
 - b. An investigation fails to show affirmatively that the applicant possesses in every instance the necessary qualifications.
 - c. The applicant has acted or attempted to act in violation of North Dakota Century Code chapter 43-23 or this title.
 - d. The applicant has had a license suspended or revoked in another state.
 - e. The check used in paying an examination or license fee shall not, for any reason, be honored by the financial institution upon which it is written.

f. The applicant has a history of issuing bad checks or otherwise has a poor reputation for financial integrity issued one or more checks or drafts which have been dishonored by a payor bank because:

(1) No account exists;

(2) The account was closed; or

(3) The account did not contain sufficient funds to pay the check or draft in full upon its presentment.

g. The applicant's credit history shows the existence of unpaid and overdue judgments, liens, or other debt obligations which, for the protection of the public, requires that the application be denied.

7. If the application and supporting documents on their face show that the applicant is qualified, but from complaints and information received or from investigation it shall appear to the commission at any time before the initial license is delivered, that there may be cause to deny a license, the commission may order a hearing to be held to consider such complaints or information.
8. The commission may require such other proof as may be deemed advisable of the honesty, truthfulness, and good reputation of any applicant, including the officers and directors of any corporation, or the members of any copartnership or association making such application, before accepting an application for license.
9. Inquiry and investigation may be made by the commission as to the financial responsibility of each applicant.
10. When a corporation submits its application for a broker's license, the application must be accompanied by a copy of the articles of incorporation and a certificate of authority issued by the secretary of state.
11. When a partnership submits its application for a broker's license, the application must be accompanied by a copy of the partnership agreement.

History: Amended effective August 1, 1981; May 1, 1986.

General Authority: NDCC ~~43-23-11-1(3)~~ 28-32-02, 43-23-08(7)

Law Implemented: NDCC 43-23-05, 43-23-08, 43-23-09, 43-23-11.1

70-02-01-05. Inactive licenses.

1. A qualified licensed salesman desiring to place the salesman's license on an inactive status may do so by having the broker

with whom the salesman is associated surrender the salesman's license and pocket card to the commission, with a written request ~~for~~ from the salesman that the salesman's license be placed on an inactive status. The salesman may keep the salesman's license on an inactive status for a period of two years an indefinite period from the date the license is surrendered as herein provided. The salesman placing the salesman's license on inactive status shall pay the required fee for such salesman's license each year. A salesman whose license is in an inactive status shall not engage in any manner in any of the activities described under North Dakota Century Code chapters 43-23 and 43-23.1, until the salesman shall first request that the salesman's license be reactivated by the commission. In the event such salesman shall not reactivate the salesman's license within two years from the date of expiration of the license surrendered, the license shall be forfeited and thereafter, the salesman shall be required to requalify for a salesman's license in accordance with the license law, rules, and regulations. During the time that a salesman's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.

2. A qualified licensed broker who withdraws from the real estate business entirely and who desires to place the broker's license on an inactive status may do so by surrendering the broker's license and pocket card to the commission, with a written request that the license be placed on an inactive status. The broker may keep the broker's license on an inactive status for a an indefinite period of two years from the date of expiration of the license surrendered as herein provided. The broker placing the broker's license on inactive status shall pay the required fee for such broker's license each year. During the time that a broker's license is on an inactive status educational requirements do not need to be met. However, if any applicable education requirements are unsatisfied, proof of fulfillment must be submitted before the license can be reissued on an active status.
3. While a license is on inactive status it is not necessary ~~to~~ maintain a surety bond or, in the case of a broker, to maintain an active trust account.
4. Applicable education requirements shall consist of the requirements of subsection 5 of North Dakota Century Code section 43-23-08 and eight hours for each year of inactive status, but not to exceed twenty-four hours as required by North Dakota Century Code section 43-23-08.2. The requirements of North Dakota Century Code section 43-23-08.2

must have been fulfilled within the three years immediately preceding the return to active status.

History: Amended effective May 1, 1986.

General Authority: NDCC ~~43-23-11-1(3)~~ 28-32-02, 43-23-08(7)

Law Implemented: NDCC ~~43-23-12(2)~~ 43-23-08, 43-23-08.2

70-02-01-06. Nonresident brokers and salesmen.

1. Any **citizen of the United States** person who becomes an applicant for a nonresident license shall become subject to the same rules required of an applicant whose residence is in North Dakota.
2. An applicant for nonresident broker's or salesman's license shall hold a currently valid broker's or salesman's license in the state of the applicant's domicile and that state shall certify that the applicant is in good standing and no complaints are pending.
3. A nonresident broker must maintain an active place of business as a real estate broker in the state of the broker's residence. The nonresident broker shall furnish proof of maintaining an active place of business by submitting a photostatic copy of the broker's license and any further information deemed necessary by the commission.
4. North Dakota will not recognize the licensee from another state unless an agreement granting reciprocal privileges to North Dakota licensees has been made by the commission with the proper regulatory authorities of that state. The agreement shall set out the terms and the regulations to be followed.

History: Amended effective May 1, 1986.

General Authority: NDCC ~~43-23-11-1(3)~~ 28-32-02, 43-23-08(7)

Law Implemented: NDCC 43-23-10

70-02-01-08. Salesmen transfer or release. The real estate broker shall retain in the broker's possession the license of all real estate salesmen licensed under the broker and shall relinquish possession of the licenses only to the real estate commission. When for any reason a salesman severs connection with the salesman's broker and desires to transfer to another broker, the salesman must secure a transfer and release form provided by the commission, to be executed by the salesman, the salesman's former broker, and the salesman's new employing broker. **For each transfer of license a fee of five dollars will be charged.** Should the salesman's former broker not be agreeable to the transfer or release, the broker then shall have the right to state the broker's reasons for refusal. Unless there is

sufficient justification, the license will be transferred pending the receipt of the transfer form and fee.

History: Amended effective May 1, 1986.

General Authority: NDCC 28-32-02, 43-23-08(7), 43-23-11.1(3)

Law Implemented: NDCC 43-23-12(2), 43-23-13(6), 43-23-13(7)

70-02-01-16. Complaints - Answer - Dismissal - Hearing.

1. All complaints to be investigated by the real estate commission, as required by North Dakota Century Code section 43-23-11.1, must be in writing and filed in triplicate on forms furnished by the commission. The complaint shall be verified and shall include: the full name and address of the person making the complaint, hereinafter referred to as the complainant; the full name and address of the person against whom the complaint is made, hereinafter referred to as the respondent; an allegation that respondent is either a licensed broker or salesman, and if the respondent is a salesman, then the full name and address of the broker employer; and a clear and concise statement of the facts constituting the alleged complaint including the time and place of occurrence of particular acts and the names of persons involved.
2. The licensee against whom a complaint, or complaints, has been filed must, within twenty days from receipt of copy or copies of complaints, file the licensee's answer in triplicate on forms furnished by the commission. This answer must be in written affidavit form in triplicate, properly certified, and contain a factual response to the allegations set out in the complaint.
3. If the investigation reveals that the complaint does not involve a violation of the laws, rules, or code of ethics regulating licensees, the complaint shall be dismissed without a formal hearing, and the complainant so informed in writing.
4. If the investigation reveals that the acts of the respondent may be such as to justify disciplinary action against the respondent, a formal hearing will be held on the complaint. Notice of such hearing shall be given at least twenty days in advance by serving upon the respondent a copy of the complaint against the respondent and the date and place of hearing.

History: Amended effective May 1, 1986.

General Authority: NDCC 28-32-02, 43-23-11.1(3)

Law Implemented: NDCC 43-23-11.1

70-02-04-01. "Continuing education" defined. As used in this chapter, "continuing education", unless the context otherwise requires, means accredited educational experience derived from participation in

approved lectures, seminars, and correspondence courses in areas related to real estate, which has been approved by the commission, to maintain and improve the professional skills and upgrade the standard of all real estate licensees.

The commission considers courses in the following areas to be acceptable when considering approval:

1. Real estate ethics;
2. Legislative issues that influence real estate practice;
3. The administration of licensing provisions of real estate law and the rules, including compliance and regulatory practices;
4. Real estate financing, including mortgages and other financing techniques;
5. Real estate market measurement and evaluation, including site evaluations, market data, and feasibility studies;
6. Real estate brokerage administration, including office management, trust accounts, and employee contracts;
7. Real property management, including leasing agreements, accounting, procedures, and management contracts;
8. Real property exchange;
9. Land use planning and zoning;
10. Real estate securities and syndication;
11. Estate building and portfolio management;
12. Accounting and taxation as applied to real property;
13. Land development;
14. Real estate appraising;
15. Real estate marketing procedures;
16. Marketing business opportunities; and
17. Business courses which relate to the practice of real estate.

History: Effective August 1, 1981; amended effective May 1, 1986.

General Authority: NDCC 28-32-02, 43-23-08.2

Law Implemented: NDCC 43-23-08.2

TITLE 71
Retirement Board

OCTOBER 1986

STAFF COMMENT: Article 71-03 contains all new material but is not underscored so as to improve readability.

ARTICLE 71-03

UNIFORM GROUP INSURANCE PROGRAM

Chapter	
71-03-01	Bid Process
71-03-02	Health Maintenance Organization Coverage
71-03-03	Employee Responsibilities
71-03-04	Employer Responsibilities
71-03-05	Board Responsibilities

CHAPTER 71-03-01
BID PROCESS

Section	
71-03-01-01	Bid Contracts
71-03-01-02	Bid Specifications
71-03-01-03	Bid Deadlines
71-03-01-04	Bid Letting

71-03-01-01. Bid contracts. Contracts for the uniform group insurance programs must be awarded through a competitive bidding process. In order to ensure uniformity, the board will utilize services of the actuarial consultant to formulate bid specifications.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-04

71-03-01-02. Bid specifications. Bid solicitations will be for:

1. Life insurance.
2. Hospital and medical coverages - fully insured contract.
3. Individual and aggregate stop-loss insurance.
4. Administrative services only.
5. Third party administrators.
6. Other bids will be solicited at the the discretion of the board for the wellness program, cost containment programs, auditing services and such other services as may be determined by the board, from time to time, as necessary for the provision of these types of programs and services under the group insurance program.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-04

71-03-01-03. Bid deadlines. Bid solicitations will be sent to prospective bidders, licensed to do business in North Dakota, on or before December first of the year preceding the end of a biennium.

All bids must be postmarked no later than midnight, December thirty-first, of the year preceding the end of a biennium. Bids postmarked after the deadline will be invalid. Bids must be in a sealed envelope, clearly marked with "BID - GROUP MEDICAL AND LIFE PROGRAMS".

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-04.2

71-03-01-04. Bid letting. Bids that are incomplete or otherwise not following the bid specifications will be invalid.

Bids will be opened at a public meeting of the board in January of the year in which the biennium ends.

Contracts will be awarded to the successful bidders prior to March first of the year in which the biennium ends.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-04.2

**CHAPTER 71-03-02
HEALTH MAINTENANCE ORGANIZATION**

Section	
71-03-02-01	Health Maintenance Organization Qualifications
71-03-02-02	Health Maintenance Organization Contract Awards
71-03-02-03	Health Maintenance Organization Contract Duration and Termination
71-03-02-04	Health Maintenance Organization Noncompliance
71-03-02-05	Notification of Employees
71-03-02-06	Employer Contribution to Health Maintenance Organization

71-03-02-01. Health maintenance organization qualifications. The board may offer any federally qualified health maintenance organization as an alternative coverage to the group medical plan subject to the following qualifications:

1. The board receives a written request from the health maintenance organization by January first of the year ending a biennium.
2. The request includes a copy of the certificate of authority issued by the North Dakota commissioner of insurance to the health maintenance organization.
3. The request includes a copy of a notice from the secretary of health and human services that the health maintenance organization is a federally qualified health maintenance organization.
4. The request includes an estimated or actual premium rate for the first year of the new biennium.
5. The health maintenance organization agrees to hold open enrollment coinciding with the dates the board holds open enrollment for the program.
6. The health maintenance organization agrees to provide the board with financial and statistical data needed to evaluate the viability of the health maintenance organization as an alternative form of coverage.
7. The health maintenance organization provides the board with the plan of services it will provide the members, along with the geographical service area.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-04.1

71-03-02-02. Health maintenance organization contract awards.

Actual premium rates of the health maintenance organization for the first year of a biennium must be submitted to the board prior to March first of the year in which the biennium ends.

The board will award a contract to the health maintenance organizations meeting all the requirements by March thirty-first of the year in which the biennium ends.

The contract will bear the signatures of the chairman of the board and the chief executive officer of the health maintenance organization.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04.1

71-03-02-03. Health maintenance organization contract duration and termination. The contract period shall be for a biennium, except that:

1. The health maintenance organization may establish a different premium rate for the second year of a biennium if it provides the board with satisfactory justification by March thirty-first of the second year of a biennium.
2. The board may terminate a health maintenance organization contract at the end of the first year of a biennium if the health maintenance organization is not operating in compliance with the contract provisions.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04.1

71-03-02-04. Health maintenance organization noncompliance. If the board determines that a health maintenance organization is not in compliance with the contract provisions, it shall notify the chief executive officer of the health maintenance organization in writing, detailing the areas of noncompliance.

The health maintenance organization has thirty days from receipt of the notice of noncompliance to assure the board, in writing, of its intent to comply with the contract provisions. Such assurance must include:

1. Procedures taken or being taken to bring the health maintenance organization into compliance.
2. The date the health maintenance organization expects to be in compliance.

If the board does not receive satisfactory assurance that the health maintenance organization will comply with the contract

provisions, it shall notify the chief executive officer of the health maintenance organization that the contract will be terminated no later than the end of the current fiscal year.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04.1

71-03-02-05. Notification of employees. The board shall notify all eligible employees enrolled in a health maintenance organization of its decision to terminate the contract and allow them thirty days of open enrollment from the date that termination takes effect.

No employer premiums may be paid on behalf of an eligible employee to a health maintenance organization for coverage after the date a contract has been terminated.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04.1

71-03-02-06. Employer contribution to health maintenance organization. Employer contribution for a health maintenance organization must be the same rate as it is for the indemnity plan or the full health maintenance organization rate, whichever is less.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-04.1

CHAPTER 71-03-03 EMPLOYEE RESPONSIBILITIES

Section

71-03-03-01	Enrollment
71-03-03-02	Late Enrollment
71-03-03-03	Early Enrollment
71-03-03-04	Open Enrollment
71-03-03-05	Enrollment for Retirees
71-03-03-06	Continuation of Hospital and Medical Coverages After Termination
71-03-03-07	Continuation of Health Benefits for Dependents
71-03-03-08	Continuation of Life Insurance After Retirement
71-03-03-09	Leave of Absence
71-03-03-10	Employee Contribution

71-03-03-01. Enrollment. Eligible employees are entitled to coverage the first of the month following the month of employment, provided the employee submits an application for coverage within the first thirty-one days of employment.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-03-02. Late enrollment. An employee failing to submit an application for coverage within the first thirty-one days of employment must furnish evidence of insurability on self and any dependents for whom coverage is later desired. Any or all may be denied coverage based on the carrier's underwriting requirements.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-03-03. Early enrollment. An eligible employee may obtain health coverage for the first month of employment by making application for coverage within the first ten working days of employment and submitting the full amount of the premium with the application.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-03-04. Open enrollment. Periodically, at a time set by the board, eligible employees will be given an opportunity to obtain coverage or change levels of coverage without need to furnish evidence of insurability. Application for change in coverage must be submitted during the time established.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-03-05. Enrollment for retirees. An eligible employee who retires and elects to take a monthly retirement benefit is eligible for coverage with the group health insurance program. The employee must submit application within ten days of the last day of employment. If the application is not submitted on time and subsequent coverage is desired, the retiree must submit evidence of insurability and coverage may be denied.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-03-06. Continuation of hospital and medical coverages after termination. An employee who terminates employment and applies for continued hospital and medical coverages with the group health plan, may continue such coverages by remitting timely payments to the board for a maximum of eighteen months.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272; 100 Stat. 222; 26 U.S.C. 162 etc.)

71-03-03-07. Continuation of health benefits for dependents.

Dependents of employees with family coverage may continue coverage with the group after their eligibility would ordinarily cease. This provision includes divorced or widowed spouses and children when they are no longer dependent on the employee. Coverage is contingent on the prompt payment of the premium, and in no case will coverage continue for more than thirty-six months.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272; 100 Stat. 232; 42 U.S.C. 300 etc.)

71-03-03-08. Continuation of life insurance after retirement.

An employee who is enrolled in the group life insurance program may continue the basic one thousand dollar life insurance coverage upon retirement or disability if the employee is entitled to a retirement

allowance from an agency by making application and remitting timely payments to the board.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-09. Leave of absence.

An employee on an approved leave of absence may elect to continue coverage for the periods specified in the plans for life insurance, hospital and medical coverages by paying the full premium to the agency. An employee electing not to continue coverage during a leave of absence must furnish evidence of insurability upon returning to work.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-03-10. Employee contribution.

An employee who selects a level of coverage which requires an additional amount of premium shall pay the amount due to the employing agency in advance. The employee contribution may be paid via payroll deduction or any other means acceptable to the agency.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

**CHAPTER 71-03-04
EMPLOYER RESPONSIBILITIES**

Section

71-03-04-01	Employer Contribution
71-03-04-02	Information to Employee
71-03-04-03	Collecting Employee Contribution
71-03-04-04	Termination of Employment
71-03-04-05	Premium for Basic One Thousand Dollar Term Life Insurance

71-03-04-01. Employer contribution. Each agency shall pay to the board the full amount of the employer contribution each month. The agency will verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. The employer contribution ends the month following the month of termination of employment.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-06

71-03-04-02. Information to employee. Each agency shall inform its employees of their right to group insurance and the process necessary to enroll. The agency shall, within five working days of the date of employment, provide each eligible employee such forms as necessary to enroll in the group insurance program.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-03

71-03-04-03. Collecting employee contribution. Each agency shall collect any employee contribution due and submit it along with the employer contribution to the board each month. When an employee on an approved leave of absence requests to continue in the group, the agency shall collect the full amount of the premium from the employee each month and remit it to the board.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-06

71-03-04-04. Termination of employment. Each agency shall notify the board when an eligible employee terminates employment. The board shall inform the terminating employee of options available to the employee for continuation of coverage.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-06

71-03-04-05. Premium for basic one thousand dollar term life insurance. All state departments and those political subdivisions that elect to participate in the group life insurance program shall pay the board the full premium for the basic one thousand dollar term life insurance for each of its eligible employees.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-01(7)

CHAPTER 71-03-05 BOARD RESPONSIBILITIES

Section

71-03-05-01	Premium Billing
71-03-05-02	Retiree Billing
71-03-05-03	Late Premium for Retirees
71-03-05-04	Late Premium for Terminated Employees
71-03-05-05	Appeal Process
71-03-05-06	Recovery of Benefit Payments

71-03-05-01. Premium billing. The board will maintain a monthly billing for all agencies, individual retirees, and terminated employees with continued coverage.

The board will reconcile the moneys received from each agency, retiree, and terminated employee to the billing.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

71-03-05-02. Retiree billing. Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check. Retirees not paying a premium from their benefit check will receive a monthly billing. The billing will be mailed on or about the twenty-fifth of the month preceding the month of coverage. Premium is due no later than the tenth of the month for which coverage is intended.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-05-03. Late premium for retirees. If the premium is not received by the due date, a late premium reminder is included in the next month's billing. If the premium is not received by the next due date, a special notice is sent by certified mail. The notice advises the retiree that coverage will be canceled retroactively to the last day of the period for which payment was received if payment is not received by the first of the following month.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

71-03-05-04. Late premium for terminated employees. If the premium due for a terminated employee with continued coverage is not received by the sixteenth of the month, coverage will be canceled retroactively to the last day of the period for which payment was received. There is no grace period.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 26.1-36-23

71-03-05-05. Appeal process. If an employee's application for benefits has been denied in whole or in part by the board or its agent, the employee will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the employee may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any documentary material. Should the employee filing a petition for review, or should the board or its agent desire information which cannot be presented satisfactorily by correspondence, the board may schedule a hearing. The person filing the appeal will be notified at least fifteen days prior to hearing of the time, date, and place.

The board or its agent will render a decision as soon as possible, but not later than one hundred twenty days after the receipt of the petition for review. The decision will be in writing.

History: Effective October 1, 1986.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-08

71-03-05-06. Recovery of benefit payments. Whenever benefits are paid in noncompliance with the contract, the board retains the right to recover the payments from the party responsible. In case the claims

payor is at fault, the amount of overpayment will be withheld from the administrative fees paid by the board. In case overpayments are made because of false or misleading information provided by a member, the claims payor shall attempt to recover the amount. Any moneys recovered shall be credited to the board. In case an overpayment is made because of a mistake or deliberate act by a health care provider, the claims payor shall collect the money from the provider and credit that amount to the board. In cases of suspected fraud, the board may turn the evidence over to the state's attorney or attorney general's office for possible prosecution.

History: Effective October 1, 1986.

General Authority: NDCC 54-52.1-08

Law Implemented: NDCC 54-52.1-08

TITLE 74
Seed Commission

MAY 1986

74-03-00.1-01. Definitions. As used in this article unless the context or subject matter otherwise requires:

1. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind and a subdivision of a kind which is distinct, uniform and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics which are describable, and "stable" in the sense that the variety will remain unchanged to a reasonable degree of reliability in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories or varieties.
2. "Other varieties and off-types" means plants or seeds which do not conform to the characteristics of a variety as described by the breeder. They do not include variations which are characteristic of the variety.
3. "Conditioning" includes all activities performed on seed between harvest and marketing. Other terms associated with conditioning could include cleaning, processing, sizing, grading, storing, and seed treating.
4. "None" means none found during the normal inspection process (both field and seed standards). None is not a guarantee to mean the lot inspected or analyzed is free of the factor.
5. "Field inspection" means physical examination or observation of a field by an authorized state seed employee.

6. "Grower" means any person that is complying with all the certification rules and regulations in the production of field inspected seed.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-01. Seed certification in North Dakota. The certification of seed in North Dakota is a function of the state seed department as outlined in North Dakota Century Code sections 4-09-16, 4-09-17, 4-09-18, and 4-09-19. This chapter applies to all crops grown for the production of all classes of North Dakota certified seed. If a North Dakota crop is accepted for field inspection and certification for which there are no North Dakota field or seed standards, the latest standards published by the association of official seed certifying agencies for that crop will apply.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-02. Purpose of seed certification. The purpose of seed certification is to maintain and make available to the public high quality seed of crop varieties so produced, handled, and distributed as to ensure proper identity and genetic purity.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-03. Eligibility requirement for certification of crop varieties. As used in this chapter, "variety" includes hybrids and breeding lines.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by a national variety review board, the plant variety protection office, or an official seed certifying agency. For those crops where national certified review boards exist, it is required that varieties be submitted to such boards for review to determine their merit for certification. Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility.
2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant.

- a. The name of the variety. This name must be the established name if the variety has previously been marketed.
- b. A statement concerning the variety's origin and the breeding procedure used in its development.
- c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.
- d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.
- e. A statement delineating the geographic area or areas of adaption of the variety.
- f. A statement on the plans and procedures for the maintenance of stock seed classes including the number of generations through which the variety may be multiplied.
- g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.
- h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.
- i. A sample of seed representative of the variety that will be planted for certified seed production.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-04. Classes ~~(generations)~~ (generation) and sources of certified seed.

1. Four classes (generations) of seed shall be recognized in seed certification: breeder, foundation, registered, and certified.
 - a. Breeder seed is directly controlled by the originating plant breeder, sponsoring institution or firm, which supplies the source for the initial and recurring increase of foundation seed.
 - b. **Foundation seed shall be seed stocks that are so handled as to most nearly maintain specific**

genetic identity and purity. Foundation seed must be owned by or under the supervision of an agricultural experiment station or the originating plant breeder institution, or firm and shall be the source of foundation, registered, or certified seed classes (generations). Foundation seed is seed which is the progeny of breeder or foundation seed produced under control of the originator or sponsoring plant breeding institution, or person, or designee thereof. As applied to certified seed, foundation seed is a class of certified seed which is produced under procedures established by the certifying agency for the purpose of maintaining genetic purity and identity.

- c. Registered seed shall be the progeny of foundation or other approved seed stocks that are so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. This class of seed shall be of a quality suitable for the production of certified seed.
 - d. Certified seed shall be the progeny of foundation, registered, certified, or other approved seed stocks that are so handled as to maintain satisfactory genetic identity and purity and that has been approved by the state seed department.
2. The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of a variety, but shall not exceed two generations beyond foundation seed. The following exceptions to the limitation of generations are permitted:
- a. Unlimited recertification of the certified class may be permitted for older crop varieties where foundation seed is not being maintained.
 - b. The production of an additional generation of the certified class may be permitted on a one year one-year basis when all of the following are met:
 - (1) An emergency is declared prior to the planting season by the certifying agency stating that foundation and registered seed supplies are not adequate to plant the needed certified acreage of the variety; and
 - (2) Permission of the originating breeder or owner of the variety is obtained; (if applicable); and
 - (3) The additional generation of certified seed produced to meet the emergency seed is declared to be ineligible for recertification.

3. Seed which fails to meet the certification standards for reasons other than those affecting genetic purity may be certified in emergency situations and will be labeled with a "substandard grade" tag.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-05. Eligibility of growers. Any person shall be eligible to produce registered or certified seed providing such seed is produced, handled, and distributed in accordance with article 74-02 ~~and this chapter~~, applicable certification rules, and all applicable North Dakota seed laws and rules. The state seed commissioner reserves the right to reject any application for certification or refuse certification on any lot of seed if essential evidence is incomplete, if information given is incorrect, or if circumstances indicate that it would be advisable for the good of the certified seed industry.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-06. Seed eligibility.

1. Eligible seed stocks shall be those which have met the requirements for foundation, registered or, in special cases, approved lots of the certified class. Eligible seed obtained from another person must have been tagged with the official tags which will be the documentary evidence of acceptance for field inspection.
2. Seed from previously observed and approved seed plots or fields may be also accepted for field inspection and certification if the following requirements are met:
 - a- Certified seed growers may use such seed if the field passed inspection the previous year and if the crop, variety and class of seed (generation) is eligible to be certified.
 - b- Seed under a bulk certified certificate will be eligible only when sown by the originating grower provided the class (generation) of seed is eligible. Certified seed growers may plant seed from fields which passed field inspection in previous years if the field passed inspection and if the class of seed (generation) is eligible to be certified.

3. Growers should check with the state seed department regarding approved lots of the certified class eligible for recertification.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-07. Field eligibility and requirements. A crop will not be eligible for the production of foundation, registered, or certified class seed if planted on land on which the same kind of crop was grown previously for the number of years as stated in the specific crop standards contained in other chapters of this article. Exceptions will be made if the previous crop was the same variety and passed field inspection for certification.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-08. Field management and isolation. The production unit for certification shall be a field. No field or part of a field will be accepted unless field boundaries are clearly defined and properly isolated as provided in the specific crop standards contained in other chapters of this article.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-09. Field inspection.

1. **Applications.** Applications for field inspection, accompanied by the correct fees, past due accounts, and proof of seed eligibility, must be mailed or received at the state seed department office in Fargo not later than June twentieth. The penalty fee will apply after that date. Applications may not be accepted after July fifth except for later planted crops. Soybean, millet, field peas, and buckwheat will be accepted until July fifteenth without late penalty. In case of an emergency or unusual circumstances due to weather and crop conditions, the deadline may be extended at the discretion of the seed commissioner. Application blanks are available at all county extension offices and the seed department offices at Fargo, Grand Forks, and Grafton.
2. **Information required on application.** The application blank shall be filled out by the grower and returned to the office. It is important that all questions be answered completely and correctly. Information is required regarding the variety of the crop, number of acres [hectares] seeded, and source of

seed. The location of the farm and field shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. A diagram of the field location shall be made on the bottom of the application blank. If the seed is purchased, an official certified seed tag must accompany the application.

3. **Roguing and spraying fields.** Roguing fields prior to inspection is desirable to remove undesirable plants from fields which are intended for seed certification. Plants that should be removed include off-type plants, prohibited and restricted noxious weeds, other crop plants such as sweet clover in alfalfa, oats in barley, winter rye in winter wheat, and other impurities which may be growing in the field.

Roguing is usually done by pulling out other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, off-type and undesirable plants should be removed before pollen is shed. Roguing is very essential in maintaining the purity of varieties and high standards of certified seed.

Wherever practical and advisable, seed fields should be sprayed with herbicides according to the best recommendations for the control of undesirable weeds.

4. **Weeds and diseases.**
 - a. Prohibited noxious weeds under North Dakota seed laws and rules are: leafy spurge, field bindweed (creeping jenny) Canada thistle, perennial sow thistle, Russian knapweed, and hoary cress (perennial peppergrass). For purposes of seed certification, musk thistle and absinth wormwood shall be included.
 - b. Restricted noxious weeds under North Dakota seed laws and rules are: dodder species, wild mustard, field pennycress (frenchweed), hedge bindweed (wild morning glory), wild oats, and quackgrass.
 - c. A field may be rejected if it is the opinion of the field inspector that the amount and kind of common weeds present materially affect its appearance or make it difficult to give adequate inspection, or the condition is such that the quality of the cleaned seed may be questionable.
 - d. **Other diseases not governed by specific crop standards may be cause for rejection if it is the opinion of the inspector that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced**

from such seed. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and some common weeds which cause a specific problem in the conditioning of some individual crops.

e. Diseases not governed by specific crop standards may be cause for rejection if it is the opinion of the inspector that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. **Cancellation of field inspection.** An application may be canceled by the grower before the field inspection is made and the application fee minus ~~five~~ ten dollars will be refunded. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection expense has been incurred. Refunds will not be made after fields are inspected or because fields have been rejected.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-10. Fees. Charges for fees and services are subject to change. For current fees contact the state seed department.

1. **Field inspection fees.**

Each applicant for field seed certification must pay an application ~~or~~ for membership fee of ~~one dollar~~ two dollars (only one time) plus:

	To June 20	After June 20- <u>July 5</u>
Cereals, grasses, legumes,		
flax and other		
perennial crops	\$1.25 per acre	\$1.35 per acre
<u>Small grains, grasses,</u>		
<u>legumes, flax and other</u>		
<u>annual and perennial</u>		
<u>crops</u>	<u>\$1.50 per acre</u>	<u>\$2.00 per acre</u>
	<u>for the first</u>	<u>for the first</u>
	<u>100 acres</u>	<u>100 acres</u>
	<u>\$1.25 per acre</u>	<u>\$1.75 per acre</u>
	<u>for additional</u>	<u>for additional</u>
	<u>acreage</u>	<u>acreage</u>
	<u>(per field)</u>	<u>(per field)</u>
 Sunflowers		
<u>Sunflower</u>		
<u>open pollinated</u>	<u>\$2.00 per acre</u>	<u>\$2.25 per acre</u>
	<u>\$2.25 per acre</u>	<u>\$2.75 per acre</u>

	hybrids	\$3.00 per acre	\$3.25 per acre
		\$3.50 per acre	\$4.00 per acre
aere	Edible beans	\$2.00 per acre	\$2.25 per
	Dry field bean	\$2.50 per acre	\$3.00 per acre
		<u>To July 15</u>	<u>After July 15-</u> <u>August 1</u>

<u>Late crops -</u>			
	soybean, millet,		
	field peas, buckwheat	\$1.50 per acre	\$2.00 per acre
		for the first	for the first
		100 acres	100 acres
		\$1.25 per acre	\$1.75 per acre
		for additional	for additional
		acreage	acreage
		(per field)	(per field)

Minimum all crops ~~\$10.00~~ \$20.00 per farm - \$5.00
\$10.00 per field

Applications may not be accepted after July fifth

EXAMPLE

185-acre wheat field:

100-A x \$1.50 =	\$150.00	Add membership fee	
85-A x \$1.25 =	106.25	(only one time)	2.00
	<u>\$256.25</u>		<u>\$258.25</u>

2. Laboratory fees.

Germination tests: all crops three dollars except sunflowers, soybeans, grasses and small seeded legumes three dollars and fifty cents grains four dollars and fifty cents, soybean, sunflower, dry field bean five dollars and fifty cents, and flax four dollars and fifty cents.

Seed purity tests: small grains, soybean, sunflower, dry field bean four dollars, and flax and row crops three dollars. Grasses three dollars and fifty cents to ten dollars four dollars and fifty cents.

Barley embryo test for loose smut five dollars: eight dollars and fifty cents (one test required for each lot). Regular fee for noncertified barley six ten dollars and fifty cents.

Greenhouse bacterial Bacterial bean blight test twenty: fifty dollars. Each lot of edible beans passing field inspection must be tested. See current price list for all laboratory charges.

3. Final certification fees.

Minimum fee is two dollars. Two cents per bushel [35.24 liters] plus four cents per tag for annual crops including ~~cereals~~ grains, flax, and row crops.

Six cents per one hundred pounds [45.36 kilograms] plus four cents per tag for alfalfa, clovers, and perennial grasses.

(The two cents for each bushel [35.24 liters] and six cents for each hundred pounds [45.36 kilograms] of alfalfa, clovers, and perennial grasses will be used to promote North Dakota certified seed.)

Bulk certification: ten dollars per lot plus ~~two~~ four cents per bushel [35.24 liters].

4. **Carryover seed tagging.** New certification tags will be furnished for carryover seed at a cost of four cents per tag. All carryover seed must be retested for germination before new certified tags will be issued.
5. **Carryover bulk seed.** All carryover bulk seed must be retested for germination before new bulk certificates will be issued at ten dollars per lot (four certificates - extra copies twenty-five cents per copy). Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16, 28-32-01

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-11. Seed sampling and laboratory inspection.

1. **Identification in storage.** Field inspected seed must be positively identified by lot number (field inspection number) at all times. Bins of bulk lots of uncleaned or cleaned seed should be marked. Bags should be identified by a stenciled lot number or an identification tag securely sewn or fastened to the bag.
2. **Germination sample.**
 - a. To speed up tagging and determine suitability of seed prior to processing conditioning a representative sample of seed from each field which has passed field inspection may be submitted to the state seed department soon after the crop is harvested. A special seed envelope for this sample is furnished the grower. This sample should be cleaned on a small mill or hand sieve to correspond as nearly as possible to the condition of the entire lot after cleaning or processing conditioning. Only a germination test and embryo test in the case of

susceptible barley varieties is made on this sample. This germination test and embryo test (in the case of barley) can be used in the final tagging of the lot and all sublots. A grower may, however, request a new test on each lot after final cleaning conditioning or delay the germination test and embryo test until after cleaning conditioning. The labeler is responsible for the germination stated on the seed label.

3. **Sampling procedures.**

- a. All seed lots for final certification should be sampled during cleaning conditioning by taking samples from the mills at periodic intervals.
- b. Specific instruction to samplers are found on reverse side of sampler's report.

4. **Maximum lot size and numbering.**

- a. The maximum size of lot for sampling of cereals and flax is five hundred bushels [176.20 dekaliters] for bagged seed, with no maximum size for bulk seed. For grasses and legumes the maximum size of lot shall be two thousand pounds [907.18 kilograms]. When desired, sublots subplot samples can be combined under one lot number if all sublots have met certified seed standards, in which case, the average analysis of all sublots subplot samples will be used, for tagging. Field inspection numbers are used as lot numbers and should not be changed. The maximum size for any bagged lot is two thousand bushels [704.78 dekaliters]. Bulk certified lots do not have a maximum limit except bin capacity.
 - b. The lot number should be preceded by the initials of both the variety and kind of seed. When large lots of seed are broken up into smaller lots and cleaned or processed conditioned at different times, a subplot number should be used. For example, the seed from a field of Larker barley, which has field inspection number eight hundred ninety-seven, will be designated as lot lb 897. If only a part of the entire lot is processed conditioned at one time, the subplot will be designated lb 897-1. When another portion of the lot is cleaned conditioned, this subplot will be designated lb 897-2.
5. **Bulking seed lots.** Seed from different fields of the same kind and variety, which have passed field inspection, may be bulked if the seed is of the same class, generation, or general quality. If the seed of different classes or generations is bulked the seed becomes eligible for the lowest class only.

6. Processing Conditioning.
 - a. All field inspected seed which is to be tagged and sealed must be cleaned and processed conditioned and must meet the minimum seed standards and condition conditioning requirements for the crop and class.
 - b. Field inspected seed may be cleaned and processed conditioned either by the grower or at an approved seed processing conditioning plant.
7. Processing Conditioning by grower - procedure.
 - a. Clean Condition the seed. A grower does not need an approved conditioning plant permit if the grower cleans conditions seed on his the grower's premises.
 - b. Complete section A of the grower's declaration, designate sampler, notarize, sign, and mail to the state seed department at Fargo.
 - c. The designated sampler will be sent sampling instructions, sampler's report and sample bag.
8. Processing Conditioning at an approved plant.
 - a. Growers must fill in grower's declaration - section B only.
 - b. The completed grower's declaration should be presented to the manager of the approved processing conditioning plant when the seed is delivered for processing conditioning.
 - c. After cleaning and processing conditioning all seed is sampled by the authorized sampler in the plant.
9. Regulatory sampling. The state seed department may resample any lot of seed either before final certification or after the seed is tagged and sealed.
10. Laboratory analysis.
 - a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysis.
 - b. If more than one sample of seed is tested from the same lot without additional cleaning or processing conditioning, an average shall be taken of all tests made.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-12. Tagging.

1. Bagged seed.

- a. All seed represented or sold as foundation, registered, and certified must be bagged in new bags and the official certification tag properly affixed on the bag with the exception of seed under a bulk certified certificate. Certification tags are void if improperly used or not on the bag.
- b. The responsibility for properly tagging foundation, registered, or certified seed rests with the grower or first distributor.
- c. The use of two tags, the official certification tag and a separate analysis tag on foundation, registered, and certified seed is optional. When two tags are used, the certification tag will not carry the seed analysis. An additional seed analysis tag must be used or the analysis printed on the bag.
- d. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.
- e. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.
- f. Official metal seals are not required except on cloth or burlap bags when the tag is not sewn on the bag.

2. Bulk certification. All rules for production, processing conditioning, and testing of certified seed shall apply except that seed does not have to be in bags.

- a. All field and seed standards applying to bagged seed shall also apply to bulk certified seed.
- b. Certified seed may be sold in bulk by an approved retail seed facility or by the applicant producer. A maximum of two sales is permitted:
 - (1) From the applicant producer to an approved retailer or consumer.
 - (2) From an approved retailer to consumer.

- c. The registered class may be sold in bulk. To be eligible for recertification, bulk registered seed must be sold by the applicant producer or by an approved conditioner directly to the consumer.
- d. It is the seller's responsibility to:
- (1) Handle seed in a manner to prevent mixtures and contamination.
 - (2) Supply seed that is representative of the seed tested and approved for certification.
 - (3) See that all bins, augers, conveyors, and other equipment are adequately ~~cleaned~~ conditioned before handling certified seed.
 - (4) Determine that the vehicle receiving bulk certified seed is clean. If it is not clean, this is to be noted on the bill of sale or transfer certificate.
 - (5) Keep a sample of each ~~load~~ lot of bulk certified seed sold.
- e. It is the buyer's responsibility to maintain purity of the seed after it has been loaded into the buyer's vehicle.
- f. The bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate. The buyer ~~should~~ must receive a certificate for each load of bulk certified seed. Additional copies of the certificates will be issued to the grower if the grower requests them on the sampler's report.
- g. Retail seed facilities must be approved before certified seed can be handled in bulk. Such facilities may be part of a seed processing conditioning plant or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.
- h. For all bulk certified seed:
- (1) A separate storage bin must be available for each variety that will be sold in bulk.
 - (2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.

- (3) All bins must be clearly and prominently marked to show crop and variety.
 - (4) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin.
- i. The following records must be maintained:
- (1) Amount of seed grown and processed conditioned or purchased for bulk sale.
 - (2) Amount of bulk certified seed sold by variety and lot number.
 - (3) A current inventory of seed available for sale for each variety.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-13. Preissued certification tags. Registered or certified tags may be issued before processing conditioning if prior approval has been granted by the state seed department. Tags will be preissued only under the following conditions:

1. Tags will be issued only to approved processing conditioning plants.
2. Cleaned samples, along with grower's declaration, sampler's report, and printed analysis tag must be submitted after each lot is cleaned.
3. The cleaned lot shall not be moved from the premises of the approved processing conditioning plant until the sample has been checked by the state seed department laboratory and shows that the lot is eligible for certification. If seed lot is rejected the approved plant must assume responsibility for removing certification tags and returning them to the state seed department.
4. The use of a certification label preprinted on bags will be permitted if prior approval by the state seed department is granted. Analysis information may also be printed on the bag. The approved conditioning plant must submit a preprinted analysis tag from the bags used with the sample for final certification.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-14. **Carryover seed.** All carryover seed eligible for certification must be reported to the state seed department by October ~~first~~ fifteenth of each year. Growers must report all field inspected seed that was not eleaned conditioned or tagged with the certification label. Failure to report will disqualify the seed for certification.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-14.1. Applicant's responsibility. It is the responsibility of the applicant to maintain genetic purity and identity at all stages of certification including seeding, harvesting, and storing. The applicant or grower and the approved conditioner are responsible for maintaining genetic purity and identity during conditioning and handling. Evidence that any lot of seed has not been protected from contamination which might affect genetic purity or is not properly identified shall be cause for possible rejection of certification.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-15. **Misuse of certification privileges.** Any seed grower, proecessor conditioner, or seedsman who is found guilty of misusing certification tags, misrepresenting seed, or who violates any of the rules governing the growing, proecessing conditioning, and marketing of foundation, registered, or certified seed, or who is guilty of violations of the North Dakota seed laws and rules with respect to any seed which the grower, proecessor conditioner, or seedsman sells, may at the discretion of the state seed commissioner or the commissioner's agents be denied the right to produce seed under certification.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-16. **Approved proecessors conditioners.** Any seed eleaning or proecessing conditioning plant in North Dakota may be designated as an approved plant "approved conditioning plant" to elean or proecess condition field inspected seed for final certification if, after inspection, it is the opinion of the inspector for the state seed department that the plant is properly managed and equipped, and facilities are such that seed will, with usual care, not become mixed during eleaning or proecessing conditioning. The managers and the designated samplers in these plants are under agreement to handle all seed and seed records and to draw representative samples of all seed lots for certification according to the certification rules and regulations. Permission to operate as an approved conditioning

plant to ~~clean~~ and ~~process~~ condition field inspected seed, is granted on a yearly basis only. An annual fee is charged for each permit. All approved conditioning plants must condition and complete final certification on at least one lot of certified seed every two years before renewal of a permit will be granted. A twenty-five dollar fee will be charged for each reinspection.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-17. Interagency certification.

1. Upon the request of an officially recognized certification agency of another state, the state seed department will act as agent in making inspections, drawing samples, bagging, tagging, or sealing of seed to be certified.
2. For certified seed carrying the certification tag or label of an official certifying agency, no official request from a recognized agency of another state is required to ~~reprocess~~ recondition, retag, or rebag certified seed under interagency certification. Application for interagency certification shall be made directly to the state seed department and the following documentary evidence shall be supplied.
 - a. Variety and kind.
 - b. Class of certified seed.
 - c. Number of bags.
 - d. Weight of each bag.
 - e. Name and address of grower or the inspection or lot number traceable to the records of the agency making the field inspections.
3. A lot of seed which has passed field inspection, or is completely certified by another officially recognized certification agency may be sold or moved into North Dakota for further ~~processing~~ conditioning or completion of certification provided:
 - a. Prior arrangements for moving the seed is made with and approved by the cooperating certification agency.
 - b. A grower's declaration is filed by the original applicant for certification of such seed.

4. Interagency certification tags shall show the certification agencies involved, the lot number, variety, kind, and class of seed.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-01. Land requirements. A crop of small grain or flax will not be eligible for certification if planted on land on which the same kind of crop was grown the year previous unless the previous crop was grown from certified seed of the same variety and passed field inspection for certification.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-02. Field inspection. All field inspection of small grain and flax will be made after the crop is fully headed or in the case of flax in bloom or in the boll stage. A field harvested before inspection is made will not be eligible for certification.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-03. Field standards.

1. Isolation.

- a. At the time of inspection, the field must be separated from other fields by a fence row, natural boundaries, or by a strip of at least ~~ten~~ five feet ~~{3-05 meters}~~ [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop.
- b. When it is necessary to remove a strip to obtain proper isolation, a part of the strip to be removed must be cut into the field to be inspected.
- c. All rye fields producing certified seed must be isolated by at least ~~forty rods~~ six hundred sixty feet [201.17 meters] from rye fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing must be done before field inspection is made. Rogued plants must not be left in the field to be harvested.
 - b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.
3. **Specific field standards** (wheat - barley - oats - rye - triticale).

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties *	1:10,000	1:5,000	1:2,000
Inseparable other crops	1:10,000	1:7,500 1:10,000	1:5,000
Prohibited <u>noxious</u> ** ... weeds	none	none	none

* Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety.

** Includes only leafy spurge and Russian knapweed. The tolerance for other prohibited noxious weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

4. **Specific field standards** (flax).

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties *	1:10,000	1:5,000	1:2,000
Prohibited <u>noxious</u> **.. weeds	none	none	none

* Other varieties shall be considered to include off-type and plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are

characteristic of the variety.

** Includes only leafy spurge and Russian knapweed. The tolerance for other prohibited noxious weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed			
(minimum) *.....	99.0 percent	99.0 percent	99.0 percent
Total weed seeds			
(maximum)	2 per pound	5 per pound	10 per pound
Other varieties ** ..	1 per 2 pounds	1 per pound	3 per pound
Other crop seeds			
(maximum)	1 per 2 pounds	1 per pound	3 per pound
Inert matter			
(maximum) ***	1.0 percent	1.0 percent	1.0 percent
Prohibited noxious			
weed seeds +	none	none	none
Objectionable weed			
seeds (maximum) ++	1 per 4 pounds	1 per 2 pounds	2 per pound 1 per pound
Germination +++	85.0 percent	85.0 percent	85.0 percent

* The standard for durum and rye shall be 98.0 percent minimum.

** Other varieties shall not include variations which are characteristic of the variety.

*** For all crops foreign matter other than broken seed shall not exceed 0.2 percent durum wheat. Durum and rye may contain 2.0 percent maximum inert matter.

+ Prohibited noxious weed seed including the seeds of quackgrass.

++ Objectionable weed seeds shall include the following: dodder, wild mustard, wild oats, hedge bindweed (wild morning glory), field pennycress (frenchweed), giant ragweed (kinghead), falseflax, and dragonhead.

+++ Winter wheat and rye minimum 80.0 percent.

Note: The loose smut content of any class of certified seed of barley shall not exceed four percent unless a special seed treatment has been applied. The percentage of loose smut as determined by the embryo test will be printed on the certification tag. The foundation class of barley has a zero tolerance for barley stripe mosaic virus.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-05. Seed standards (flax).

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	98.5 percent
Total weed seeds (maximum)	0.05 percent	0.05 percent	0.10 percent
Other varieties (maximum) *	2 per pound	8 per pound	16 per pound
Other crop seeds (maximum)	2 per pound	5 per pound	10 per pound
Inert matter (maximum) **	1.0 percent	1.0 percent	1.5 percent
Prohibited noxious weed seeds ***	none	none	none
Objectionable weed seeds (maximum) + .	none	1 per 2 pounds	3 per pound
Germination (minimum)	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variations which are characteristic of the variety. For golden or yellow varieties the figures should be multiplied by two.

** May not exceed two-tenths percent foreign matter.

*** Prohibited noxious weed seeds including seeds of quackgrass.

+ Objectionable weed seeds shall include the following:
dodder species, wild mustard, wild oats, field pennycress (frenchweed), hedge bindweed (wild morning glory), giant ragweed (kinghead), small seeded falseflax and American

dragonhead.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-03-01. Land requirements. A field to be eligible for the production of foundation, registered, or certified seed must not have been in alfalfa production in the previous three years, unless the field was planted to the same class or a higher class of the same variety and passed field inspection for certification in one of the three years.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-03-02. Field inspection. Field inspection prior to harvest will be required each year a seed crop is removed.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-03-03. Field standards.

1. Age. Production for seed certification shall be limited to fields not more than six years old, excluding the year seeded.
2. Portion. A portion of a field may be certified if the area to be certified is clearly defined. Portions of the field not meeting requirements for certification must not be allowed to reach the bud stage.
3. Isolation. A field producing foundation, registered, or certified seed must have the minimum isolation distance from fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification, as given in the following table:

Class	Fields of Less Than Five Acres	Fields of Five Acres or More
Foundation	<u>80 rods</u> <u>1320 feet</u>	<u>80 rods</u> <u>1320 feet</u>
Registered	<u>40 rods</u> <u>660 feet</u>	<u>20 rods</u> <u>330 feet</u>
Certified	<u>20 rods</u> <u>330 feet</u>	<u>10 rods</u> <u>165 feet</u>
Between different classes		

of the same variety . 10 rebs 10 rebs
165 feet 165 feet

4. Specific requirements.

Factor	Maximum Permitted in Each Class		
	Foundation	Registered	Certified
Other varieties *..	0.1 percent (1:1000)	.25 percent (1:400)	1.0 percent (1:100)
Sweetclover ...	none	5 plants- per acre	25 plants per acre

* Other varieties shall be considered to include off-type plants that can be differentiated from the variety that is being inspected.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-03-04. Seed standard (alfalfa).

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum)	1 percent <u>0.1 percent</u>	2 percent <u>0.2 percent</u>	5 percent <u>0.5 percent</u>
Other varieties (maximum) *	1 percent <u>0.1 percent</u>	.25 percent	1.00 percent
Other crop seeds (maximum)	0.2 percent	.35 percent	1.00 percent
Sweetclover seed (maximum)	none	18 per pound	45 per pound
Inert matter (maximum)...	1.0 percent	1.0 percent	1.0 percent
Prohibited noxious weed seeds **	none	none	none
Objectionable weed seeds ***	none	9 per pound	27 per pound <u>13 per pound</u>
Germination and hard			

seeds (minimum) 85.0 percent 85.0 percent 85.0 percent

* Including sweetclover.

** Includes the seeds of quackgrass and dodder species.

*** Objectionable weed seeds shall include the following: wild mustard, wild oats, dragonhead, hedge bindweed (wild morning glory), giant ragweed, (kinghead), field pennycress (frenchweed), nightflowering catchfly, hoary alyssum, white cockle, buckhorn plantain, small seeded falseflax and ~~American~~ dragonhead.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-04

SPECIFIC CROP REQUIREMENTS - BIRDSFOOT TREFOIL

[Repealed effective May 1, 1986]

CHAPTER 74-03-05

SPECIFIC CROP REQUIREMENTS - RED CLOVER

[Repealed effective May 1, 1986]

CHAPTER 74-03-06

SPECIFIC CROP REQUIREMENTS - SWEETCLOVER

[Repealed effective May 1, 1986]

74-03-07-01. Land requirements. The following field requirements may be modified when the reproduction of a strain or strains, entering into a specific variety, are under the supervision of an experiment station or seed certification agency.

1. A field, to be eligible for the production of foundation seed, must not have grown or been seeded to the same species during the previous five years.
2. A field, to be eligible for the production of registered or certified seed, must not have been in the production of the same species during the previous year unless the crop was of

the same variety or strain and passed field inspection for certification.

History: Amended effective May 1, 1986.
General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-02. Field inspection. Field inspection will be made each year a seed crop is harvested, after the crop is fully headed, and before harvest.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-03. Field standards.

1. A portion of the field may be accepted for certification if the boundary is well defined.
2. Fields should be rogued before blooming and before inspection is made to remove other species, off-type plants, and weeds, the seeds of which are difficult to separate in cleaning.
3. A seed field to be eligible for the production of foundation, registered or certified seed must be isolated from any other strain or strains of the same species in bloom at the same time in accordance with the requirements given in the following table:

		Minimum Isolation Distance Required (rods) (feet)			
		Symbol	Foundation	Registered	Certified
All cross-pollination species	C	<u>80</u> 1320	<u>40</u> 660	<u>20</u> 330	<u>20</u>
Strains entirely apomictic	A	<u>10</u> 165	<u>10</u> 165	<u>5</u> 82.5	<u>5</u>
Highly self-fertile species	S	<u>10</u> 165	<u>10</u> 165	<u>5</u> 82.5	<u>5</u>

4. Specific requirements. The maximum field tolerance for other varieties and off-type plants of the same species, when recognized, shall be as follows:

Foundation0 percent
Registered 0.5 percent
Certified 1.0 percent

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-04. Specific seed standards (non-chaffy seeded species).

Other varieties (maximum)		Foundation 0.1%		Registered 1.0%		Certified 2.0%									
Species	Type of Reproduction	Minimum				Maximum									
		Percent Pure Seed		Percent Germination		Percent Other Crop		Percent Other Grass		Percent Inert		Percent Weed Seed ¹		Objectionable weed seeds ² Per Pound	
		F&R	C	F&R	C	F&R	C	F&R	C	F&R	C	F&R	C		
Bromegrass...	C	90	85	80	80	0.2	0.5	0.1	0.2	10.0	15.0	0.2	0.3	5	9
Timothy.....	C	99	97	80	80	0.3	0.5	0.1	0.2	1.0	3.0	0.2	0.3	9	13
Crested Wheatgrass...	C	95	90	80	80	0.2	0.5	0.1	0.2	5.0	10.0	0.1	0.3	5	9
Intermediate Wheatgrass...	C	98	95	80	80	0.2	0.5	0.1	0.2	2.0	5.0	0.1	0.3	5	9
Pubescent Wheatgrass...	C	98	95	80	80	0.2	0.5	0.1	0.2	2.0	5.0	0.1	0.3	5	9
Slender Wheatgrass...	S	98	95	80	80	0.2	0.5	0.1	0.2	2.0	5.0	0.1	0.3	5	9
Tall Wheatgrass...	C	98	95	80	80	0.2	0.5	0.1	0.2	2.0	5.0	0.1	0.3	5	9
Western Wheatgrass...	C	90	85	70	70	0.2	0.5	0.1	0.2	10.0	15.0	0.1	0.3	5	9
Canada Wildrye.....	S	90	85	80	80	0.2	0.5	0.1	0.2	10.0	15.0	0.1	0.3	5	9
Russian Wildrye.....	C	95	90	80	80	0.2	0.5	0.1	0.2	5.0	10.0	0.1	0.3	5	9
Feather Bunchgrass...	S	90	80	*	*	0.2	0.5	0.1	0.2	10.0	20.0	0.1	0.3	5	9
Creeping Foxtail.....	C	80	80	80	80	0.2	0.5	0.1	0.2	20.0	20.0	0.1	0.3	5	9

*Untreated (awned)—15%

*Treated (deawned)—65%

¹Prohibited noxious weed seeds including seeds of Quackgrass and Dodder are not allowed.

²Objectionable weed seeds shall contain the following:

Wild Mustard	Hedge Bindweed (Wild Morninglory)	White Cockle
Wild Oats	Giant Ragweed (Kinghead)	Dragonhead
Field Pennycress (Frenchweed)	Nightflowering Catchfly	Buckhorn Plantain
	Hoary Alyssum	

General Authority: NDCC 4-09-03, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

STAFF COMMENT: Chapter 74-03-07.1 contains all new material but is not underscored so as to improve readability.

**CHAPTER 74-03-07.1
SPECIFIC CROP REQUIREMENTS - BUCKWHEAT**

Section	
74-03-07.1-01	Land Requirements
74-03-07.1-02	Field Inspection
74-03-07.1-03	Field Standards
74-03-07.1-04	Seed Standards

74-03-07.1-01. Land requirements. A crop of buckwheat will not be eligible for certification if planted on land on which the same kind of crop was grown the year previous unless the previous crop was grown from certified seed of the same variety and passed field inspection.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-02. Field inspection.

1. All field inspection of buckwheat will be made in the bloom stage.
2. A field harvested before inspection is made will not be eligible for certification.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-03. Field standards.

1. Isolation.
 - a. At the time of inspection, the field must be separated from other fields by a fence row, natural boundaries or by a strip at least five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop.
 - b. When it is necessary to remove a strip to obtain proper isolation, a part of the strip to be removed must be cut into the field to be inspected.
 - c. All buckwheat fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from buckwheat fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing must be done before field inspection is made. Rogued plants must not be left in the field to be harvested.
- b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.

3. Specific field standards.

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties *	1:10,000	1:5,000	1:2,000
Inseparable other crops	1:10,000	1:7,500	1:5,000
Prohibited weed seeds **	none	none	none

* Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety.

** Includes only leafy spurge and Russian knapweed. The tolerance for other prohibited weeds in the field will be determined by the inspector on the basis of stages of development of both the crop and the weed.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-04. Seed standards.

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum)	2 per pound	5 per pound	10 per pound
Other varieties * ...	1 per 2 pounds	1 per pound	3 per pound
Other crop seeds (maximum)	1 per 2 pounds	1 per pound	3 per pound
Inert matter (maximum) **			
noxious	1.0 percent	1.0 percent	1.0 percent
Prohibited weed seeds ***	none	none	none
Objectionable weed seeds (maximum) ****	1 per 4 pounds	1 per 2 pounds	2 per pound
Germination	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variations which are characteristic of the variety.

** For all crops foreign matter other than broken seed may not exceed 0.2 percent.

*** Prohibited noxious weed seed including the seeds of quackgrass.

**** Objectionable weed seeds shall include the following: dodder, wild mustard, wild oats, hedge bindweed (wild morning glory), field pennycress (frenchweed), giant ragweed (kinghead), falseflax, and dragonhead.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-08-01. Land requirements. A millet crop shall be planted on land on which the last crop grown was of another kind or was planted with certified seed of the same variety and passed field inspection.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-08-02. **Field inspection.** Fields shall be inspected before harvest or when the seed begins to take on color.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-08-03. **Field standards.**

1. **General - Isolation.** A field shall be separated by a ~~ten feet~~ five-foot [3.05 meter 1.52-meter] strip of ground to prevent mechanical mixtures. The strip may be either mowed, uncropped, or planted to some crop other than the kind being certified.
2. **Specific.**

<u>Factor</u>	Foundation	Registered	Certified
Other varieties * (maximum)	1:3000	1:2000	1:1000
Inseparable other ** crops (maximum)	1:10,000	1:10,000	1:2000
Objectionable weeds whose seed are inseparable (maximum) ..	None	None	None

* Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected and shall not include variations which are characteristic of the variety.

** Inseparable other crops shall include crop plants, the seed of which cannot be thoroughly removed by the usual methods of cleaning.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-08-04. **Seed standards (millet).**

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	98.0 percent
Total weed seeds (maximum) ..	.01 percent	.01 percent	.04 percent
Total other crop seeds (maximum) ..	none	none	.04 percent
Other varieties (maximum)	none	none	.02 percent
Other kinds (maximum)	none	none	.02 percent
Inert matter	1.0 percent	1.0 percent	2.0 percent
Prohibited noxious weed seeds	none	none	none
Objectionable weed seeds *	none	1 per pound	3 per pound
Germination	70.0 percent	70.0 percent	70.0 percent

* Objectionable weed seeds are: dodder, wild mustard, wild oats, quackgrass, field pennycress (frenchweed), hedge bindweed (wild morning glory), nightflowering catchfly, giant foxtail, hoary alyssum, wild radish, wild vetch species, buckhorn plantain, horsenettle.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-01. Land requirements. Foundation seed of mustard shall be on land which did not produce mustard or rapeseed during the previous five years. Certified seed of mustard shall be on land which did not produce mustard or rapeseed during the previous three years.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-02. Field inspection. Field inspection shall be made after the crop reaches the bloom stage, ~~with at~~ (at least fifty percent of the plants showing one or more ~~blossoms~~ blossoms).

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-03. Field standards.

1. General.

a. ~~The field shall be considered the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.~~

b. Isolation. A field producing any class of certified seed must have the minimum isolation distance from fields of any other variety of the same kind, from a noncertified crop of the same variety or from any variety of rapeseed as follows:

(1) Producing foundation seed - one thousand three hundred twenty feet [402.34 meters].

(2) Producing certified seed - six hundred sixty feet [201.17 meters].

Required isolation between classes of the same variety - ten feet [3.05 meters].

b. Unit of certification. The field shall be considered the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.

2. Specific field standards.

Factor	Maximum Permitted in Each Class	
	Foundation	Certified
Other varieties *	1:2000	1:500
Inseparable other crops **	1:2000	1:500
Prohibited noxious weeds ***	none	none

* Other varieties shall include off-type plants that can be differentiated from the variety being inspected.

** Inseparable crops are any other crops of similar size which are difficult to remove in the usual cleaning process.

*** All prohibited noxious weeds.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-09-04. Seed standards (mustard).

Factor	Foundation	Certified
Pure seed (minimum)	99.00 percent	99.00 percent
Inert matter (maximum)	1.00 percent	1.00 percent
Prohibitive noxious weed seeds	none	none
Objectionable weed seeds *	1 per pound	5 per pound 6 per pound
Other weeds	5 per pound	15 per pound
Total other crop seeds (maximum)	0.05 percent	0.25 percent
Other varieties (maximum)	0.05 percent	0.25 percent
Other kinds ** (maximum)	0.01 percent	0.01 percent
Germination (minimum)	85.00 percent	85.00 percent
Sclerotia (maximum) ***	1 per pound	1 per pound

* Objectionable weed seeds are: dodder, wild mustard, wild oats, quackgrass, field pennycress (frenchweed), hedge bindweed (wild morning glory), nightflowering catchfly, giant foxtail, hoary alyssum, wild radish, wild vetch species, buckhorn plantain, horsenettle.

** Shall not exceed one per pound for foundation, and ~~five~~ six per pound for certified.

*** One sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-10-01. Land requirements. Safflower will not be considered for certification if planted on land where safflower has been grown the past two years. It is recommended that the crop be planted on summerfallow or on land immediately following a row crop.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-10-02. Field inspection. Field inspection shall be made after the crop reaches the bloom stage, ~~with at~~ (at least fifty percent of the plants showing one or more ~~blossoms~~ blossoms).

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-10-03. Field standards.

1. General.

- a. Isolation. Fields of safflower planted to produce the registered or certified class of seed shall be at least one thousand three hundred twenty feet [402.34 meters] from any other variety or noncertified field of safflower. When certified classes of seed of the same variety are planted in close proximity, no isolation requirement applies, except to maintain field borders.
- b. Unit of certification. The field shall be considered the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.
- c. Roguing. Off-type plants or identifiable mixtures shall be removed prior to bloom or before pollination occurs.

2. Specific field standards.

Factor	Maximum Permitted in Each Class		
	Foundation	Registered	Certified
Other varieties *	none	1:2,000	1:1,000
Inseparable other crops **	none	1:10,000	1:3,000
Prohibited noxious weeds ***	none	none	none

* Other varieties shall include off-type plants that can be differentiated from the variety being inspected.

** Inseparable crops may include wheat, barley or oats and any other crops of similar size which are difficult to remove in the usual cleaning process.

*** Prohibited noxious weeds for the purpose of field inspection include field bindweed, leafy spurge, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector, based on the amount and separability of the seed from the crop being considered and the development of the crop and the weed.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-10-04. Seed standards (safflower).

Factor	Foundation	Registered	Certified
Pure seed (minimum)	98.0 percent	98.0 percent	98.0 percent
Inert matter (maximum)	2.0 percent	2.0 percent	2.0 percent
Other crops or varieties (maximum)	1 per 2 pounds	1 per pound	3 per pound
Weed seeds (maximum)	2 per pound	5 per pound	10 per pound
Prohibited <u>noxious</u> weed seed	none	none	none
Objectionable weed seeds *	none	<u>9 per pound</u> <u>1 per 2 pounds</u>	<u>27 per pound</u> <u>2 per pound</u>
Germination (minimum)		80 percent	80 percent
Sclerotia ** (maximum)	1 per pound	1 per pound	1 per pound

* Objectionable weed seeds shall include the following: dodder, wild mustard, wild oats, hedge bindweed (wild morning glory), field pennycress (frenchweed), giant ragweed (kinghead),

falseflax, and dragonhead.

** One sclerotium per pound [454 grams] is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

~~A lot of seed may be rejected if it appears to be of low quality other than as shown by the mechanical analysis above.~~

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-01. Land requirements. A crop will not be eligible for certification if planted on land where sunflowers were grown during the previous ~~three~~ years year.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-02. Field inspection. Open pollinated varieties, hybrids and inbreds.

1. Number of inspections Open pollinated inspections.

a. ~~Open pollinated.~~

(1) The first inspection shall be made ~~four to six weeks after planting~~ prior to the bloom stage.

(2) b. The second inspection shall be made after the crop is at least fifty percent in bloom and before it is fully matured.

b. ~~Hybrid production.~~

(1) ~~The first inspection shall be made four to six weeks after planting.~~

(2) ~~The second inspection shall be made during the bud stage just prior to bloom.~~

(3) ~~The final inspection shall be made after the crop is at least fifty percent in bloom and before it is fully matured.~~

2. Diseases- Diseases may be cause for rejection if the quality of the seed may be affected- Hybrid and inbred production.
- a. At least three field inspections shall be made, one during the bud to early bloom stage and two during bloom.
 - b. In a field producing hybrid sunflower seed, at least fifty percent of the male parent plants must be in bloom and producing pollen at the time the female parent is in full bloom. The heads of female plants shedding pollen must be removed. They shall be disposed of in a manner which will prevent their pollen from being disseminated.
 - c. The field shall be considered the unit for certification. Fields shall be separated from other inseparable crops by a distance adequate to prevent mechanical mixture and from other sunflowers by five thousand two hundred eighty feet [1609.34 meters].
 - d. In inbred lines and foundation single crosses only the foundation class shall be recognized. In hybrid varieties only the certified class shall be recognized.
 - e. In increase field of inbred parental lines and in the male rows of commercial hybrid production fields all off-types must be removed before any pollination has taken place.
3. Diseases. Standards for seed-borne diseases in sunflower are not specified; however, the inspector may reject fields for disease if the quality of the seed will be affected.

History: Amended effective May 1, 1986.
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-03. Field standards.

Factor	Foundation	Registered	Certified
Off-type plants (per 1000) (maximum) *			
Hybrid production **			
Female seed parent ...	4		4
Male pollinating parent	4		4
Open pollinating varieties	5	5	5
Isolation ***			

Open pollinated	320 rebs	160 rebs	160 rebs	
	<u>5,280 feet</u>	<u>5,280 feet</u>	<u>5,280 feet</u>	
Hybrid or inbred lines ..	320 rebs		320 rebs	
	<u>5,280 feet</u>		<u>5,280 feet</u>	
Corn plants bearing seed ..	none	none	none	
Verticillium wilt				
(per 1000 plants)	-----	2	4	6

* To include not more than one plant per 1000 of the following types: wild types type branching, purple, white seeded. Other varieties shall be considered to include plants that can be differentiated from the variety that is being inspected. However, other varieties shall not include variations which are characteristic of the variety, fer. For example, some pollen plants may be of the branching type. In total genetic male sterile or cytoplasmic male sterile, females, pollen producing plants are considered off types.

** Flowering - in a field producing certified hybrid sunflowers, at least fifty percent of the male parent plants must be flowering and producing pollen when the female parent is in full bloom. Female plants flowering and shedding pollen must be removed.

*** The field must be isolated from other varieties, strains, hybrids, noncertified crops of the same variety, volunteer sunflowers or wild annual sunflowers.

+ Must be rogued to this level before final inspection. Only plants showing wilt symptoms on the upper half of the plant shall be considered wilt infected for the purpose of certification.

** Must be isolated from other varieties, strains, hybrids, noncertified crops of the same variety which are not monitored, volunteer sunflower and wild H.annuus.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-04. Seed standards (sunflowers sunflower).

Factor	Foundation	Registered	Certified
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Pure seed

	(minimum)	98.0 percent	98.0 percent	98.0 percent
	<u>Germination</u>			
percent	(minimum) -----	85.0 percent	85.0 percent	85.0
percent	<u>Inert (maximum) --</u>	1.0 percent	2.0 percent	2.0
	<u>Total weed</u>			
	<u>seeds</u>			
	(maximum)	1 per pound	1 per pound	3 per pound
	<u>Other varieties</u>			
	(maximum) *	1 per pound	1 per pound	5 per pound
	<u>Other crop seeds</u>			
	(maximum)	none	none	3 per pound
		<u>1 per pound</u>	<u>1 per pound</u>	
	<u>Total weed seeds</u>			
pound	(maximum) ** ---	none	none	1 per
	<u>Inert matter</u>			
	(maximum)	2.0 percent	2.0 percent	2.0 percent
	<u>Objectionable weed</u>			
	seeds *** ** ...	none	none	none
	<u>Prohibited noxious</u>			
	weed seeds	none	none	none
	<u>Germination</u>			
	(minimum)	85.0 percent	85.0 percent	85.0 percent
	<u>Sclerotia + *** ..</u>	1 per pound	1 per pound	1 per pound

* To include not more than two purple seeds, or two white seeds per pound. Other varieties shall not include variations which are characteristic of the variety.

** Prohibited noxious weeds will not be allowed.

*** Objectionable weed seeds shall include the following: buckhorn plantain, dodder, wild oats, wild mustard, nightflowering catchfly, field pennycress (frenchweed), giant foxtail, hoary alyssum, horsetettle, quackgrass, wild vetch species, wild radish, hedge bindweed (wild morning glory).

+ *** One sclerotium per pound is all that is allowed in North Dakota certified seed to prevent the dissemination to areas not previously infected with sclerotia (sclerotinia sclerotiorum).

In addition to the above standards, hybrid seed must be tested in an approved winter grow out test. If a lot tests below ninety-five percent hybrid, the percentage of hybrid as found by grow out will be on the certification label.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-11-05. Postcontrol standards. Samples from all certified hybrid seed fields and all foundation inbred fields must be entered in approved winter growout tests. They must meet the following standards in such tests:

Factor	Hybrids	Inbreds
Sterile plants (maximum)	5.0 percent	
<u>Sterile or fertile plants</u>		
(maximum)		5.0 percent
<u>Morphological variants</u>		
(maximum)	0.3 percent	0.3 percent
<u>Wild types (maximum)</u>	0.3 percent	0.3 percent
<u>Total including above</u>		
<u>types (maximum)</u>	5.0 percent	5.0 percent

For nonoil types, seed which contains not more than fifteen percent sterile plants may be certified. If it contains eighty-five percent to ninety-five percent hybrid plants, the percentage of hybrid shall be shown on the certification label.

History: Effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-01. Land requirements. A crop will not be considered for certification if planted on land which produced the same kind of crop the previous year unless the previous crop was grown from an equal or higher certified class and passed field inspection.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-02. Field inspection. Field inspection shall be made on **soybeans** soybean prior to harvest when the crop is approaching maturity preferably after the leaves have dropped or at a time when

varietal purity can be determined. Field inspection on field peas shall be made prior to harvest when the crop is in bloom or at such a time as the varietal purity of the crop can be determined.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-03. Field standards.

1. **Isolation.** A strip at least ~~ten~~ five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop shall constitute a field boundary for the purpose of isolation.
2. **Specific requirements (~~soybeans~~) (soybean).**

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties * ...	0.1 percent	0.2 percent	0.2 percent
Corn and sunflower plants bearing seed ..	none	none	none
Prohibited noxious weed **	none	none	none

* Other varieties shall not include variations which are characteristic of the variety inspected.

** Prohibited weeds include only field bindweed, leafy spurge, and Russian knapweed. The tolerance for other noxious and common weeds will be determined by the inspector based on the amount and separability of the seed from the crop being considered and the development of the crop and the weed.

3. Specific requirements (field peas).

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties *.	0.01 percent	0.01 percent	0.01 percent
Other crops (inseparable)	none	none	none
Prohibited noxious			

History: Amended effective May 1, 1986.
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-01. General field standards and land requirements.

1. A crop will not be eligible for certification if planted on land that was in any class of dry field beans or green beans the preceding ~~three~~ two years or soybeans the preceding year.
2. The field shall be considered a unit for certification. A strip at least ~~ten five~~ feet ~~{3.05 meters}~~ [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop shall constitute a field boundary for the purpose of these standards.
3. ~~Fields planted in rows closer than eighteen inches {45.72 centimeters} are not eligible for certification.~~
4. Poor stands, poor vigor, lack of uniformity, excess weeds, or conditions which are apt to make inspection inaccurate or bring certified seed into disfavor shall be cause for rejection.

History: Amended effective May 1, 1986.
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-02. Field inspection. Two field inspections shall be made. The first when approximately seventy-five percent of the plants are flowering. The second when approximately ~~twenty-five~~ seventy-five percent of the pods are showing maturity.

History: Amended effective May 1, 1986.
 General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
 Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-03. Specific field standards (dry ~~edible~~ field beans).

Factor	Maximum Tolerance		
	Foundation	Registered	Certified
Other varieties or classes *	0.03 percent	0.05 percent	0.1 percent
Inseparable other crops ..	none	none	none

Bacterial bean blights --- none	none	none	none
(leaves) .....	.005 percent	.005 percent	.005 percent
(pods)	none	none	none
Anthraco nose	none	none	none
Wilt	none	none	none
Common bean mosaic	none	0.05 percent	0.1 percent 1.0 percent

* Other varieties shall not include variations which are characteristic of variety.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-04. Seed standards (dry edible field beans).

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum) *	98.0 percent 98.5 percent	98.0 percent 98.5 percent	98.0 percent 98.5 percent
Inert matter (maximum) **	2.0 percent 1.5 percent	2.0 percent 1.5 percent	2.0 percent 1.5 percent
Total weed seeds (maximum)	none	± per pound	none 2 per pound
Other varieties or classes	0.01 percent	0.05 percent	0.1 percent
Other crops (maximum)	none	none	1 per 2 pounds
Prohibited noxious weed seeds ***	none	none	none
Restricted Objectionable weed seeds ****	none	none	none
Germination (minimum)	no standard	85.0 percent	85.0 percent
Bacterial blight infected seed (maximum) +	none	none	none
test *****	pass	pass	pass

* Foreign matter other than broken seed may not exceed 0.50 percent.

** Prohibited weeds include those of Canada thistle, field

bindweed, leafy spurge, perennial peppergrass, perennial sow thistle, and Russian knapweed. Splits and cracks cannot exceed 1.0 percent.

foxtail,

*** Restricted weed seeds include those of buckhorn, dodder, frenchweed, hoary alyssum, horsenettle, quackgrass, wild oats, wild mustard, wild vetch species, giant

and wild radish. Prohibited noxious weeds include those of Canada thistle, field bindweed, leafy spurge, perennial peppergrass, perennial sow thistle, and Russian knapweed.

**** Objectionable weed seeds include those of buckhorn, dodder, hedge bindweed (wild morning glory), field pennycress, (frenchweed), hoary alyssum, horsenettle, quackgrass, wild oats, wild mustard, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

+ ***** The grower shall be responsible for having a bacterial blight test on the harvested seed of each field of dry edible field beans.

A seed treatment to reduce surface bacterial contamination of the seed coat is recommended.

History: Amended effective May 1, 1986.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

TITLE 75
Department of Human Services

MAY 1986

AGENCY SYNOPSIS: Subsection 3 removed as inconsistent with 75-02-02-14.

75-02-02-03. State organization.

1. **Single state agency.** The department of human services is the single state agency with authority to supervise the administration of the medical assistance plan and program.
2. **Statewide operation.**
 - a. The state plan will be in operation, through a system of local offices on a statewide basis, in accordance with equitable standards for assistance and administration that are mandatory throughout the state.
 - b. The state plan will be administered by the political subdivisions of the state and will be mandatory on such political subdivisions.
 - c. The department of human services, hereinafter referred to as the state agency, will assure that the plan is continuously in operation in all local offices or local agencies through:
 - (1) Methods for informing staff of state policies, standards, procedures, and instructions.
 - (2) Regular planned examination and evaluation of operations in local offices by regularly assigned state staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

- 3- **County residence determinations.** For applicants for medical assistance applying after the effective date of this section, time spent while residing in a skilled nursing facility or intermediate care facility shall be counted toward the time necessary to establish county residence for poor relief purposes provided that the applicant received no type of public assistance or poor relief during that time.

History: Amended effective May 1, 1986.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-06-05.1, 50-24.1-04; 45 CFR 205-100, 45 CFR 205-120 42 CFR 431.10, 42 CFR 431.20

AGENCY SYNOPSIS: Defines several terms used in this chapter.

75-02-02-03.1. Definitions. For the purposes of this chapter:

1. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program.
2. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program.
3. "Good faith offer to sell" means an honest offer to sell in a manner which is reasonably calculated to induce a willing buyer to believe that the property offered for sale is actually for sale at a fair price. A good faith offer to sell includes, at a minimum, making the offer at a stated minimum price equal to seventy-five percent of fair market value, in the following manner:
 - a. To the regular market for such property, if any regular market exists and, if no buyer is thereby secured;
 - b. To any coowner, joint owner, possessor, or occupier of the property and, if no buyer is thereby secured;
 - c. By public advertisement for sale in a newspaper of general circulation, the circulation area of which includes the location of any property resource offered for sale, which advertisement was published successively for two weeks if the newspaper is a weekly publication, and for one week if the newspaper is a daily publication, and which includes a plain and accurate description of the property and the name, address, and telephone number of a person who will answer inquiries and receive offers.

4. "Home" means, when used in the phrase "the home occupied by the medical assistance unit," the residence occupied by the medical assistance unit including the land on which it is located, provided that the acreage [hectarage] does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located within the established boundaries of a city.
5. "Medical assistance unit" means an individual, a married couple, or a family with children under twenty-one years of age, whose income and resources are considered in determining eligibility for any member of that unit, without regard to whether the members of the unit all physically reside in the same location.
6. "Occupied" means, when used in the phrase "the home occupied by the medical assistance unit," the home the medical assistance unit is living in, or if temporarily absent from, possessed with an intention to return and the capability of returning within a reasonable length of time. Property is not occupied if the right to occupy has been given up through a rental or lease agreement whether or not that rental or lease agreement is written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse or child who is under age twenty-one or blind or disabled, at home, unless a physician has certified that the individual is likely to return home within six months.
7. "Persons deemed to be receiving aid to families with dependent children" means those persons who are not receiving an aid to families with dependent children money payment, but who must be treated as recipients of such benefits because federal law or regulations so provides.
8. "Property which is essential to earning a livelihood" means property which the applicant or recipient owns, and which the applicant or recipient is actively engaged in using to earn income and where the total benefit of such income is derived for the applicant or recipient's needs. An applicant or recipient is actively engaged in using the property if that individual contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property. Property from which an applicant or recipient is merely receiving rental or lease income is not essential to earning a livelihood.
9. "Property resource" includes any kind of property or property interest, whether real, personal, or mixed, and whether or not presently vested with possessory rights.

10. "Property which is not salable without working an undue hardship" means property which the owner has made a good faith offer to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value, and which is continuously for sale.

11. "Specialized facility" means a residential facility which provides remedial services.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Parts of two subsections removed; in one instance because the material duplicates part of section 75-02-02-17(1), and in the other instance because a form number is referred to.

75-02-02-04. Application and decision.

1. Application.

- a. All individuals wishing to make application for medical assistance under the medical assistance program shall have the opportunity to do so, without delay.
- b. An application is a written request made to a county social service board by a person desiring assistance under the medical assistance program or by a proper person seeking such assistance on behalf of another person. A proper person means any person of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- c. An application must be in writing and signed on the prescribed application form.
- d. The prescribed application form must be signed by each applicant if the applicant is physically and mentally able to do so. For those applicants adjudged incompetent by a court, it shall be signed on behalf of the applicant by a legally appointed guardian.
- e. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients shall be furnished to all who require it.
- f. A relative or other interested party may file an application in behalf of a deceased person to cover

medical costs incurred prior to the deceased person's death.

- g- Each applicant must reasonably provide the applicant's social security number-

2. Decision.

- a. A decision as to eligibility will be made promptly on applications, within forty-five days, or sixty days in disability cases, except in unusual situations.
- b. Immediately upon determination of eligibility, applicants for medical assistance will be notified by the county social service board on the prescribed form (form 600) as provided for in other public assistance programs.

History: Amended effective February 1, 1981; May 1, 1986.

General Authority: NDCC 50-06-05.1, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 CFR 435.905, 42 CFR 435.906, 42 CFR 435.907, 42 CFR 435.908, 42 CFR 435.909, 42 CFR 435.910, 42 CFR 435.911, 42 CFR 435.912, 42 CFR 435.914

75-02-02-06. Coverage for eligibility.

- 1- **General-** Within the limits of legislative appropriations, medical assistance will be available to the following individuals as "categorically needy", with medical care and services available in the same amount, duration, and scope for:
 - a- All individuals receiving aid or assistance under North Dakota Century Code chapter 50-09 (aid to families with dependent children) or title XVI of the Federal Social Security Act, as amended, provided that individuals receiving title XVI benefits must also meet all additional applicable income and resource requirements as set out in section 75-02-02-07.
 - b- All persons who would be eligible for aid or assistance under North Dakota Century Code chapter 50-09 or title XVI of the Social Security Act (including all additional applicable income and resource requirements as set out in section 75-02-02-07) except for any condition or other requirement for eligibility therefor which is specifically prohibited in a program for medical assistance under title XIX of the Social Security Act.

e. Essential spouses of (persons essential to) individuals receiving aid or assistance in December 1973, under the state's approved plan for title XVI, who continue to live with the individual as grandfathered into the supplemental security income program under title XVI of the Social Security Act.

2. Other. The following are other groups of individuals, based on reasonable classifications that will be included in the program.

a. All persons whose income and resources are insufficient to meet the cost of necessary medical care and services and who are categorically linked to and thus categorically eligible for assistance under North Dakota Century Code chapter 50-09 or title XVI of the Social Security Act, as amended (including all additional applicable income and resource requirements as set out in section 75-02-02-07) as a result of age (sixty-five years or over), disability, blindness, or parental deprivation, but who do not qualify for assistance in either of such programs due to other conditions for eligibility in such programs which are not conditions for eligibility in the medical assistance program.

b. All persons under twenty-one in aid to families with dependent children program families who, except for age, would be dependent children under the state's aid to families with dependent children plan.

c. Individuals who are under twenty-one or sixty-five years of age or older and are patients in the state institution for mental diseases or who are receiving care and treatment in an institution for tuberculosis.

d. Persons under twenty-one who are residents in foster homes or in private child care institutions licensed by the department of human services whether the cost of care in such living arrangements is being met in whole, or in part, by public or private agency funds.

e. Persons under age twenty-one who are residing in adoptive homes and who have been determined under the subsidized adoptive program to be eligible for subsidized payments or medical care as provided under state law and in accordance

with rules adopted by the department of human services.

f. All individuals under age twenty-one who are not otherwise covered under the plan and whose income and resources are insufficient to meet the costs of medical care.

g. Aliens shall not be eligible for medical assistance except as specifically allowed by federal law and regulation.

h. Inmates of public institutions shall not be eligible for medical assistance except as specifically allowed by federal law and regulation.

History: Amended effective September 17, 1978.

General Authority: NDEC 50-24.1-04

Law Implemented: NDEC 50-24.1-02, 52-24.1-06, 45 CFR 435-112, 45 CFR 435-113, 45 CFR 435-120, 45 CFR 435-121, 45 CFR 435-122, 45 CFR 435-131

Repealed effective May 1, 1986.

75-02-02-07. Conditions of eligibility.

1. No age, residence, citizenship, or other requirements will be imposed that is prohibited by title XIX of the Social Security Act.

2. Financial eligibility.

a. Persons receiving aid to families with dependent children or technically eligible to receive aid to families with dependent children on the basis of categorical relatedness shall be subject to the income levels set out in paragraph 1 of subdivision e and to the resource eligibility standards set out under North Dakota Century Code chapter 50-09 and the resource rules and policies of the department of human services pertaining to aid to families with dependent children eligibility except that those resource rules set out in subdivision d which are more liberal in any particular case than the aid to families with dependent children rules and policies shall be applicable in the case of aid to families with dependent children recipients and those categorically related to

the aid to families with dependent children program.

b. Persons receiving supplemental security income or technically eligible therefor on the basis of age, disability, or blindness shall be subject to the income levels set out below as well as the resource standards set out below.

c. The following levels of income and resources for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance:

(1) The income levels applicable to families of various sizes in determining eligibility for medical assistance will be according to income levels established by the department of human services.

(2) Only twenty-five percent of that income of the ineligible medical assistance unit in the home which exceeds the appropriate medical assistance income level will be deemed to be available to an eligible individual residing in a specialized facility. Income is not otherwise deemed to be available to persons who live outside of the home of the medical assistance unit on other than a temporary basis.

(3) It is presumed that all spousal resources or parental resources are actually available to those aged, blind, or disabled individuals identified in subdivisions b and c. In order to rebut this presumption, the applicant or recipient must demonstrate that the spousal or parental resources are unavailable despite reasonable and diligent efforts to access such resources. The rebuttal of this presumption shall not preclude the board from exercising the powers granted to it by North Dakota Century Code section 50-24-1-02-1. Except as provided in subparagraphs a, b, c, and d, no applicant or recipient who has a statutory or common-law cause of action for support out of the resources of a spouse or parent, but who has failed to diligently pursue that cause of action, may rebut the presumption. Any applicant or recipient who documents any of the following circumstances will have

rebutted the presumption without further proof.

- (a) A court order, entered following a contested case, determines the amounts of support that a parent or spouse must pay to the applicant or recipient.
- (b) The parent or spouse from whom support could ordinarily be sought, and the property of such parent or spouse, is outside the jurisdiction of the courts of the United States.
- (c) The applicant or recipient has been subject to marital separation, with or without court order, for at least two years prior to making application for medical assistance benefits, and there has been no contact whatever between the applicant or recipient and his or her spouse for the same two-year period.
- (d) The applicant or recipient has lived separately and apart from a noninstitutionalized spouse for at least six months, and the value of all resources, not otherwise disregarded, and separately owned by that spouse do not exceed resource limitations in subdivision d by more than twenty-five thousand dollars.

d- Resources. The following property provisions will be applied in determining eligibility for medical assistance. In all instances, including determinations of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs which may be associated with liquidation of excess property must be taken into account.

- (1) The home. The home occupied by the individual or family will be exempt in determining eligibility for medical assistance. The home is defined as including the land on which it is located, providing the acreage does not exceed one hundred sixty contiguous acres (64.75 hectares) if rural or two acres (.81 hectares) if located in town. Acreage in excess of these amounts would be declared "real property other than home". The home

will be considered occupied and exempt if the individual or family is temporarily absent but actually intends and is able to return within a reasonable length of time.

(2) Real property other than the home. Nonexempt real property other than the home may not exceed an equity of two thousand five hundred dollars. The following exemptions apply to real property other than the home.

(a) Property which is essential to earning a livelihood shall be exempt, provided that the property owners are actively engaged in utilizing the property to earn income and derive the total benefit of such income for their own needs. An individual who is merely receiving rental or lease income from property is not eligible for this exemption. An individual is actively engaged in utilizing property if the individual contributes significant current personal labor in utilizing the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of the property.

(b) Property which is not salable without working an undue hardship.

(c) However, an individual would be actively engaged in utilizing such property if the individual contributed significant current personal labor in utilizing such property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active utilization of such property.

(3) Personal property resources.

(a) Personal property is defined as including cash surrender value of life insurance policies, vehicles, machinery, livestock, and other types of movable property.

(b) The following types, kinds, and amounts of personal property are exempt from consideration under the medical assistance program. All nonexempt property owned by the medical assistance unit is an available resource.

{1} Personal effects, wearing apparel, household goods, furniture, and trailer homes being used as living quarters.

{2} Term insurance and burial insurance, the terms of which specifically provide that the proceeds can be used only to pay the burial expenses of the insured, is also exempt.

{3} Prepaid burial arrangements or deposits of up to a three thousand dollar value for each applicant or recipient in the medical assistance unit.

{4} One motor vehicle owned by the medical assistance unit is exempt regardless of its value. Any other motor vehicle must be considered as personal property and is subject to the limitations on personal property set out below.

(c) Nonexempt, nonliquid personal property may not exceed an equity of two thousand five hundred dollars except when such property is essential to the earning of a livelihood or when the liquidation of such excess assets would cause undue hardship. The descriptive definition of the phrase "essential to the earning of a livelihood" as set out in paragraph 2 is fully applicable also in instances involving personal property.

(4) Cash reserve exemption. With respect to cash, savings, redeemable stocks and bonds, and other liquid assets, the following levels will be applicable to families of various sizes, one person, three thousand dollars, two persons, four thousand five hundred dollars, and for each additional person, an amount of twenty-five dollars

shall be added. These amounts will not be considered as being available for medical expenses.

(5) There is a presumption that the holder's interest in contractual rights to receive payment, including, but not limited to, the seller's interest in a long-term contract for the sale of real property, promissory notes, mortgages, and accounts receivable, is salable without working an undue hardship. This presumption may be rebutted by evidence demonstrating all of the following:

(a) The holder's interest was publicly advertised for sale in a newspaper of general circulation, the circulation area of which includes any real property underlying the holder's interest, which advertisement was published successively for two weeks if the newspaper is a weekly publication, and for one week if the newspaper is a daily publication.

(b) The advertisement included, at a minimum, a legal description of any real property underlying the holder's interest, a statement of a minimum price at which the holder's interest will be sold, which price shall not exceed seventy-five percent of the determined discounted value of that interest or thirty thousand dollars, whichever is less, and the name, address, and telephone number of a person who will answer inquiries and receive offers.

(c) The sworn statement of the applicant, recipient, or the applicant's or recipient's representative, that no offers were received which equaled or exceeded the minimum amount identified in subparagraph b.

e- Disqualifying transfers.

(1) Every person who before or after making application for medical assistance gives an assignment or makes a transfer of the person's property (whether real or personal property or liquid assets, or a combination thereof) for the purpose of rendering

oneself eligible for medical assistance is thereby rendered ineligible.

(2) The intent of the person making such a transfer is the basis for determining eligibility for medical assistance.

(3) There are legitimate instances when property transfers may be valid when related to a particular set of circumstances. The applicant or recipient should be given full opportunity to state the reasons for having made the transfer of property and this evidence should in turn be considered in relation to the following questions:

(a) Was adequate consideration received?

(b) How recent was the transfer? Caution on this point is advised since very recent transfers may in some instances be entirely acceptable insofar as eligibility for medical assistance is concerned.

(c) Is the applicant's or recipient's stated purpose reasonable in view of the circumstances prevailing at the time of transfer?

(d) Would it have been reasonable to anticipate that the transfer of property at the time it occurred would result in an earlier need for assistance?

(e) Were benefits available to the applicant or recipient from the transferee that were contingent upon the transfer of the property?

(f) Did the transferee have a legal or otherwise equitable interest in the property transferred to the transferee?

(4) A transfer of property for less than adequate consideration, made either within two years prior to the application for medical assistance or after a previous application has been made and denied because of excess property resources, shall be presumed to have been made for the purpose of rendering the applicant eligible for medical assistance. This presumption may be

rebutted by substantial evidence of an intent which is inconsistent with the presumed intent.

- f. There shall be a flexible measurement of available income which will be applied in the following order or priority-
- (1) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance.
 - (2) Payments made for noncovered necessary current medical and remedial care will be deducted.
 - (3) Reasonable work-related expenses for producing any earned income will be deducted.
 - (4) Finally, payments made for necessary health insurance coverage will be deducted.
 - (5) All of the remaining excess income will be applied to costs of medical assistance included in the state plan.
- g. All income and resources will be considered in establishing eligibility and in the flexible application of income to medical costs not in the state plan, and payment toward the medical assistance costs.
- (1) The state agency or local agency under supervision of the state agency will take reasonable measures to ascertain any legal liability of third parties arising after March 31, 1968, for the medical care and services included under the plan, the need for which arises out of injury, disease, or disability of applicants for or recipients of medical assistance.
 - (2) The state or local agency, in determining whether medical assistance is payable, will treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time.

(3) The state or local agency will not withhold reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed but was not treated as a current resource. In such cases, the state and local agency shall require the applicant or recipient to execute all necessary documents to protect rights to subsequent reimbursements. Failure of any applicant or recipient to execute any such documents shall be considered adequate grounds for ineligibility for medical assistance.

(4) The state or local agency will seek reimbursement from a third party for assistance provided when the party's liability is established after assistance is granted and in any other case in which the liability of a third party existed, but was not treated as a current resource.

(5) Each applicant or recipient shall execute all necessary documents to protect his, or the state agency's, rights to subsequent reimbursement as a condition of eligibility.

h. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated.

i. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents for a child under age twenty-one, or blind, or permanently and totally disabled. Such responsibility is imposed on applicants and recipients of medical assistance as a condition of eligibility under the state plan.

j. An applicant or recipient must take all necessary steps to obtain any annuities, pensions, unemployment compensation, veteran's benefits, and retirement and disability benefits to which the applicant or recipient may be entitled, unless the applicant or recipient can show good cause for not doing so.

3. Blindness and disability.

a- The federal definition of the terms "blind" and "disabled" as used by the social security administration in the supplemental security income program shall be used in all applicable eligibility determinations.

b- The following is the state's definition of blindness in terms of ophthalmic measurement.

An individual is considered blind if the individual has central vision acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than twenty degrees.

c- In any instance in which a determination is to be made whether an individual is blind according to the state's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

d- Each eye examination report form will be reviewed by a state supervising ophthalmologist who is responsible for the agency's decision that the applicant does or does not meet the state's definition of blindness.

e- The following is the state's definition of permanent and total disability, showing that:
(1) "permanently" is related to the duration of the impairment or combination of impairments;
(2) "totally" is related to the degree of disability; and (3) "permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes the individual from engaging in useful occupations within the individual's competence, such as holding a job.

Under this definition, "Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is

refused by the individual on a reasonable basis, "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis, in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient. "Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in the individual's particular situation in light of the individual's impairment, an individual's disability would usually be tested in relation to ability to engage in remunerative employment, the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment, eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which the individual can work, the amount the individual can produce in a given period of time, and the number of hours the individual is able to work.

- f. Each medical report form and social history will be reviewed by technically competent persons, not less than a physician and a social worker qualified by professional training and pertinent experience, acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the appropriate definition of blindness or disability. The agency shall decline to determine blindness or disability when such determination can be made pursuant to the processing of a supplemental security income benefits application by the social security administration or its contractee for that purpose.

History: Amended effective January 1, 1980, February 1, 1980, February 1, 1981, June 1, 1981, October 1, 1981.
General Authority: NDEC 50-24-1-04
Law Implemented: NDEC 50-24-1-02, 42 CFR Part 435

Repealed effective May 1, 1986.

AGENCY SYNOPSIS: Subsection 3 is amended to make plain the meaning and use of the term "remedial services."

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within the limits of legislative appropriations, eligible recipients may obtain the following medical and remedial care and services:
 - a. Inpatient hospital services (other than services in an institution for mental diseases). "Inpatient hospital services" are those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.
 - b. Outpatient hospital services. "Outpatient hospital services" are those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
 - c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction, of a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social

Security Act, or is determined currently to meet the requirements for such participation.

- d. Skilled nursing home services (other than services in an institution for mental diseases) for individuals twenty-one years of age or older. "Skilled nursing home services" means those items and services furnished by a licensed and otherwise eligible skilled nursing home or swing-bed hospital maintained primarily for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- e. Intermediate nursing care (other than services in an institution for mental diseases). "Intermediate nursing care" means those items and services furnished by a currently licensed intermediate care facility or swing-bed hospital maintained for the care and treatment of inpatients with disorders other than mental diseases which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law.
- f. Early and periodic screening and diagnosis of individuals under twenty-one years of age, and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.
- g. Physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home or elsewhere. "Physician's services" are those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.
- h. Medical care and any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as

defined by state law. This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.

- i. Home health care services. "Home health care services" in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in these definitions, are any of the following items and services when they are provided on recommendation of a licensed physician to a patient in the patient's place of residence, but not including as a residence a hospital or a skilled nursing home:
 - (1) Intermittent or part-time nursing services furnished by a home health agency.
 - (2) Intermittent or part-time nursing services of a professional registered nurse or a licensed practical nurse when under the direction of the patient's physician, when no home health agency is available to provide nursing services.
 - (3) Medical supplies, equipment, and appliances recommended by the physician as required in the care of the patient and suitable for use in the home.
 - (4) Services of a home health aide who is an individual assigned to give personal care services to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and the home health agency which assigns a professional registered nurse to provide continuing supervision of the aide on the aide's assignment. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.
- j. Private duty nursing services. "Private duty nursing services" are nursing services provided by a professional registered nurse or a licensed practical nurse, under the general direction of the patient's physician, to a patient in the patient's own home or extended care facility when the patient requires individual and continuous care beyond that available from a visiting nurse or that routinely provided by the nursing staff of the hospital, nursing home, or extended care facility.

- k. Dental services. "Dental services" are any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession. Such services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual. "Dentist" means a person licensed to practice dentistry or dental surgery.
- l. Physical therapy and related services. "Physical therapy and related services" means physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders, and the use of such supplies and equipment as are necessary.
- (1) "Physical therapy" means those services prescribed by a physician and provided to a patient by or under the supervision of a qualified physical therapist. A qualified physical therapist is a graduate of a program of physical therapy approved by the council on medical education of the American medical association in collaboration with the American physical therapy association, or its equivalent, and where applicable, is licensed by the state.
 - (2) "Occupational therapy" means those services prescribed by a physician and provided to a patient and given by or under the supervision of a qualified occupational therapist. A qualified occupational therapist is registered by the American occupational therapy association or is a graduate of a program in occupational therapy approved by the council on medical education of the American medical association and is engaged in the required supplemental clinical experience prerequisite to registration by the American occupational therapy association.
 - (3) "Services for individuals with speech, hearing, and language disorders" are those diagnostic, screening, preventive or corrective services provided by or under the supervision of a speech pathologist or audiologist in the practice of the pathologist's or audiologist's profession for which a patient is referred by a physician. A speech pathologist or audiologist is one who has been granted the certificate of clinical competence in the American speech and hearing association, or who has completed the equivalent educational requirements and work experience necessary for such a certificate, or who has completed the academic program and is in the process of accumulating the necessary supervised work experience required to qualify for such a certificate.

- m. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.
- (1) "Prescribed drugs" are any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law. With respect to "prescribed drugs" federal financial participation is available in expenditures for drugs dispensed by licensed pharmacists and licensed authorized practitioners in accordance with North Dakota Century Code chapter 43-17. When dispensing, the practitioner must do so on the practitioner's written prescription and maintain records thereof.
 - (2) "Dentures" are artificial structures prescribed by a dentist to replace a full or partial set of teeth and made by, or according to the directions of, a dentist.
 - (3) "Prosthetic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.
 - (4) "Eyeglasses" are lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision.
- n. Other diagnostic, screening, preventive, and rehabilitative services.
- (1) "Diagnostic services" other than those for which provision is made elsewhere in these definitions, include any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to

enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.

- (2) "Screening services" consist of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.
 - (3) "Preventive services" are those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability and other health deviations or their progression, prolong life and promote physical and mental health and efficiency.
 - (4) "Rehabilitative services" in addition to those for which provision is made elsewhere in these definitions, include any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.
- o. Care and services in a certified mental institution for individuals under twenty-one years of age or sixty-five years of age or over.
 - p. Any other medical care and any other type of remedial care recognized under state law, specified by the secretary. This term includes but is not limited to the following items:
 - (1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the agency to be necessary in the individual case. "Travel expenses" are defined to include the cost of transportation for the individual by ambulance, taxicab, common carrier or other appropriate means; the cost of outside meals and lodging en route to, while receiving medical care, and returning from a medical resource; and the cost of an attendant may include transportation, meals, lodging, and salary of the attendant, except that no salary may be paid a member of the patient's family.

- (2) Family planning services, including drugs, supplies, and devices, when such services are under the supervision of a physician. There will be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals can choose in accordance with the dictates of their consciences.
 - (3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician and when it is not available to the patient from other sources.
 - (4) Skilled nursing home services, as defined in subdivision d, provided to patients under twenty-one years of age.
 - (5) Emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act, or definitions of inpatient or outpatient hospital services set forth in subdivisions a and b.
2. The following limitations exist with respect to medical and remedial care and services covered or provided under the medical assistance program.
- a. Coverage will not be extended and payment will not be made for diet remedies prescribed for eligible recipients.
 - b. Coverage will not be extended and payment will not be made for alcoholic beverages prescribed for eligible recipients.
 - c. Coverage will not be extended and payment will not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.
 - d. Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames shall not exceed forty-four dollars per pair. A recipient is responsible for copayment of three dollars for the replacement of eyeglasses when the replacement is occasioned by loss or breakage.

3. Remedial services provided by residential facilities such as licensed homes for the aged and infirm, licensed foster care homes or facilities, and specialized facilities are not covered services but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility. For the purposes of this ~~section~~ chapter, "remedial services" means those services, provided in the above-identified facilities, which produce the maximum reduction of physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-24.1-04; 42 CFR 431.53, 42 CFR 431.110, 42 CFR 435.1009, 42 CFR Part 440, 42 CFR Part 441, subparts A, B, & D, 45 CFR 435.732

AGENCY SYNOPSIS: Subsection 4 is amended to reflect current practice in financing the medical assistance program.

75-02-02-14. County administration.

1. Except as provided in subsection 2, the county where the medical assistance unit is physically present will be responsible for the administration of the program with respect to that unit.
2. Where a family unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.
3. For the purposes of apportioning each county's share of assistance costs in the medical assistance program, a fraction will be formed for each county. Each county's assistance expenses, in the year ending June 30, 1983, is the numerator, and the total of all county's assistance expenses, in that year, is the denominator. For periods beginning July 1, 1984, each county's share of the amount expended, statewide, for the medical assistance program, will be determined by multiplying that county's fraction times the total of all county's assistance expenses.
4. For purposes of this section, "county's assistance expense" means the total amount, in dollars, expended from each county's funds, for the medical assistance program, excluding the cost of services furnished by regional human service centers and, intermediate care facilities for the mentally retarded, home and community based care for aged, disabled and

developmentally disabled persons, and early and periodic screening and diagnosis and treatment (EPSDT) screening services.

History: Effective November 1, 1983; amended effective July 1, 1984; May 1, 1986.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 50-01-09

AGENCY SYNOPSIS: Identifies the categories of persons who may establish eligibility for medical assistance benefits.

75-02-02-15. Groups covered.

1. Categorically needy. Within the limit of legislative appropriation, and subject to any waiver granted by the United States department of health and human services, medical assistance will be made available to individuals described in the title XIX state plan for medical assistance as "categorically needy", with medical care and services available in the same amount, duration, and scope for all eligible individuals.
2. Medically needy. Within the limits of legislative appropriations, and subject to any waiver granted by the department of health and human services, medical assistance may be made available to individuals described in the title XIX state plan for medical assistance as "medically needy", with medical care and services available in the same amount, duration, and scope for all eligible individuals.
3. Aliens. Aliens shall not be eligible for medical assistance except as specifically allowed by federal law and regulation.
4. Inmates. Inmates of public institutions shall not be eligible for medical assistance except as specifically allowed by federal law and regulation.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-06; 42 CFR Part 435

AGENCY SYNOPSIS: States certain information which must always be furnished by applicants for medical assistance eligibility.

75-02-02-16. Basic eligibility factors.

1. It is the responsibility of the applicant for medical assistance benefits to establish the eligibility of each

individual for whom medical assistance is requested including, but not limited to, the furnishing of a social security number, and, the establishment of age, identity, residence, citizenship, blindness, disability, and financial eligibility. The applicant and each individual for whom assistance is requested must, as a condition of eligibility, execute all necessary documents to protect his, or the agency's, rights to subsequent reimbursement from any third parties, for medical care and services included under this plan, the need for which arises out of injury, disease, or disability of the applicant or recipient for medical assistance.

2. No age, residence, citizenship, or other requirement that is prohibited by title XIX of the Social Security Act will be imposed as a condition of eligibility.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 CFR Part 435

AGENCY SYNOPSIS: Describes a process by which an applicant for medical assistance benefits may establish the existence of blindness or disability.

75-02-02-17. Blindness and disability.

1. In any instance in which a determination is to be made as to whether any individual is disabled, each medical report form and social history will be reviewed by technically competent persons, not less than a physician and a social worker qualified by professional training and pertinent experience, acting cooperatively, who are responsible for the department's decision that the applicant does or does not meet the appropriate definitions of disability.
2. In any instance in which a determination is to be made whether an individual is blind, there will be an examination by a physician skilled in the diseases of the eye, or by an optometrist, whichever the individual may select. Each eye examination report will be reviewed by state supervising ophthalmologist who is responsible for comparing that report with the state's definition of blindness and for determining:
 - a. Whether the individual meets the definition of blindness;
and
 - b. Whether and when reexaminations are necessary for periodic redeterminations of eligibility.
3. The agency shall decline to determine blindness or disability when such a determination can be made pursuant to the

processing of a supplemental security income benefit application or an old-age and survivors' insurance benefit payments application by the social security administration, or its contractee, for that purpose.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02; 42 CFR Part 435

AGENCY SYNOPSIS: Relates eligibility for medical assistance benefits to eligibility for certain other programs.

75-02-02-18. Financial eligibility.

1. Persons receiving or deemed to be receiving aid to families with dependent children benefits are eligible for medical assistance benefits.
2. Persons receiving supplemental security income program benefits are eligible for medical assistance benefits only if they also meet all income and resource requirements of this chapter.
3. Essential spouses of, or persons essential to, individuals receiving benefits, in December 1973, under the state's approved plan for title XVI, aid to the aged, blind or disabled, who were grandfathered into the supplemental security income program, and who have continuously received benefits under the supplemental security income program since its inception, but only if the "essential spouse" or "person essential to" continues to live with the individual.
4. Any individual not described in subsection 1, 2, or 3 may be made eligible for medical assistance benefits only if the individual meets all eligibility requirements of this chapter.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Describes the general approach for the consideration of income or resources which may be available to the applicant or deemed available to the applicant.

75-02-02-19. Income and resource considerations.

1. All income and resources will be considered in establishing eligibility and in the flexible application of income to

medical costs not in the state plan, and payment toward the medical assistance costs.

2. Only such income and resources as are actually available will be considered; income and resources will be reasonably evaluated.
3. The financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse, and parents for a child under age twenty-one. Such responsibility is imposed upon applicants or recipients as a condition of eligibility under the state plan. Except as otherwise provided in this section, the income and resources of the spouse, and of the parents of a child under age twenty-one, will be considered available to the applicant or recipient even if they are not actually contributed.
4. Except as otherwise provided in this subsection, one hundred percent of the income of the ineligible medical assistance unit in the home, which exceeds the appropriate medical assistance income level, will be deemed to be available to all individuals residing in the home. Individuals residing in the home include individuals who are physically present as well as individuals who are temporarily absent, including individuals receiving educational services, acute medical care and service in a specialized facility. Only twenty-five percent of the income of that ineligible medical assistance unit which exceeds the appropriate medical assistance income level will be deemed available to an eligible individual receiving services in a specialized facility. None of the income of the medical assistance unit in the home will be deemed available to an eligible individual who resides, or is treated as residing, outside of the home of the medical assistance unit on other than a temporary basis. Individuals who reside in a facility which provides to them skilled nursing home services or intermediate nursing care are residing outside the home on other than a temporary basis. Individuals receiving home and community-based services are treated as residing outside the home on other than a temporary basis.
5. Applicants and recipients must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include, but are not limited to, veterans' compensation and pensions, old age, survivors, and disability insurance benefits, railroad retirement benefits, and unemployment compensation.
6. It is presumed that all spousal resources are actually available to aged, blind, or disabled individuals where financial responsibility is imposed pursuant to subsection 3.

In order to rebut this presumption, the applicant or recipient must demonstrate that the spousal resources are unavailable despite reasonable and diligent efforts to access such resources. The rebuttal of this presumption does not preclude the department from exercising the powers granted to it by North Dakota Century Code section 50-24.1-02.1. Except as provided in subdivisions a, b, and c, no applicant or recipient who has a statutory or common law cause of action for support out of the resources of a spouse, but who has failed to diligently pursue that cause of action, may rebut the presumption. Any applicant or recipient who documents any of the following circumstances will have rebutted the presumption without further proof:

- a. A court order, entered following a contested case, determines the amounts of support that a spouse must pay to the applicant or recipient.
- b. The spouse from whom support could ordinarily be sought, and the property of such spouse, is outside the jurisdiction of the courts of the United States or any of the United States.
- c. The applicant or recipient has been subject to marital separation, with or without court order, for at least two years prior to making application for medical assistance benefits, and there has been no contact whatever between the applicant or recipient and his or her spouse for the same two-year period.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Describes a process by which income levels are established, and by which available income is measured.

75-02-02-20. Income levels and application.

1. Levels of income for maintenance, in total dollar amounts, will be used as a basis for establishing financial eligibility for medical assistance. The income levels applicable to families of various sizes will be established by the department of human services.
2. There shall be a flexible measurement of available income which will be applied as follows:
 - a. First, for maintenance, so that any income in an amount at or below the established income level will be protected for maintenance;

- b. Payments made for noncovered necessary current medical and remedial care;
- c. Reasonable work-related expenses for producing any earned income as determined by the department;
- d. Payments made for necessary health insurance coverage; and
- e. Appropriate income deductions and disregards as determined by the department.

All the remaining income will be applied to costs of medical care included in the state plan.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Establishes maximum amount of nonexempt and nonexcluded property which an individual may have and remain eligible for assistance.

75-02-02-21. Property resource limits. The following property provisions will be applied in determining eligibility for medical assistance. In all instances, including determinations of equity, property must be realistically evaluated in accord with current market value. Any reasonable costs which may be associated with liquidation of excess property must be taken into account. Except for those persons found eligible for medical assistance benefits pursuant to section 75-02-02-26, no person may be found eligible for medical assistance benefits unless the total value of the medical assistance unit's resources, in addition to resources exempted pursuant to section 75-02-02-22 or excluded pursuant to section 75-02-02-23, does not exceed:

1. Three thousand dollars for a one-person unit;
2. Six thousand dollars for a two-person unit; and
3. An additional amount of twenty-five dollars for each member of the unit in excess of two.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Lists items of property which are exempt from any consideration in determining eligibility for medical assistance.

75-02-02-22. Exempt property resources. The following resources shall be exempt from consideration in determining eligibility for medical assistance:

1. The home occupied by the medical assistance unit, including trailer homes being used as living quarters;
2. Personal effects, wearing apparel, household goods, and furniture;
3. Term insurance;
4. Burial insurance, the terms of which specifically provide that the proceeds can be used only to pay the burial expenses of the insured; and
5. One motor vehicle.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Describes types of property which will not, in some circumstances, be considered in determining eligibility for medical assistance benefits.

75-02-02-23. Excluded property resources. The following types of property interests will be excluded in determining if the available resources of an applicant or recipient exceed resource limits:

1. Property which is essential to earning a livelihood;
2. Property which is not salable without working an undue hardship;
3. Any prepayments or deposits which total three thousand dollars or less made under a pre-need funeral service contract for each applicant or recipient in the medical assistance unit; and
4. Property with a fair market value which does not exceed twenty-five thousand dollars and which is separately owned by a noninstitutionalized spouse of an institutionalized applicant or recipient who has lived separately and apart from that spouse for at least six months.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-02.2, 50-24.1-02.3

AGENCY SYNOPSIS: Provides a mechanism by which contractual rights to receive money payments may be valuated and offered for sale, and, in certain circumstances, be determined to be excluded property resources.

75-02-02-24. Contractual rights to receive money payments. There is a presumption that the holder's interest in contractual rights to receive money payments, including, but not limited to, the seller's interest in a long-term contract for the sale of real or personal property, promissory notes, trust deeds, mortgages, and accounts receivable, is salable without working an undue hardship. This presumption may be rebutted by evidence demonstrating a good faith offer to sell the contractual rights to receive money payments and the sworn statement of the applicant, recipient, or the applicant's or recipient's representative, that no offers were received which equaled or exceeded the stated minimum price. The stated minimum price may not exceed seventy-five percent of the determined discounted value of the holder's interest, or thirty thousand dollars, whichever is less.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Provides that a person may not deliberately impoverish him or herself, by giving away property, for the purpose of achieving eligibility for medical assistance benefits.

75-02-02-25. Disqualifying transfers.

1. An assignment or transfer of a nonexempt property, for less than adequate consideration, whenever made with the intent to render the assignor or transferor, or a family member, eligible for medical assistance benefits, produces ineligibility. An amount equal to the fair market value of the property transferred will be treated as though the assignor or transferor had retained the property. An individual found ineligible as a result of a disqualifying assignment or transfer will remain ineligible until he becomes obligated for medical expenses equal to the difference between the fair market value of the property and the amount of compensation actually received. The return of an assigned or transferred resource to the assignor or transferor will nullify the disqualifying assignment or transfer, and the returned resource is thereafter treated as any other property resource.
2. There are legitimate instances when a property assignment or transfer may be valid. The applicant or recipient should be given full opportunity to state the reasons for having made the property assignment or transfer, and these statements should be considered in relation to the following questions:

- a. Was adequate consideration received?
 - b. How recent was the assignment or transfer? (Caution on this point is advised since very recent assignments or transfers may in some instances be entirely acceptable.)
 - c. Is the applicant's or recipient's stated purpose reasonable in view of the circumstances prevailing at the time of the assignment or transfer?
 - d. Would it have been reasonable to anticipate that the assignment or transfer of property at the time it occurred would result in an earlier need for assistance?
 - e. Was there some consideration other than cash? For instance, were benefits available to the applicant or recipient, from the assignee or transferee, that were contingent upon the assignment or transfer of the property?
 - f. Did the transferee have a legal or equitable interest in the property transferred?
3. Where the assignee or transferee is a relative of the assignor or transferor, services or assistance furnished by the assignee or transferee to the assignor or transferor may not be treated as consideration for the property unless provided pursuant to a valid contract entered into prior to the rendering of the service or assistance.
 4. An assignment or transfer of property for less than adequate consideration, made at any time after two years prior to the first date of application or inquiry for medical assistance, or after a previous application for medical assistance has been made and denied because of excess property resources, shall be presumed to have been made for the purpose of rendering the applicant eligible for medical assistance. This presumption may be rebutted by substantial evidence of an intent which is inconsistent with the presumed intent.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

AGENCY SYNOPSIS: Provides that a person may not be found ineligible for medical assistance if that individual would have been eligible had the state plan for medical assistance in effect on January 1, 1972, been in effect in the month in which the individual sought assistance.

75-02-02-26. Eligibility under 1972 state plan. No individual may be determined to be ineligible for medical assistance benefits for

any month if, had the approved state plan for medical assistance in effect on January 1, 1972, been in effect in such month, that individual would be eligible. The following income and resource standards were a part of the approved state plan in effect on January 1, 1972, and may not be exceeded by any individual who claims eligibility under this section:

1. The income level for a family of one is one hundred fifty dollars per month. The income level for a family of two is two hundred dollars per month. The income level for a family of three is two hundred fifty dollars per month. The income level for a family of four is three hundred dollars per month. The income level for a family of five is three hundred forty-two dollars per month. The income level for a family of six is three hundred eighty-four dollars per month. The income level for a family of seven is four hundred twenty-five dollars per month. An additional thirty-four dollars per month will be added for each family member beyond seven to establish the income level for families with more than seven members. The income level for a person residing in a long-term care facility is eight dollars per month.
2. The home occupied by the medical assistance unit will be exempted in determining eligibility for medical assistance.
3. Real property other than the home may not exceed an equity of twenty-five hundred dollars, except that real property which is essential to earning a livelihood shall be exempt from the limitation, if the liquidation of such assets would cause undue hardship. Liquidation of income-producing real property, which would result in reducing annual income below the established income levels, would be considered undue hardship. If undue hardship is not a consideration, equity in excess of the twenty-five hundred dollars would be considered available for meeting medical costs, providing the property is salable. The person would have the option of liquidating the excess property or borrowing funds on it.
4. For the purposes of subsections 5, 6, and 7, personal property includes cash, savings, and redeemable stocks and bonds, vehicles, machinery, livestock, et cetera, but does not include personal effects, wearing apparel, household goods, furniture, or trailer homes being used for living quarters. Cash surrender value of life insurance policies will be considered personal property but will not be considered cash.
5. Personal property may not exceed an equity of twenty-five hundred dollars except that such property which is essential to the earning of a livelihood shall be exempt from the limitation if the liquidation of such excess assets would cause undue hardship. Liquidation of income-producing personal property which would result in reducing annual income below the established income levels would be considered undue

hardship. If undue hardship is not found to be a consideration, equity in excess of the twenty-five hundred dollars would be considered available for meeting medical costs providing the property is salable. The person would have the option of liquidating the excess property or borrowing funds on it.

6. In all instances, real and personal property must be realistically evaluated in accord with current market value, and in considering net equity, any possible costs which may be associated with liquidation of the excess property must be taken into account.

7. With respect to cash, savings, redeemable stocks and bonds, and other liquid assets, the following levels will be applicable to families of various sizes:

a. Three hundred fifty dollars for one person;

b. Seven hundred dollars for two persons;

c. Fifty dollars for each family member through ten; and

d. Twenty-five dollars for each additional family member.

These amounts will not be considered as being available for medical expenses.

History: Effective May 1, 1986.

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02

JUNE 1986

AGENCY SYNOPSIS: North Dakota Administrative Code chapter 75-04-01 was originally created effective April 1, 1982. The licensing of programs and services for developmentally disabled persons has continued since that time based upon the original promulgation. Since that time, numerous technical and semantical changes have been found to be desirable. New terminology has come into use and statutory changes have been made. These various changes led to a determination that the basic licensing chapter should be reviewed and updated.

The amendments proposed to sections 75-04-01-01, 75-04-01-02, 75-04-01-06, 75-04-01-08, 75-04-01-09, 75-04-01-16, 75-04-01-17, 75-04-01-21, and 75-04-01-23 are largely technical in nature.

The proposed repeal of section 75-04-01-18 envisions the elimination of the process of registering ancillary services furnished by a licensed provider.

The proposed repeal of section 75-04-01-19 is intended to apply the same licensing process to all community residential service facilities housing more than four persons with developmental disabilities.

Section 75-04-01-20 is proposed to include specific requirements for assurances and guarantees to be made by entities which would furnish services to developmentally disabled persons.

The proposed new sections 75-04-01-27 through 75-04-01-38 have become necessary to assure uniform safety and service requirements. These requirements, in large part, reflect existing requirements which are imposed by other agencies on only some of the licensable developmentally disabled facilities.

STAFF COMMENT: Sections 75-04-01-27 through 75-04-01-38 contain all new material but are not underscored so as to improve readability.

75-04-01-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Adult group home" means a residence designed to meet the needs of developmentally disabled individuals who can benefit from family living in a congregate setting and which provides opportunities for individuals to obtain or maintain social, behavioral, and other domestic skills. "Accreditation" means recognition by a national organization of a licensee's compliance with a set of specified standards.
2. "Adult day care" means comprehensive and coordinated activities provided on an ongoing basis to adults with developmental disabilities residing in the community. Programs involve social, physical, recreational, and personal care training and activity with emphasis on stimulation, exposure, community orientation, and participation.
3. "Applicant" means an entity which has requested licensure from the North Dakota department of human services pursuant to North Dakota Century Code chapter 25-16.
- 2- 4. "Basic services" means those services required to be provided by an entity in order to obtain and maintain a license.
- 3- 5. "Case management" means a process of interconnected steps designated by the division department, and implemented by a specific individual, designed to maximize delivery of the full range of services to developmentally disabled individuals with developmental disabilities.
- 4- "Child development" means the systematic application of an individualized program designed to prepare the handicapped child, aged three through five, for participation in the public school programs.
- 5- 6. "Client" means a person accepted for or receiving services from a licensee.
7. "Congregate care" means a specialized program to serve elderly individuals with developmental disabilities whose health and medical conditions are stable and do not require continued nursing and medical care, and are served within a community group-living arrangement.
- 6- 8. "Department" means the North Dakota department of human services.
- 7- 9. "Developmental day activity" means a physically separated department or entity having an identified program and separate supervision and records in which very basic functional skills

are developed through repetitive instruction. Training emphasis is stimulation exposure and reinforcement in activities of daily living which include communication skills, education skills, self-awareness, physical and emotional development, grooming, hygiene, and recreation. Skill development, when appropriate, would be preliminary to and in preparation for entry into a work activity program.

- 8- 10. "Developmental disability" means a severe, chronic disability of a person which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the person attains age twenty-two;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) Self-care;
 - (2) Receptive and expressive language;
 - (3) Learning;
 - (4) Mobility;
 - (5) Self-direction;
 - (6) Capacity for independent living; and
 - (7) Economic sufficiency; and
 - e. Reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
11. "Developmental work activity" means those services provided in a workshop, or physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for workers with handicapping conditions whose physical or mental impairment is so severe as to make their productive capacity inconsequential as defined in 29 CFR 525 et seq.
- 9- 12. "Extended employment" means a work situation in a supervised noncompetitive environment which provides remunerative employment opportunities for indefinite periods of time and which is subject to 29 CFR 524 et seq., and 525 et seq.

- ~~10-~~ 13. "Governing ~~board~~ body" means ~~these~~ the person or persons designated in the articles of incorporation of a corporation or constitution of a legal entity as being authorized to act on behalf of the entity.
14. "Group home" means any community residential service facility licensed by the department housing more than four persons with developmental disabilities.
- ~~11-~~ 15. "Infant development" means a systematic application of an individual program designed to alleviate or mediate the handicapping conditions in children from birth through age two.
- ~~12-~~ 16. "Intermediate care facility for the ~~developmentally disabled mentally retarded~~" means a residential health facility operated pursuant to regulation under 42 CFR 442 et seq.
- ~~13-~~ 17. "License" means authorization by the department to provide a service to ~~developmentally disabled~~ persons with developmental disabilities.
18. "Licensee" means that entity which has received authorization by the department to provide a service or services to persons with developmental disabilities.
- ~~14-~~ 19. "Minimally supervised living arrangements" means a group home or community complex which provides self-contained rented units, with an available client advisor, to clients.
- ~~15-~~ 20. "Principal officer" means the presiding member of a governing body, a chairperson or president of a board of directors.
- ~~16-~~ "Reasonable cost" means the cost, including all necessary and proper costs, incurred in rendering the services subject to the principles related to specific items of revenue and cost. Reasonable cost takes into account both direct and indirect cost of providers of services. Implicit in the intention that actual costs be paid to the extent they are reasonable is the expectation that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost conscious buyer pays for a given item or services. Within this definition costs must be related to client care. Client care costs would be those costs which are necessary and proper and which are common and expected occurrences in the field of the providers activity.
- ~~17-~~ "Related organization" means an organization with which a provider is to a significant extent

associated or affiliated with or has control of, or is controlled by the organization furnishing the services, facilities, or supplies. Control may be obtained either through ownership, management, or contractual arrangements.

- ~~18-~~ 21. "Resident" means a client receiving services provided in any licensed residential facility.
- ~~19-~~ 22. "Respite care" means a service, consisting of short-term placement out of the home or temporary care within the home, provided to the family of a developmentally disabled an individual with developmental disabilities.
- ~~20-~~ 23. "Standards" means requirements which, or complied with, result in accreditation by the accreditation council for service for mentally retarded and other developmentally disabled persons.
- ~~21-~~ 24. "Supported living arrangements arrangement" means a program providing a variety of types of living arrangements that enable handicapped persons with handicapping conditions to enjoy choice and options comparable to those available to the general population. Clients entering this service shall have obtained those skills associated with independent living and the effects of any skill deficits shall be subject to mitigation by the provision of individualized training and follow-along services.
- ~~22-~~ 25. "Transitional community living facility" means a residence for clients with individualized programs consisting of social and, community integration and daily living skills development preliminary to entry into the less restrictive setting of a minimally supervised living arrangement settings.
- ~~23-~~ 26. "Vocational development" means a program of vocational preparation preliminary to competitive or extended employment, administered through a rehabilitation facility subject to 29 CFR 525 et seq., for participants who have demonstrated productivity in excess of fifty percent of normal. The service shall be a physically separate department of a workshop, with separate supervision and records, and with a separately identifiable program. Vocational education and training may be provided in a manner or setting not subject to regulation by the department of labor.
- ~~24-~~ "Vocational evaluation" means a systematic and organized methodology section employed to determine an individual's vocational assets, limitation, and behavior in the context of work environments.
- ~~25-~~ "Work activity" means those services provided in a workshop, or physically separated department of a

workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential as defined in 29 CFR 525 et seq.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-01.2-18, 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-15-08, 25-16-06

75-04-01-02. License required. No person, association of persons, or corporation shall offer or provide a service or own, manage, or operate a facility offering or providing a service to more than four developmentally disabled persons with developmental disabilities without first having obtained a license or registration certificate from the department unless the facility is exempted by subsection 1 or 2 of North Dakota Century Code section 15-59.3-02 or is a health care facility (as defined in North Dakota Century Code section 23-17.2-02) other than an intermediate care facility for the developmentally disabled mentally retarded.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-01.2-18, 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-15-08, 25-16-02

75-04-01-04. License denial, suspension, or revocation. The department may deny a license to an applicant or suspend or revoke an existing license upon a finding of noncompliance with the rules of the department.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03, 25-16-08

75-04-01-05. Notification of denial, suspension, or revocation of license.

1. The department shall, within sixty days from the date of the receipt of an application for a license, or upon finding a licensee in noncompliance with the rules of the department, notify the applicant or licensee's principal officer of the department's intent to grant, deny, suspend, or revoke a license.
2. Notification shall be in writing. Notification is made upon deposit with the United States postal service. The notice of denial, suspension, or revocation shall identify any rule or standard alleged to have been violated and the factual basis

for the allegation, the date after which the denial, suspension, or revocation is final, and the procedure for appealing the action of the department.

3. The applicant or licensee may appeal the denial, suspension, or revocation of a license by written request for an administrative hearing, mailed or delivered to the department within ten days of receipt of the notice of intent to deny, suspend, or revoke. The hearing shall be governed by the provisions of chapter 75-01-03.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-08

75-04-01-06. Disclosure of criminal record.

1. Each member of the governing board body of the applicant, the chief executive officer, and any employees or agents who receive and disburse funds on behalf of the board governing body, or who provide any direct care service to clients, shall disclose to the department any conviction of a criminal offense.
2. Such disclosure shall not disqualify the applicant from licensure, unless the conviction is for a crime having direct bearing on the capacity of the applicant to provide a service under the provision of this chapter and the convicted person is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1.
3. The department shall determine the effect of a conviction of an offense.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03.1

75-04-01-08. Types of licenses.

1. A license issued pursuant to this chapter shall be denominated "license", "provisional license", or "special provisional license".
2. A "license" is unrestricted and shall be issued to any applicant which complies with the rules and regulations of the department and North Dakota Century Code section 25-16-03, and which is accredited by the accreditation council for services for mentally retarded and other developmentally disabled persons. The license shall be nontransferable, expire one

year from the date of issuance, and shall be valid for only those services or facilities identified thereon.

3. A "provisional license" may be issued subject to the provision of section 75-04-01-09.
4. A "special provisional license" may be issued subject to the provision of section 75-04-01-10.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-09. Provisional license.

1. A provisional license may be issued to an applicant notwithstanding a finding of noncompliance with the rules of the department and of North Dakota Century Code section 25-16-03. A provisional license shall not be issued to an applicant whose practices or facilities pose a clear and present danger to the health and safety of **developmentally disabled persons with developmental disabilities.**
2. Upon a finding that the applicant is not in compliance of the rules, the department may notify the applicant in writing of its intent to issue a provisional license. This notice shall provide the reasons for the action and shall describe the corrective actions required of the applicant, which, if taken, will result in the issuance of an unrestricted license.
3. The applicant shall, within ten days of the receipt of notice under subsection 2, submit to the department, on a form provided, a plan of correction. The plan of correction shall include, but not be limited to, the elements of noncompliance, a description of the corrective action to be undertaken, and a date certain of compliance. The department may accept, modify, or reject the applicant's plan of correction. If the plan of correction is rejected, the department shall notify the applicant that the license has been denied. The department may conduct periodic inspection of the facilities and operations of the applicant to evaluate the implementation of a plan of correction.
4. A provisional license may be issued for any period not exceeding one year, **and may be renewed not more than twice.** A provisional license may be renewed only upon successful completion of an accepted plan of correction. A provisional license is nontransferable and valid only for the facilities or services identified thereon. Notice of the granting of a provisional license, or of a decision to modify or reject a plan of correction, may be appealed in the same manner as a notice of denial or revocation of a license.

History: Effective April 1, 1982; amended effective June 1, 1986.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-03

75-04-01-13. Purchase of service, ~~certification~~ or recognition of unlicensed entities. The department shall not ~~certify~~, recognize, or approve the activities of unlicensed entities in securing public funds from the United States, North Dakota, or any of its political subdivisions, nor shall it purchase any service from such entities.

History: Effective April 1, 1982; amended effective June 1, 1986.
General Authority: NDCC 25-16-06, 50-06-16
Law Implemented: NDCC 25-16-10

75-04-01-15. Standards of the department. The department herein adopts and makes a part of the rules the standards for services for developmentally disabled individuals, accreditation council for services for mentally retarded and other developmentally disabled persons, ~~1980~~ current edition.

History: Effective April 1, 1982; amended effective June 1, 1986.
General Authority: NDCC 25-01.2-18, 25-15-08, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-15-08, 25-16-06

75-04-01-16. Imposition of the standards. Unaccredited applicants issued a provisional license shall ~~include~~ provide the department with a plan to secure accreditation in any plan of correction submitted pursuant to the provisional license requirements. The licensee, upon request of the department, shall submit copies of reports generated by the accreditation process.

History: Effective April 1, 1982; amended effective June 1, 1986.
General Authority: NDCC 25-01.2-18, 25-15-08, 25-16-06, 50-06-16
Law Implemented: NDCC 25-01.2-18, 25-15-08, 25-16-06

75-04-01-17. Identification of basic services subject to licensure. Services provided to more than four developmentally disabled persons in treatment or care centers shall be identified and licensed by the following titles:

1. Residential services:
 - a. Intermediate care facility for the ~~developmentally disabled~~ mentally retarded;
 - b. ~~Adult group home~~;
 - e. Transitional community living facility;

- ~~d-~~ c. Minimally supervised living arrangement;
- ~~e-~~ d. Supported living arrangement; ~~or~~
- e. Respite care; or
- ~~f.~~ ~~Out-of-home respite care.~~ Congregate care.

2. Day services:

- a. Developmental day activity;
- ~~b.~~ ~~Work~~ Developmental work activity;
- ~~c.~~ ~~Vocational evaluation;~~
- ~~d-~~ Vocational development;
- ~~e-~~ d. Extended employment;
- ~~f-~~ ~~In-home respite care;~~
- ~~g-~~ e. Infant development; or
- ~~h-~~ ~~Child development.~~
- f. Adult day care.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-15-08, 25-16-06

75-04-01-18. Identification of ancillary services subject to registration.

- ~~1-~~ A licensed provider of basic services may provide an ancillary service which must be registered with the department when:
 - ~~a-~~ The service is provided to more than four persons;
 - ~~b-~~ The service is subject to review for conformance with the standards;
 - ~~e-~~ The service is included for the purpose of state financial participation as discrete and identifiable;
 - ~~d-~~ The service is provided by a professional licensed or certified by the state, or

e. The service functions in support of persons enrolled in a basic service.

2. A licensee offering an ancillary service, which the department determines has an adverse effect upon the delivery of a basic service or which is not registered with the department, may have its license revoked subject to section 75-04-01-03 or 75-04-01-08.

History: Effective April 17, 1982.

General Authority: NDEC 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDEC 25-15-08, 25-16-06

Repealed effective June 1, 1986.

75-04-01-19. Licensure of intermediate care facilities for the developmentally disabled. Applicants subject to certification by the state pursuant to the provisions of 42 CFR 442 et seq., upon submission of evidence of certification, shall be issued a license.

History: Effective April 17, 1982.

General Authority: NDEC 25-16-06, 50-06-16

Law Implemented: NDEC 25-16-06

Repealed effective June 1, 1986.

75-04-01-20. Applicant guarantees and assurances.

1. Applicants shall submit, in a manner prescribed by the department, evidence that policies and procedures approved by the governing body are written and implemented in a manner which:
 - a. Guarantees each client an individual program plan pursuant to the provisions of North Dakota Century Code section 25-01.2-14;
 - b. Guarantees that each client, parent, guardian, or advocate receives written notice of ~~their~~ the client's rights pursuant to in the manner provided by North Dakota Century Code section ~~25-01-01~~ 25-01.2-16;
 - c. Guarantees that each client admission is subject to a multidisciplinary determination that placement is appropriate pursuant to North Dakota Century Code section 25-01.2-02;
 - d. Guarantees the client the opportunity to vote, to worship, to interact socially, to freely communicate and receive

guests, to own and use personal property, to unrestricted access to legal counsel, and guarantees that all rules regarding such conduct are posted or made available pursuant to North Dakota Century Code sections 25-01.2-04 and 25-01.2-05;

- e. Guarantees that such restrictions as may be imposed upon a client relate solely to capability and are imposed pursuant to the provisions of an individual program plan;
- f. Guarantees the confidentiality of all client records;
- g. Guarantees that the client receives adequate remuneration for compensable labor, that subminimum wages are paid only pursuant to 29 CFR 525 et seq., that restrictions upon client access to money are subject to the provisions of an individual program plan, that assets managed by the applicant on behalf of the client shall inure solely to the benefit of that client, that each client has a money management plan or documented evidence of the client's capacity to manage money, and that, in the event the applicant is a representative payee of a client, the informed consent of the client is obtained and documented;
- h. Guarantees the client access to appropriate and timely medical and dental care and adequate protection from infectious and communicable diseases, and guarantees effective control and administration of medication, as well as prevention of drug use as a substitute for programming;
- i. Guarantees the client freedom from corporal punishment, guarantees the client freedom from imposition of isolation, seclusion, chemical, physical, or mechanical restraint except as prescribed by law, North Dakota Century Code section 25-01.2-10, or these rules, and guarantees the client freedom from psychosurgery, sterilization, medical behavioral research, pharmacological research, electroconvulsive therapy, shock treatment except as prescribed by law, North Dakota Century Code sections 25-01.2-09 and 25-01.2-11;
- j. Guarantees, where applicable, that a nutritious diet, approved by a qualified dietitian, will be provided in sufficient quantities to meet the client's dietary needs;
- k. Guarantees the client the right to refuse services, the right of the client and the client's representatives to be informed of the possible consequences of the refusal, alternative services available, and specifically, the extent to which such refusal may harm the client or others; **and**

- l. Assures the client safe and sanitary living and working arrangements and provides for emergencies or disasters and first-aid training for staff;
- m. Assures the existence and operation of both behavior management and human rights committees, pursuant to standards of the accreditation council for services for mentally retarded and other developmentally disabled persons for those committees;
- n. Assures that residential services will coordinate with the developmental and remedial services outside the group home in which a client engages;
- o. Assures that adaptive equipment, where appropriate for toilet training, toileting, mobility, or eating for use by individuals with multiple handicaps is provided in the service facility;
- p. Assures that all direct service staff demonstrate basic professional competencies as required by their job descriptions;
- q. Assures that annual evaluations that measure program outcomes against previously stated goals and objectives are conducted;
- r. Assures that all vehicles transporting clients are subject to routine inspection and maintenance, licensed by the state motor vehicle department, equipped with a first-aid kit and a fire extinguisher, to carry no more individuals than the manufacturer's recommended maximum capacity, handicapped accessible where appropriate, and driven by individuals who hold a valid state driver's license;
- s. Assures that an annual inspection with written report of safety program and practices is conducted in facilities providing day services;
- t. Guarantees that incidents of alleged abuse and neglect are thoroughly investigated and reported to the governing body, chief executive officer, parent, guardian or advocate, and the department with written records of these proceedings being retained for three years; guarantees that all incidents of restraint utilized to control or modify a client's behavior are recorded and reported to the governing body; guarantees that any incident resulting in injury to the client or agency staff that requires medical attention or hospitalization shall be recorded and reported to the governing body immediately, and as soon thereafter as possible to the parent, guardian, or advocate; and guarantees that incidents resulting in injury to the client or agency staff that requires

extended hospitalization, endangers life, or results in permanent disability shall also be reported to the department immediately; and

u. Guarantees that a grievance procedure, reviewed and approved by the department, affords the client or the client's parent or parents, guardian, or advocate a fair hearing of any complaint; and guarantees that records of such hearings are maintained and shall note therein the complaint, persons complaining, and the resolution of the grievance.

2. Accredited applicants shall submit evidence, satisfactory to the department, of accreditation.
3. The degree to which the unaccredited applicant's policies and procedures are in compliance with the standards shall be determined by the department.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-01.2-18, 25-16-06, 50-06-16

Law Implemented: NDCC 25-01.2-18, 25-16-06

75-04-01-21. Legal status of applicant. The applicant shall submit, in a form or manner prescribed by the department, the following items:

1. A correct and current statement of their articles of incorporation, bylaws, license issued by a local unit of government, partnership agreement, or any other evidence of legal registration of the entity.
2. A correct and current statement of tax exempt or taxable status under the laws of North Dakota or the United States **as well as the most recent financial report to the United States internal revenue service.**
3. A current list of partners or members of the **board of directors governing body and any advisory board** with their address, phone number, **and principal occupation, term of office, and status as a consumer or consumer representative.**
4. A statement disclosing the owner of record of any buildings, facilities, or equipment used by the applicant, the relationship of the owner to the applicant, and, if any, the cost of such use to the applicant and the identity of the entity responsible for the maintenance and upkeep of the property.
5. A statement disclosing any financial benefit which may accrue to the applicant or applicants to be diverted to personal use including, but not limited to, director's fees or expenses,

dividends, return on investment, rent or lease proceeds, salaries, pensions or annuities, or any other payments or gratuities.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-15-08, 25-16-06, 25-01.2-08, 50-06-16

Law Implemented: NDCC 25-15-08, 25-16-06, 25-01.2-08

75-04-01-22. Applicant's buildings. Applicants occupying buildings, whether owned or leased, must provide the department with a license or registration certificate properly issued pursuant to North Dakota Century Code chapter 15-59.3 or 50-11 or with:

1. The written report of an authorized fire inspector, following to an inspection of the buildings an initial or subsequent annual inspection of a building pursuant to section 75-04-01-23, which states:
 - a. Rated occupancy and approval of the building for occupancy; or
 - b. Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy;
2. A statement prepared by a sanitarian or authorized public health officer, following an initial or subsequent annual inspection, that the building's plumbing, water supply, sewer disposal, and food storage and handling comply with the applicable rules and regulations of the department of health;
3. A written statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances; and
4. For existing buildings, floor plans drawn to scale showing the use of each room or area and a site plan showing the source of utilities and waste disposal; or
5. Plans and specifications of buildings and site plans for facilities, proposed for use, but not yet constructed, showing the proposed use of each room or area and the source of utilities and waste disposal.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-15-08, 25-16-06

75-04-01-23. Safety codes.

1. Applicant's residential service facilities which house individuals capable of following directions and taking appropriate action for self-preservation under emergency conditions shall meet the following requirements provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code of the national fire protection association-, 1985 edition, as determined by the department.
 - a- For transitional community living facilities which house eight or fewer individuals, chapter 11, section 6, Life Safety Code, 1973 Edition.
 - b- For transitional community living facilities which house nine through fifteen individuals, and adult group homes which house eight or fewer individuals, chapter 11, section 5, Life Safety Code, 1973 Edition.
 - c- For transitional community living facilities which house sixteen or more individuals, and adult group homes which house nine through fifteen individuals, chapter 11, section 4, Life Safety Code, 1973 Edition.
 - d- For adult group homes which house sixteen or more individuals, applicable provisions of chapter 10, Life Safety Code, 1973 Edition.
 - e- For minimally supervised living arrangement, chapter 11, section 3, Life Safety Code, 1973 Edition.
 - f- For supported living arrangement, these provisions of the Life Safety Code determined applicable to the living arrangement by the local authority.
2. Applicant's facilities housing persons incapable of following directions and taking appropriate action for self-preservation under emergency conditions shall conform to chapter 10, Life Safety Code, 1973 Edition. Upon written application, and good cause shown to the satisfaction of the department, the department may grant a variance from any specific requirement of the Life Safety Code, upon such terms as the department may prescribe, except no variance may permit or authorize a danger to the health or safety of the residents of the facility.

3. Applicant's facilities housing wheelchair ~~board~~ bound or multiphysically handicapped shall conform to American National Standards Institute Standard No. A117.1 (1980).
4. Applicant's buildings used to provide day services ~~including, but not limited to, developmental day activity, work activity, vocational evaluation, vocational development, infant development, and child development~~ shall conform to chapter 9, Life Safety Code, 1973 Edition, and be accessible to and usable by the physically handicapped the chapters pertaining to new or existing educational occupancies of the Life Safety Code of the National Fire Protection Association, 1985 edition.

History: Effective April 1, 1982; amended effective June 1, 1986.

General Authority: NDCC 25-15-08, 25-16-06, 50-06-16

Law Implemented: NDCC 25-15-08, 25-16-06

75-04-01-27. Group home design.

1. Group home facilities shall be small enough and of a modest design minimizing the length of hallways, the number of exterior corners, and the complexity of construction to ensure the development of meaningful interpersonal relationships and the provision of proper programming, services, and direct care. New or remodeled homes completed after July 1, 1985, are limited to occupancy by no more than eight individuals with developmental disabilities.
2. Group home facilities shall simulate the most homelike atmosphere possible in order to encourage a personalized environment.
3. Group home facilities shall provide, at a minimum, enough living space based on the needs of both males and females with provisions for privacy and appropriate access to quiet areas where an individual can be alone.
4. Group home facilities shall provide arrangement of space to permit clients to participate in different kinds of activities, both in groups and singly. Space shall be arranged to minimize noise and permit communication at normal conversational levels.
5. Group home facilities shall be accessible to nonambulatory visitors and employees.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-28. Group home location.

1. Group home facilities shall be located at least three hundred feet [91.44 meters] from hazardous areas such as bulk fuel or chemical storage, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.
2. Group home facilities shall not be located in such areas subject to adverse environmental conditions such as mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibrations, or vehicular traffic.
3. Group home facilities shall not be located in an area within the one-hundred-year base flood elevations unless:
 - a. The facility is covered by flood insurance as required by 42 U.S.C. 4101; or
 - b. The finished lowest floor elevation is above the one-hundred-year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one-hundred-year flood.
4. Group home facilities shall be located in residential neighborhoods reasonably accessible to shops, commercial facilities, and other community facilities; and shall be located not less than six hundred feet [182.88 meters] from existing group homes or day service facilities licensed by the department to serve persons with developmental disabilities, schools for the disabled, long-term care facilities or other institutional facilities. Upon written application, and good cause shown, the department may grant a variance from the provisions of this subsection upon such terms as the department may prescribe.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-29. Group home bedrooms.

1. Bedrooms in group home facilities shall accommodate no more than two individuals.
2. Bedrooms in group home facilities shall provide at least eighty square feet [7.43 square meters] per individual in a single occupancy bedroom, and at least sixty square feet [5.57 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space. Bedrooms in newly constructed homes or existing homes converted to group

home facilities completed after July 1, 1985, shall provide at least one hundred square feet [9.29 square meters] per individual in a single occupancy bedroom, and at least eighty square feet [7.43 square meters] per individual in a double occupancy bedroom, both exclusive of closet and bathroom space.

3. Bedrooms in group home facilities shall be located on outside walls and separated from other rooms and spaces by walls extending from floor to ceiling and be at or above grade level.
4. Bedrooms in group home facilities shall not have doors with vision panels and shall to be capable of being locked, except where individuals may lock their own rooms as consistent with their programs.
5. Bedrooms in group home facilities shall provide furnishings which are appropriate to the psychological, emotional, and developmental needs of each individual. Each individual shall be provided a separate bed of proper size and height, a clean comfortable mattress, bedding appropriate to the climate, and a place for personal belongings. Individual furniture, such as a chest of drawers, table, or desk, and an individual closet with clothes racks and shelves shall be provided. A mirror shall be available to mobile individuals and a tilted mirror shall be available to nonambulatory individuals.
6. Bedrooms in group home facilities shall provide storage space for clothing in the bedroom which is accessible to all, including nonambulatory individuals.
7. Bedrooms in group home facilities shall provide space outside the bedrooms to be equipped for out-of-bed activities for all individuals not yet mobile, except for those who have a short-term illness or those for whom out-of-bed activity is a threat to life.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-30. Group home kitchens.

1. Kitchens in group home facilities shall provide sufficient space to permit participation by both staff and clients in the preparation of food.
2. Kitchens in group home facilities shall provide appropriate space and equipment, including a two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.

3. Kitchens in group home facilities shall have hot water supplied to sinks in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-31. Group home bathrooms.

1. Bathrooms in group home facilities shall be located in such places as to facilitate maximum self-help by clients.
2. Bathrooms in group home facilities shall provide showers, bathtubs, and lavatories approximating normal patterns found in homes unless specifically contraindicated by program needs.
3. Bathrooms in group home facilities shall serve only up to four individuals each.
4. At least one bathroom per group home facility shall be accessible and usable by nonambulatory visitors and employees.
5. Bathrooms in group home facilities shall have hot water supplied to lavatories and bathing facilities in the range of one hundred ten to one hundred forty degrees Fahrenheit [47.22 to 60 degrees Celsius], as controlled by a tempering valve, located to preclude client access.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-32. Group home laundry.

1. Laundry space within group home facilities shall provide a washer and dryer, storage for laundry supplies, accommodations for ironing, and counterspace for folding clothing and linen.
2. Hot water supplied to clothes washers shall be in the range of one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-33. Group home use of space.

1. Group home facilities shall provide free use of space within the living unit, with due regard for privacy, personal possessions, and programs; with limitations of personal areas of supervisory staff.
2. Group home facilities shall provide for individuals to personalize their portion of the living unit and mount pictures on the walls.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-34. Group home staff accommodations.

1. Group home facilities shall provide staff accommodations for onsite living, if a condition of employment, of a living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom; or
2. For employees working in shifts, adequate sleeping facilities.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: 25-16-03

75-04-01-35. Water supply.

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private water supplies approved by the state department of health are available. Approved public water supplies shall be used where available.
2. When a private water supply is used, water samples shall be submitted at the earliest possible date prior to occupancy and every six months thereafter to determine chemical and bacteriological acceptability.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-36. Sewage disposal.

1. Group home facilities for individuals with developmental disabilities shall be located in areas where public or private sewage disposal systems approved by the state health

department are available. Approved public sewage disposal systems shall be used where available.

2. Plans and specifications for proposed private sewage disposal system or alteration to such systems must be approved by the state department of health prior to the construction, maintenance, and operation of such systems.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-37. Emergency plans. There shall be written plans and procedures, which are clearly communicated to and periodically reviewed with staff and clients for meeting emergencies such as fire; serious illness, severe weather, and missing persons. Applicable requirements of state law and regulations by the state fire marshal and applicable licensing authorities shall be met.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

75-04-01-38. Insurance and bond requirements.

1. Licensees shall secure and maintain insurance and bonds appropriate for the size of the programs including, but not limited to:
 - a. Blanket fidelity bond equal to not less than ten percent of the total operating costs of the program.
 - b. Property insurance covering all risks at replacement costs and costs of extra expense of loss of use.
 - c. Liability insurance covering bodily injury, property damage, personal injury, teacher liability, professional liability, and umbrella liability as applicable.
 - d. Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.
2. The department shall determine the adequacy of the insurance coverages maintained by the applicant.

History: Effective June 1, 1986.

General Authority: NDCC 25-16-06, 50-06-16

Law Implemented: NDCC 25-16-03

TITLE 81
Tax Commissioner

AUGUST 1986

81-09-02-01. Definitions. Unless As used in this chapter and for the administration of North Dakota Century Code chapter 57-51, unless the context otherwise requires the following definitions apply:

1. "Casinghead gas" means gas as produced from a well classified as an oil well by the industrial commission.
2. "Commissioner" means the tax commissioner of the state of North Dakota.
3. "Natural gas" means gas as produced from a well classified as a gas well by the industrial commission.
4. "Nonoperating interest" means an interest in production from a mineral property which does not share in operating rights. A nonoperating interest includes an overriding royalty interest, a net profit interest, and a carried interest.
5. "Oil" means petroleum, crude oil (including condensate), mineral oil, and casinghead gasoline.
6. "Person" means an individual, partnership, corporation, association, fiduciary, trustee, and any combination thereof.
7. "Producer" means the owner of a working interest or a nonoperating interest, in a well capable of producing oil or gas, or both.
8. "Purchaser" means any buyer of oil or gas after it has been produced. Purchaser does not include one who acquires oil or gas in place in the earth through a lease, estate, or other interest.

2- 9. "Return" means any statement, report, or return required by North Dakota Century Code chapter 57-51 to be filed with the commissioner.

10. "Tax" means the oil and gas gross production tax.

11. "Working interest" means a mineral interest which includes the rights granted to a lessee of property to explore for, produce and own, oil or gas.

History: Effective July 1, 1982; amended effective August 1, 1986.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51

81-09-02-02. Procedure for review of commissioner's determination of tax due. The commissioner shall audit the returns filed pursuant to North Dakota Century Code chapter 57-51. If any tax is found due, the commissioner shall notify the taxpayer of the amount of tax due and the reason for the increase. If any person fails or refuses to file a return and pay the tax, the commissioner shall determine the amount of tax due from the best information available and shall notify that person of the amount determined to be due.

Such determination of tax due shall fix the tax finally and irrevocably unless the person against whom the determination is made shall within thirty days after the date of notice of the determination apply to the commissioner pursuant to North Dakota Century Code section 57-01-11 for a hearing.

At such hearing evidence may be offered to support the amount of tax determined by the commissioner to be due or to prove that such tax is not due. The notice of hearing, the hearing procedure, and any appeal from the decision of the commissioner shall be governed by North Dakota Century Code chapter 28-32 as provided for in North Dakota Century Code section 57-01-11.

1. The commissioner shall audit the returns filed pursuant to North Dakota Century Code chapter 57-51.
2. If the commissioner finds additional tax due, the commissioner shall notify the person of the determination. The notice of determination must be sent by first-class mail and must state the amount of additional tax due and state the reasons for the determination.
3. A person has thirty days to file a written protest objecting to the commissioner's notice of determination. The protest must set forth the basis for the protest and any other information which may be required by the commissioner. If a

person fails to file a written protest within the time provided, the amount of additional tax stated in the notice of determination becomes finally and irrevocably fixed. If a person protests only a portion of the commissioner's determination, the portion which is not protested becomes finally and irrevocably fixed.

4. If a protest is filed, the commissioner shall reconsider the notice of determination. The reconsideration may include further examination by the tax commissioner or his representative of a person's books, papers, records, or memoranda. The commissioner, upon request, may grant the person an informal conference.
5. Within a reasonable time after the protest, the commissioner shall mail a notice of reconsideration to the taxpayer. The notice of reconsideration must respond to the person's protest and must assess the amount of additional tax due. The amount of additional tax due stated in the notice of reconsideration becomes finally and irrevocably fixed unless the person files a complaint pursuant to North Dakota Century Code chapter 28-32 within thirty days after receipt of the notice of reconsideration.
6. Upon written request the commissioner may grant an extension of time to file a protest or a complaint.

History: Effective July 1, 1982; amended effective August 1, 1986.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-01-11, 57-51-07, 57-51-09

81-09-02-03. [Reserved]

81-09-02-04. [Reserved]

81-09-02-05. [Reserved]

81-09-02-06. [Reserved]

81-09-02-07. [Reserved]

81-09-02-08. [Reserved]

81-09-02-09. [Reserved]

81-09-02-10. Condensate. Gross value at the well includes the value of condensate from associated and nonassociated production. The value of condensate is included in gross value regardless of the point at which it is recovered. This includes, but is not limited to, condensate recovered at the lease site, compressor station, and processing plant.

History: Effective August 1, 1986.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-02

81-09-02-11. Tax reimbursement. Tax reimbursement to which a producer is entitled in settlement for gas sold must be included when determining gross value at the well. The producer may calculate the tax reimbursement as follows:

Tax reimbursement = 0.052632 x residue value of gas.

Where a producer claims an exempt royalty, the above formula may be modified as follows:

Tax reimbursement = 0.052632 x [residue value - (royalty percentage x residue value)].

History: Effective August 1, 1986.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-02

81-09-02-12. Postproduction costs. When reporting the price of oil or gas for purposes of subdivision d of subsection 1 and subdivision c of subsection 2 of North Dakota Century Code section 57-51-06, postproduction costs incurred by the producer may be deducted from the price paid at the point of sale. These postproduction costs include expenditures made to transport, by pipeline or truck, oil or gas from the point of production to the place of sale.

Nothing in this rule may be construed to limit the commissioner's authority pursuant to subsection 4 of North Dakota Century Code section 57-51-05 and North Dakota Century Code section 57-51-09.

History: Effective August 1, 1986.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-02, 57-51-06

81-09-02-13. [Reserved]

81-09-02-14. [Reserved]

81-09-02-15. Exempt royalty interests.

1. A royalty interest in oil or gas is exempt from the gross production tax if the royalty interest is owned by any of the following:

a. The federal government or an instrumentality of the federal government.

- b. The state of North Dakota or its political subdivisions.
 - c. An organized Indian tribe, whose land cannot be alienated without consent of the federal government.
2. A royalty interest in production which is owned by a private or charitable organization, whether profit or nonprofit, is not exempt from the gross production tax.

History: Effective August 1, 1986.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-02

81-09-02-16. Exemption for lease use gas. Gas used for production purposes on the lease from which it was produced is exempt. This exemption does not include gas that has been processed in any manner.

"Processed", as used in this section, does not include gas that has passed through a heater-treater, or other similar device, commonly used at the well site by the producer.

History: Effective August 1, 1986.

General Authority: NDCC 57-51-21

Law Implemented: NDCC 57-51-05.1

81-09-03-02. Definition. Unless the context requires otherwise, the following definition applies. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the enforcement of spacing requirements.

History: Effective August 1, 1986.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(5), 57-51.1-03(2)

81-09-03-03. Determination of a property - Operator's election to designate individual wells as separate properties. A property, for purposes of exemption of stripper well property from the oil extraction tax, is governed by the following:

1. A unit, whether created before, on, or after January 1, 1972, constitutes a separate property.

2. A lease or fee interest subdivision created before January 1, 1972, constitutes a separate property if production of oil occurred in commercial quantities before January 1, 1972.
3. A lease or fee interest subdivision created after December 31, 1971, does not constitute a separate property if production of oil occurred in commercial quantities before January 1, 1972.

To receive a determination from the tax commissioner that the property an operator desires to have classified as a stripper well property constitutes a property as specified in subdivision 3 of North Dakota Century Code section 57-51.1-01, the operator must file, on forms prescribed by the tax commissioner, an application for property determination. Upon receipt of the completed application form, the tax commissioner will determine whether the unit, lease, or fee interest subdivision constitutes a property within the meaning of subdivision 3 of North Dakota Century Code section 57-51.1-01. The tax commissioner will notify the operator of the tax commissioner's determination within thirty days of receipt of a completed application form. If the operator objects to the tax commissioner's determination, the operator may apply for a redetermination. The application for a redetermination must state the reasons for the objection. Within fifteen days of the receipt of the objection, the tax commissioner shall notify the operator of any change in the property determination.

An operator may elect at any time to treat each and every well located on the property determined above as a separate property for stripper well purposes. An operator's election to designate individual wells as separate properties is effective upon proper notification to the tax commissioner pursuant to section 81-09-03-04. The election, once exercised, is irrevocable.

History: Effective August 1, 1986.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(5), 57-51.1-03(2)

81-09-03-04. Designation of a property on an individual well basis - Notification by operator. An operator who elects to designate as a separate property each and every well located on a property determined in section 81-09-03-03 shall notify the tax commissioner. The notice must be submitted upon forms prescribed by the tax commissioner. The tax commissioner will review the notice to guarantee that the election is not in conflict with previous actions concerning that property. Provided the election is consistent with previous actions, within thirty days of receiving the notice, the tax commissioner shall provide the operator with a statement of separate property designation.

The origination date for a well receiving a separate property designation is the first day of the month following notification to the tax commissioner by the operator. Any consecutive twelve-month period after December 31, 1972, must be considered in determining whether a

designated separate property qualifies for certification as a stripper well property. The exemption from the oil extraction tax for a designated separate property which is certified as a stripper well property is effective as of the origination date.

History: Effective August 1, 1986.

General Authority: NDCC 57-51-21, 57-51.1-05

Law Implemented: NDCC 57-51.1-01(3)(5), 57-51.1-03(2)

OCTOBER 1986

81-04.1-01-28. Coupons. When a manufacturer, processor, or wholesaler issues a coupon entitling a purchaser to credit on the item purchased, the tax is due on the total gross receipts.

Example: If a manufacturer, processor, or wholesaler issues coupons entitling the holder to a credit allowance of seven cents on the purchase of its products from a retailer, the sales tax is computed by the retailer as follows:

Regular price	.75
Sales tax at four percent	.04
Subtotal	.79
Credit for coupon	.07
Amount due from purchaser	.72

When a retailer issues a coupon entitling the purchaser to a discounted price on the item purchased and when the retailer receives no reimbursement from a manufacturer, processor, or wholesaler, the sales tax is due from the purchaser only on the discounted price.

Example: If a retailer issues coupons entitling the holder to a credit allowance of seven cents on the purchase of its products from the retailer, the sales tax is computed by the retailer as follows:

Regular price	.75
Credit for coupon	.07
Subtotal	.68
Sales tax at four percent	.03
Amount due from purchaser	.71

History: Effective October 1, 1986.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3)(7), 57-39.2-02.1

81-04.1-03-09. Sales of microfiche. The gross receipts from the sale of an original copy of microfiche are not subject to sales tax. This sale is exempt from sales tax as a nontaxable service.

The gross receipts from the sale of all copies of an original microfiche are subject to sales tax because they are sales of tangible personal property.

When a retailer sells an original copy of microfiche with additional copies, the original copy is exempt from sales tax as a nontaxable service if it is separately billed. The separately billed copies remain subject to sales tax. If a lump sum amount is billed to the purchaser, the total gross receipts, including labor charges, are subject to sales tax.

History: Effective October 1, 1986.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3)(7), 57-39.2-02.1

81-04.1-03-10. Mailing lists. The gross receipts from the sale of a prepared mailing list are subject to sales tax if the retailer of the mailing list prepared the list for sale to a number of purchasers.

The gross receipts from the sale of a prepared mailing list are not subject to sales tax if the retailer of the mailing list prepared the list on a custom basis for a specific purchaser.

History: Effective October 1, 1986.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01(3)(7), 57-39.2-02.1

81-04.1-04-40. Rentals and rental agencies. In a lease-purchase arrangement, sales tax must be charged on the rentals until the option is exercised. When the option is exercised, sales tax must be charged on any additional amount the purchaser must pay to complete the purchase.

An agent acting for an undisclosed principal and leasing tangible personal property to the public is the owner, and the rentals received are subject to sales tax. Tax applies to the full rental as long as the leased item is used within this state.

Persons engaged in the business of leasing or renting tangible personal property other than motor vehicles, are retailers and subject to sales tax. Purchases by rental agencies of items to be leased or rented are purchases for resale and are not subject to sales tax. A certificate of resale must be presented to the seller for these purchases.

The term "sale" does not include sales or rentals of motor vehicles licensed by the North Dakota motor vehicle registrar on which the motor vehicle excise tax has been paid to North Dakota.

When the sales tax rate changes during the term of an existing lease, the rate of tax to be charged on the remaining lease or rental payments will reflect the new rate of tax.

History: Effective June 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-41. Telephone companies. Mutual or cooperative telephone companies are subject to payment of sales or use taxes on purchases made for final use or consumption. They must collect and remit sales tax on gross receipts derived from all retail sales.

Exchange companies must collect and remit sales tax upon their gross receipts. The exchange must pay the tax on the total receipts of a pay station. The gross receipts of an exchange must include assessments made to subscribers as well as regular periodic billings for telephone service. Exchange companies which receive switching fees from rural telephone lines must include the fees in gross receipts.

An exchange company owning service station lines but which does not operate switchboards, must collect sales tax from its subscribers. The company operating the switchboard and performing the switching service will collect the switching charge without tax, unless special authority for billing switching charges with tax added is requested jointly by the companies and authorized by the tax commissioner.

When toll services are furnished to subscribers of a service station or exchange company on a line switched by another exchange company, the company operating the switchboard over which the toll service call is placed must collect tax from the service station company.

Switching charges made to service station companies are taxable. There is no additional tax upon assessments to rural users for the switching charge.

Charges for telephone calls or telegrams beginning within North Dakota and completed outside the state or beginning outside North Dakota and completed within this state are not subject to sales or use tax if such charges are clearly indicated on a statement given to the customer. Federal excise taxes separately stated may be excluded.

Telegrams subject to sales tax charged to the account of telephone subscribers and billed by the telephone company must appear on the toll bill with the sales tax added.

A telephone system includes several components. These components include wiring, cables, plug-ins, jacks, installation labor, telephone instruments, and switchboard modules.

A telephone system includes both material and equipment which are installed into real property and material and equipment which remain tangible personal property.

The retailer of a telephone system is usually also responsible for the installation of all material and equipment necessary for the system to function. The wiring, cables, plug-ins, and jacks are installed into real property. An installer of these items is regarded as a contractor who is subject to sales or use tax on the cost of the installed material and equipment.

A telephone instrument or a switchboard module is regarded as tangible personal property and the gross receipts from the sale of these items are subject to sales tax.

Since the completed system will include both material and equipment which are installed into real property and material and equipment which remain tangible personal property, all material, equipment, and installation charges must be separately stated on the billing. The portion of the billing representing material and equipment which remain tangible personal property is subject to sales tax and the portion of the billing representing the installation of material and equipment into real estate is subject to sales or use tax based on the cost of the material and equipment to the installer, with no tax appearing on the billing.

If a lump sum amount is billed to the purchaser, the total gross receipts, including labor charges, are subject to sales tax.

History: Effective June 1, 1984; amended effective October 1, 1986.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

TITLE 92
Workmen's Compensation Bureau

MAY 1986

STAFF COMMENT: Sections 92-02-01-03.1 through 92-02-01-03.7 contain all new material but are not underscored so as to improve readability.

92-02-01-03.1. Definitions. For purposes of North Dakota Century Code chapter 65-14, the following definitions apply:

1. "Health professional" means a duly licensed medical doctor, doctor of osteopathy, and registered nurse.
2. "Material safety data" means that information required to be kept as detailed in the North Dakota employee information program including material identification, ingredients and hazards, physical data, fire and explosion data, reactivity data, health hazard information, spill/leak and disposal procedures, special protection information, and special precautions and comments.
3. "Variance" means an agreement to engage in an act or method which deviates from the North Dakota employee information program, but provides at least the same degree of safety and health as would be provided had the requirement been met. This should not be construed to mean an exemption from the requirements of sections 92-02-01-03.1 through 92-02-01-03.7.

History: Effective March 26, 1986.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-14-01

92-02-01-03.2. The North Dakota act and federal hazard regulations. North Dakota Century Code chapter 65-14 requires employers to implement an employee information program. Variances will be granted pursuant to subsection 6 of North Dakota Century Code section 65-14-02 where the bureau determines that the employer who requests the variance

has complied with such federal regulation. Nothing herein may be construed to foreclose the bureau from inspecting, and investigating the employee information programs of those to whom variances have been granted.

History: Effective March 26, 1986.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-14-01, 65-14-02

92-02-01-03.3. Written program. An employee information program is required as provided for in the "North Dakota Employee Information Program" publication, including the following areas:

1. Hazardous chemical inventory;
2. Identification of chemicals used;
3. Material safety data sheets;
4. Labeling controls;
5. Spill or emergency response teams and kits, as may be deemed necessary by the bureau;
6. Monitoring;
7. Supervisory training; and
8. Employee training.

By order of the commission, this program may be required to be reduced to a written form.

History: Effective March 24, 1986.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-14-01

92-02-01-03.4. Documentation of employee training. A training program shall be implemented whereby each employee is trained to properly and safely handle hazardous substances. Such training efforts shall be documented by use of a form, maintained by the employer, and must be signed by the individual receiving the training.

History: Effective March 24, 1986.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-14-01

92-02-01-03.5. Trade secrets.

1. The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:
 - a. The chemical manufacturer, importer, or employer can demonstrate the facts which underlie the legal conclusion that the chemical identity is a trade secret;
 - b. Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;
 - c. The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and
 - d. The specific chemical identity is made available to health professionals, in accordance with the applicable provisions of this section.
2. Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement as soon as circumstances permit.
3. In nonemergency situations, chemical manufacturers, importers, or employers must disclose the withheld specific chemical identity to health professionals providing medical or other occupational health services to exposed employees if certain conditions are met. The request for information must be in writing and must describe with reasonable details, the medical or occupational health needs for the information. The health professional must also specify why current information is insufficient. The request for information must explain, in detail, why disclosure of the specific chemical identity is essential, and include the procedures to be used to protect the confidentiality of the information. It must include an agreement not to use this information for any purpose other than the health need stated, or to release it under any circumstances, except to the North Dakota workmen's compensation bureau and the North Dakota state department of health.
4. The confidentiality agreement authorized by this section:

- a. May restrict the use of the information to the health purpose indicated in the written statement of need;
 - b. May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable preestimate of likely damages; and
 - c. May not include requirements for the posting of a penalty bond.
5. In nonemergency situations, where the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:
- a. Be provided to the health professional within thirty days of the request;
 - b. Be in writing;
 - c. Include evidence to support the claim that the specific chemical identity is a trade secret;
 - d. State the specific reasons why the request is being denied; and
 - e. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.
6. The health professional whose request for information is denied may refer the request and written denial of the request to the North Dakota workmen's compensation bureau for consideration.
7. If the North Dakota workmen's compensation bureau determines that the specific chemical identity requested is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the North Dakota workmen's compensation bureau.
8. If a chemical manufacturer, importer, or employer demonstrates to the North Dakota workmen's compensation bureau that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the commissioners may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided

without an undue risk of harm to the chemical manufacturer, importer, or employer.

History: Effective March 26, 1986.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-14-02(4)

92-02-01-03.6. Labeling.

1. The chemical manufacturer, importer, or employer shall ensure that each container of hazardous chemicals, storage or transfer container, dispenser, and pipe, be clearly and appropriately marked with appropriate hazard warnings, which may be any type of message, words, pictures, or symbols which convey the hazards of the chemicals in the container.
2. The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are for the immediate use of the employee who performs the transfer.
3. The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

History: Effective March 24, 1986.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-14-01

92-02-01-03.7. Inspections and investigations. The bureau shall conduct inspections and investigations for the purpose of enforcing the requirements of North Dakota Century Code chapter 65-14. If found to be in violation of such requirements, penalties may be levied pursuant to North Dakota Century Code section 65-03-02, injunctive relief obtained pursuant to subdivision c of subsection 1 of North Dakota Century Code section 65-04-27.1 or stop orders issued pursuant to subsection 2 of North Dakota Century Code section 65-14-02 and North Dakota Century Code chapter 28-32.

History: Effective March 24, 1986.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-14-01, 65-14-02(1), 65-14-02(2), 65-03-02, 65-04-27.1(1)(c)

