

ENVIRONMENTAL REVIEW ADVISORY COUNCIL  
March 10, 2021

A meeting of the Environmental Review Advisory Council was called to order by Terry O'Clair, at 2:30 p.m. on Wednesday, March 10, 2021 at the Gold Seal Center, 4<sup>th</sup> Floor, Bismarck, ND and via Teams Meeting.

Members Present:

Randy Hanson, Waste Management Industry (teleconference)  
Randy Binegar, Liquid & Gas Fuels Industry  
Tom DeSutter, Agronomy & Soil Sciences (teleconference)  
Terry Steinwand, Game & Fish-statute (ex-officio)  
Terry O'Clair, Environmental Sciences  
Dan Wogsland, Corp Agriculture (teleconference)  
Ed Murphy, State Geologist-statute (ex-officio) (teleconference)  
Julie Ellingson, Livestock Industry  
Greg Allen, Manufacturing or Agricultural Processing (teleconference)  
Craig Bleth, Minnkota Power Cooperative  
Jennifer Bell, Senator, Coyote Creek (teleconference)  
John Paczkowski, Interim St. Engineer (teleconference)  
Steve Dale, County or Municipal Government

Staff Members Present:

Jim Semerad, Air Quality  
Chuck Hyatt, Waste Management  
David Bruschwein, Municipal Facilities  
Jim Quanstrom, Chemistry  
Karl Rockeman, Water Quality  
Duane Sandvick, Office of the Director (PTRCF)  
Maggie Olson, Ass't. Att. General (teleconference)  
Carolyn Leingang, Office of the Director (teleconference)  
Beth Jacobson, Office of the Director  
Jennifer Skjod, Public Information Officer

**WELCOME**

The meeting was called to order by Chairman Terry O'Clair and it was stated that the meeting would follow the agenda. Jennifer Skjod explained conducting the meeting via Teams and that all the information was sent to the Council members and that the documents were also made available as attachments inside the chat and will be posted publicly.

## **APPROVAL OF MINUTES**

Discussion about obtaining and distributing of the September 9, 2020 minutes was done. It was determined that members received the minutes and there was a motion to approve them

RANDY BINEGAR MOVED TO APPROVE THE MINUTES FROM THE SEPTEMBER 9, 2020 MEETING. SECOND BY CRAIG BLETH AND MOTION CARRIED.

## **OLD BUSINESS**

### **Quad OOOO**

- Database in place for the Quad OOOO Program which provides electronic reporting for oil companies and other sources.
- Database will allow collection of fees.
- Program is half-way through hiring of the 10 new positions.

### **Petroleum Tank Release Compensation Fund**

- PTRCF Rules Article 33.1-12 are the proposed rules for the program that was transferred to the NDDEQ on July 1, 2019. The proposed rules outline practices and procedures of the fund, the form and procedure for applications for compensation from the fund, and any other rules as may be appropriate to administer the chapter NDCC 23.1-12.
- The proposed rules give the NDDEQ authority to administer the PTRCF Program. The proposed rules outline a risk-based tank registration annual fee schedule. The rules establish procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the Department.
- The proposed rules will be sent out for public comment in April 2021. The notice will be published through the North Dakota Newspaper Association and on the NDDEQ website. A public hearing will be scheduled before the public comment period ends. The public hearing will be held at the 4th Floor Conference Room, 918 East Divide, Bismarck,

### **Above-Ground Storage Tanks**

- New set of rules which will be implemented under the Petroleum Tank Release Compensation Fund, Chapter 23.1-12.
- Rules will give authority to ND Department of Environmental Quality to administer rules regulating the use of AST's outlying rules for new above-ground storage tank systems and existing above-ground tank systems.
- The rules are in the draft stage and anticipate them going out for public comment sometime in 2021.

### **Boiler Rules**

- Boiler Rules Article 33.1-14 are the rules for the Boiler Inspection Program that transferred to NDDEQ on July 1, 2019. These rules outline the definitions, general requirements, administration including fees charged, and installation requirements for the Boiler Inspection Program. The rules were updated to reflect the current 2021 A.S.M.E. code which is the boiler and pressure vessel construction code of the American Society of Engineers. The revision also removed the dollar amount for certificate fees and reference the North Dakota Century Code 23.1-16-10 where the fee is set. Briefly Describe what your rules do.
- The rules give NDDEQ the authority to administer the Boiler Inspector Program. This includes the authority to inspect and certify boilers as defined in the rule. It also gives NDDEQ the authority to certify Welders and issue Hobby Boiler Operating Licenses. Summarize significant comments and NDDEQ's response.
- Notice for public comment was issued on March 1-6, 2021. Public comments are being accepted through April 26, 2021. The notice was published through the North Dakota Newspaper Association and on the NDDEQ website. Also, a public hearing will be held on April 15th at 11:00 a.m. at the 4th Floor Conference Room, 918 E Divide.

### **PFAS Sampling Project**

- PFAS is a group of manmade chemicals used to make household products.
- EPA has established a drinking water health advisory level which is not currently enforceable. EPA is in the process of working toward regulating PFOS and PFOA chemicals.
- Sampling has been conducted in North Dakota by EPA between 2013 and 2015. EPA sampled 13 drinking water systems for chemicals. None were found at that time.
- NDDEQ has conducted similar testing in various locations since then and found that the results are similar to what's being found around the U.S. More sampling is planned in 2021.

### **Water Quality**

- Summary of changes is attached to the minutes.

## **NEW BUSINESS**

### **Legislative Update**

- Appropriations was discussed
- Our Senate Bill is 2024. We, of course, testified in support of the executive recommendation, our budget, and totals just about 59.8 million dollars about 12.6 is general funds, which is about 21%, 28.76 is federal funds and that's 48%. Then the remainder, 31% is special funds. The executive recommendation basically included all the changes to our base budget that we made. Some of those changes included the 10% general fund reduction that we were required to do and the 5% special fund prioritization that required to do. A couple of the other changes in for the executive compensation package, which that was a two and two pay increase for each year and there was like a 1% retirement employer percentage. A couple other changes were there was a removal of an I.T.

consolidation position. We also received two years of funding for our Quad O program. Those are the major changes from our base budget to make up the executive recommendation. When we presented to the Senate, they didn't make many changes to the executive recommendation. They basically adopted the executive recommendations and they made some minor changes to the pay package. They did remove the 1% retirement portion of the executive recommendation that the governor had submitted, and they actually reinstated \$125,000 in general funds which was part of our 10% general fund cut. That was to reinstate the Operator Certificate Training Reimbursement Program. It has hit the House and they will typically want a more detailed presentation.

Senate Bill 2070 Mini Super Fund update. Bill establishes a state cleanup fund similar to the federal super fund.

House Bill 1079 adopting the Uniform Environmental Covenants Act into State law. A uniform group of North Dakota lawyers and lawmakers who work with the national group in developing consistent laws through the State.

Senate Bill 2238 which deals with regional haze in North Dakota and implementation of the federal regional haze rules. Federal program requires the State to develop a regional haze plan and update that plan; next update is due in July of 2021.

House Bill 1259 is requiring communities to conduct a public hearing before doing COVID-19 testing of wastewater.

Senate Bill 2098 has to do with the abandoned auto program. The bill was developed in coordination with the Highway Patrol. Changes are being required from taking abandoned motor vehicles into custody.

### **Radiological Health Rules**

- Summary of rule changes are attached.

### **Boiler Rules**

- Summary of rule changes are attached.
- Notice of public comment was run March 1-6 through the Newspaper Association. Comment period is through April 26 and then the Department will hold a public hearing here and virtually on April 15<sup>th</sup> at 11:00 a.m.

### **New Administration Impacts**

Executive and various orders have been signed by the new administration. We are reviewing those orders and, of course, monitoring any impacts that can have on our economy and our environment.

### **Carbon Intensity**

There's really been no carbon direction. We as a state are moving towards a carbon intensity plan. So, the states are, in fact, doing more political. We don't know what the plan is yet. We all realize that the carbon is going to be the issue and is currently the issue and will continue to be an issue in the future. It's discussions on climate change, global warming, and the current carbon

contribution to that has been ongoing for a long time. Really the goal behind this, is that we in North Dakota need to have seat at the table for developing how we are going to function and what could be a carbon constrained future.

### **Soil Health**

What happens on the landscape happens in our water and we've been long proponents of soil health and soil practices through our nonpoint source pollution prevention program. This is something we want to continue doing and we have been in discussions with our state conservation committee on the best way to do that.

### **COVID-19 Wastewater Testing**

This is a research project that DEQ is doing and conducting in conjunction with an issue in 21 communities around the State to see if COVID can be found in the wastewater and if it can be used as a public health indicator.

### **Recycling Wind Blades**

A project being worked on is recycling and disposal of wind blades. Approximately 95% of wind towers are recyclable, which are made out of metal components. The blades are made out of fiberglass and fiberglass is not traditionally a recyclable material.

The Department feels it would be useful to develop some kind of end of life strategy for these blades, to get out in front of this before it becomes a big issue.

### **Division Updates**

Jim Quanstrom, Chemistry

Chuck Hyatt, Waste Management

David Bruschwein, Municipal Facilities

Jim Semerad, Air Quality

Karl Rockeman, Water Quality

### **NEXT MEETING – DATE/TIME**

The next meeting time was tentatively set for September 8, 2021 at 2:30 p.m.

### **ADJOURNMENT**

TERRY O'CLAIR CALLED FOR A MOTION TO ADJOURN. RANDY BINEGAR MOTIONED. SECONDED BY JULIE ELLINGSON. MOTION CARRIED.

Submitted,



L. David Glatt, P.E.  
Executive Secretary

**North Dakota Environmental Review Advisory Council**

Wednesday, March 10, 2021

2:30 p.m.

*Due to public health considerations, a meeting room will not be available to the public for this meeting.*

*The public may call in to the live meeting by dialing +1 701-328-0950 and entering conference ID 923742844#.*

**Microsoft Teams meeting**

**Join on your computer or mobile app** [Click here to join the meeting](#)

**Or call in (audio only)** [+1 701-328-0950,923742844#](#)

(Phone Conference ID: 923 742 844#)

**Agenda:**

- Call to Order – Welcome (Terry O.)
- Approval of Minutes (Sept. 9, 2020)
- Old Business:
  - Rule Adoption Update (Dave G.)
  - PFOA/PFOS Project Update (David B.)
  - Water Quality Standards Update (Karl)
- New Business:
  - Legislative Update (Dave G.)
  - Rule Making (Dave G.)
  - New Administration Impacts (Dave G.)
  - Carbon Intensity Plan (Dave G.)
  - Soil Health (Karl)
  - COVID-19 Wastewater Testing (David B.)

- Recycling Wind Blades (Chuck)
- Division Updates: New or Evolving Issues  
(goal of 5 min. per division)
- Board Member Comments
- Public Comments
- Next Meeting Date
- Adjournment

## Summary of Proposed Changes to Administrative Rules 33.1-16-02.1

### Standards of Water Quality for the State of North Dakota

- Changes with a \* and in red are proposed based on comments received during the public comment period and public hearing.

#### 1. Correct Spelling, Improve Grammar, Increase Clarity and Ease of Use in:

- 33.1-16-02.1-05. Variances and Compliance schedules, Appendix I, II, III, & IV.

#### 2. Water Quality Criteria:

- Add the word “None” in the Cas No. Column when no Cas Number exist for the criteria.
- Update the Ammonia Criteria in Table 1, to reflect Clean Water Act, Section 304(a) Criteria Recommendations for the protection of aquatic life.
- \* Rewrote equation for calculating the proposed ammonia criteria in Table 1.
- Removed from Table 1 the Site-Specific Ammonia Criteria applied to the Red River of the North beginning at 12<sup>th</sup> Avenue North bridge in Fargo, North Dakota and continuing north approximately 32 miles as Fargo’s current waste treatment systems is sufficient to meet the Clean Water Act, Section 304(a) Criteria Recommendations for the Protection of Aquatic Life.
- Updated pH in Table 1 for Class I and IA streams from 7.0-9.0 to 6.5-9.0 to reflect the CWA Section 304(a) Criteria Recommendation for the Protection of Aquatic Life.
- Adding selenium fish flesh to Table 1. Criteria is applied in a hierarchy process beginning with Egg-Ovary of 15.1, Whole Body of 8.5 and Muscle of 11.1 mg/kg as dry weight. The addition reflects the fish flesh CWA Section 304(a) Criteria Recommendation for the Protection of Aquatic Life.
- \* Added to Table 1’s footnote 4 a statement that the fish flesh criteria in Table 1 and water column criteria in Table 2 are independently applicable and when new site specific water column criteria are developed they will supersede the criteria in Table 2 and remain subordinate to fish flesh data.
- Changed the example of the hardness dependent criteria for Cadmium, Chromium (III), Copper, Lead, Nickel, Silver, and Zinc from a hardness of 100 mg/l to 400 mg/l to accurately reflect the hardness in North Dakota waters.
- Corrected the spelling of Chromium.
- Updated the chronic aquatic life Mercury criteria from 0.012 µg/l to 0.88 µg/l total recoverable to reflects the CWA Section 304(a) Criteria Recommendation for the Protection of Aquatic Life.
- \* Added (Except for aquatic life values) to foot note 1 in Table 2.
- Amended 33.1-16-02.1-11 Discharge of Wastes to read: Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible by telephoning 1-833-99SPILL (1-833-997-7455) or on the website [www.spill.nd.gov](http://www.spill.nd.gov) and provide all relevant information about the spill. ~~Depending on the severity of the spill or accidental discharge, the department may require~~ The owner or operator is required to:

- a. Take immediate remedial measures appropriate for the severity of the spill;  
Determine the extent of pollution to waters of the state;
- b. Provide alternate water sources to water users impacted by the spill or accidental discharge.
- c. \*Provide on request any documents, reports or other information relevant to the spill or discharge; or

**3. APPENDIX III, MIXING ZONE & DILUTION POLICY & PROCEDURES:**

- Updated Step 1 for implementing mixing zone procedures during critical low-flow conditions.

**4. APPENDIX IV, ANTIDEGREDATION PROCEDURES:**

- Updated language in the review process for Category 3 Waters. By removing reference to Pollution Control Board.



**NDDEQ ADVISORY COUNCIL**

**March 10, 2021**

**PROPOSED NEW RULES UPDATE**

**Petroleum Tank Release Compensation Fund (PTRCF) Article 33.1-12**

**In a short sentence or two describe your rules**

- PTRCF Rules Article 33.1-12 are the proposed rules for the program that was transferred to the NDDEQ on July 1, 2019. The proposed rules outline practices and procedures of the fund, the form and procedure for applications for compensation from the fund, and any other rules as may be appropriate to administer the chapter NDCC 23.1-12.

**Briefly describe what the PTRCF Rules do**

- The proposed rules give the NDDEQ authority to administer the PTRCF Program. The proposed rules outline a risk-based tank registration annual fee schedule. The rules establish procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the department.

**Summary of Future Public Comment for the Proposed Rules**

- The proposed rules will be sent out for public comment in April 2021. The notice will be published through the North Dakota Newspaper Association and on the NDDEQ website. A public hearing will be scheduled before the public comment period ends. The public hearing will be held at the 4th Floor Conference Room, 918 East Divide, Bismarck, ND.

**Ask for Questions**

**NDDEQ ADVISORY COUNCIL**  
**March 10, 2021**  
**PROPOSED NEW RULES UPDATE**  
**Boiler Rules Article 33.1-14**

**In a short sentence or two describe your rules**

- Boiler Rules Article 33.1-14 are the rules for the Boiler Inspection Program that transferred to NDDEQ on July 1, 2019. These rules outline the definitions, general requirements, administration including fees charged, and installation requirements for the Boiler Inspection Program. The rules were updated to reflect the current 2021 A.S.M. E. code which is the boiler and pressure vessel construction code of the American Society of Engineers. The revision also removed the dollar amount for certificate fees and reference the North Dakota Century Code 23.1-16-10 where the fee is set.

**Briefly Describe what your rules do**

- The rules give NDDEQ the authority to administer the Boiler Inspector Program. This includes the authority to inspect and certify boilers as defined in the rule. It also gives NDDEQ the authority to certify Welders and issue Hobby Boiler Operating Licenses.

**Summarize significant comments and NDDEQ's response**

- Notice for public comment was issued on March 1-6, 2021. Public comments are being accepted through April 26<sup>th</sup>, 2021. The notice was published through the North Dakota Newspaper Association and on the NDDEQ website. Also, a public hearing will be held on April 15<sup>th</sup> at 11:00 am at the 4<sup>th</sup> Floor Conference Room, 918 E Divide.

**Ask if they have any questions**

## **SUMMARY OF PROPOSED AMENDMENTS TO NDAC 33.1-24**

The North Dakota Hazardous Waste Rules (the Rules) must be at least as stringent as the federal hazardous waste regulations found in Title 40 of the Code of Federal Regulations. Whenever there are changes to the federal regulations, the State must adopt any regulations stricter than current regulations, and have the option to adopt rules less stringent than current regulations.

In 2019, the Federal Regulations were updated with two changes. The first was the new Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine. The second was the Universal Waste Regulations: Addition of Aerosol Cans.

### **MANAGEMENT STANDARDS FOR HAZARDOUS WASTE PHARMACEUTICALS AND AMENDMENT TO THE P075 LISTING FOR NICOTINE**

In 2019 the Federal Regulations were updated to include the new Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine. This amendment introduced new management standards for hazardous waste pharmaceuticals, including special provisions for potentially creditable pharmaceuticals.

This amendment also removed nicotine replacement therapies like nicotine gum from classification as hazardous waste. This was done to ease the burden on smaller pharmaceutical facilities and grocery stores disposing of damaged or returned products.

### **UNIVERSAL WASTE REGULATIONS: ADDITION OF AEROSOL CANS**

In 2019 the Federal Regulations were updated again to add aerosol cans to the universal waste regulations. Universal wastes are a special subset of hazardous wastes with less stringent management and disposal requirements. This was done to reduce the operational and financial burden on facilities generating aerosol can wastes.

### **QUESTIONS OR CONCERNS ABOUT HAZARDOUS WASTE RULE AMENDMENTS**

If you have any questions or concerns about the proposed changes to the Hazardous Waste Rules, please contact:

Derek Kannenberg, Manager  
Hazardous Waste Program  
Division of Waste Management  
701-328-5160  
[dkannenberg@nd.gov](mailto:dkannenberg@nd.gov)

*January 11, 2021*

## North Dakota Radiological Health Rules Revision Summary

### Background:

- Section 274 of the Atomic Energy Act of 1954 (the Act), as amended, provides a statutory basis under which the U.S. Nuclear Regulatory Commission (NRC) relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials (radioisotopes); source materials (uranium and thorium); and certain quantities of special nuclear materials. The mechanism for the transfer of NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the United States Atomic Energy Commission, in accordance with section 274b of the Act.
- North Dakota's agreement was signed, dated and became effective in 1969. As a part of this agreement, North Dakota's Radiological Health Rules are required to be compatible with the NRC's regulations of radioactive materials. Periodically, the NRC amends their regulations and requires the Agreement States to adopt the changes to remain compatible within 3 years of their effective date.
- The NRC amended its regulations in 2018 and 2019. As an Agreement State, North Dakota is required to adopt these changes within 3 years from the effective dates. The proposed changes to the North Dakota Radiological Health Rules are in response to this requirement.

### Timeline:

9/3/2020	Proposed rule revisions submitted to the NRC for review.
9/25/2020	Received NRC review response. The NRC determined that if the proposed regulations were adopted, incorporating the NRC's two comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements." The two NRC comments were subsequently incorporated into the draft rule revisions.
12/14/2020	Full notice of intent signed. Established the public hearing date (1/19/2021) and set the public comment period expiration date (1/31/2021).
12/21-26/2020	Abbreviated notice of intent published in each official county newspaper. A copy of the full notice and copies of the proposed rules were placed on the Department's website.
1/19/2021	Held public hearing. No members of the public were physically or virtually present. Extended the public comment period until 2/3/2021. Extension notice placed on the Department's website.
2/3/2021	Public comment period ended. No written or oral comments received.

**Summary of Proposed Changes to Administrative Rules 33.1-16-02.1  
Standards of Water Quality for the State of North Dakota**

- **Changes with a \* and in red are proposed based on comments received during the public comment period and public hearing.**

**1. Correct Spelling, Improve Grammar, Increase Clarity and Ease of Use in:**

- 33.1-16-02.1-05. Variances and Compliance schedules, Appendix I, II, III, & iV.

**2. Water Quality Criteria:**

- Add the word "None" in the Cas No. Column when no Cas Number exist for the criteria.
- Update the Ammonia Criteria in Table 1, to reflect Clean Water Act, Section 304(a) Criteria Recommendations for the protection of aquatic life.
- \* Rewrote equation for calculating the proposed ammonia criteria in Table 1.
- Removed from Table 1 the Site-Specific Ammonia Criteria applied to the Red River of the North beginning at 12<sup>th</sup> Avenue North bridge in Fargo, North Dakota and continuing north approximately 32 miles as Fargo's current waste treatment systems is sufficient to meet the Clean Water Act, Section 304(a) Criteria Recommendations for the Protection of Aquatic Life.
- Updated pH in Table 1 for Class I and IA streams from 7.0-9.0 to 6.5-9.0 to reflect the CWA Section 304(a) Criteria Recommendation for the Protection of Aquatic Life.
- Adding selenium fish flesh to Table 1. Criteria is applied in a hierarchy process beginning with Egg-Ovary of 15.1, Whole Body of 8.5 and Muscle of 11.1 mg/kg as dry weight. The addition reflects the fish flesh CWA Section 304(a) Criteria Recommendation for the Protection of Aquatic Life.
- \* Added to Table 1's footnote 4 a statement that the fish flesh criteria in Table 1 and water column criteria in Table 2 are independently applicable and when new site specific water column criteria are developed they will supersede the criteria in Table 2 and remain subordinate to fish flesh data.
- Changed the example of the hardness dependent criteria for Cadmium, Chromium (III), Copper, Lead, Nickel, Silver, and Zinc from a hardness of 100 mg/l to 400 mg/l to accurately reflect the hardness in North Dakota waters.
- Corrected the spelling of Chromium.
- Updated the chronic aquatic life Mercury criteria from 0.012 µg/l to 0.88 µg/l total recoverable to reflects the CWA Section 304(a) Criteria Recommendation for the Protection of Aquatic Life.
- \* Added (Except for aquatic life values) to foot note 1 in Table 2.
- Amended 33.1-16-02.1-11 Discharge of Wastes to read: Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible by telephoning 1-833-99SPILL (1-833-997-7455) or on the website [www.spill.nd.gov](http://www.spill.nd.gov) and provide all relevant information about the spill. ~~Depending on the severity of the spill or accidental discharge, the department may require~~ The owner or operator is required to:

- a. Take immediate remedial measures appropriate for the severity of the spill;  
Determine the extent of pollution to waters of the state;
- b. Provide alternate water sources to water users impacted by the spill or accidental discharge.
- c. \*Provide on request any documents, reports or other information relevant to the spill or discharge; or

**3. APPENDIX III, MIXING ZONE & DILUTION POLICY & PROCEDURES:**

- Updated Step 1 for implementing mixing zone procedures during critical low-flow conditions.

**4. APPENDIX IV, ANTIDEGREDATION PROCEDURES:**

- Updated language in the review process for Category 3 Waters. By removing reference to Pollution Control Board.

FULL NOTICE OF INTENT TO  
AMEND ADMINISTRATIVE RULES  
RELATING TO RADIOLOGICAL HEALTH

TAKE NOTICE that the North Dakota Department of Environmental Quality (“Department”) will hold a public hearing to address proposed amendments to North Dakota Administrative Code Article 33.1-10 at the following time and location:

4th Floor Conference Room  
North Dakota Department of Environmental Quality  
918 E Divide Avenue  
Bismarck, ND 58501  
January 19, 2021  
8:30 am CST

The purpose of the proposed rule amendments is to comply with federal law. As a requirement of North Dakota’s Agreement State status, the State of North Dakota is required to adopt rules that are compatible with the U.S. Nuclear Regulatory Commission (NRC) rules. As a result of recent changes to the NRC rules, there are some changes/updates required to certain chapters of North Dakota Administrative Code Article 33.1-10. The proposed amendments address the following:

<u><b>NRC Section</b></u>	<u><b>Title</b></u>	<u><b>State Section</b></u>
§ 30.34 (g)	Terms and conditions of licenses	33.1-10-03.1-01 [§ 30.34]
§ 32.72 (a)(4) revised, (b)(5)(i) revised, (d) new	Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35.	33.1-10-20-01 [§ 32.72]
§ 35.2	Definitions	33.1-10-07.2-01 [§ 35.2]
§ 35.12	Application for license, amendment, or renewal	33.1-10-07.2-01 [§ 35.12]
§ 35.13	License amendments	33.1-10-07.2-01 [§ 35.13]
§ 35.14	Notifications	33.1-10-07.2-01 [§ 35.14]
§ 35.15	Exemptions regarding Type A specific licenses	33.1-10-07.2-01 [§ 35.15]

of broad scope

§ 35.24 (b) and (c)	Authority and responsibilities for the radiation protection program	33.1-10-07.2-01 [§ 35.24]
§ 35.40	Written directives	33.1-10-07.2-01 [§ 35.40]
§ 35.41	Procedures for administrations requiring a written directive	33.1-10-07.2-01 [§ 35.41]
§ 35.50	Training for Radiation Safety Officer and Associate Radiation Safety Officer	33.1-10-07.2-01 [§ 35.50]
§ 35.51	Training for an authorized medical physicist	33.1-10-07.2-01 [§ 35.51]
§ 35.55	Training for an authorized nuclear pharmacist	33.1-10-07.2-01 [§ 35.55]
§ 35.57	Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist	33.1-10-07.2-01 [§ 35.57]
§ 35.65	Authorization for calibration, transmission and reference sources	33.1-10-07.2-01 [§ 35.65]
§ 35.190	Training for uptake, dilution, and excretion studies	33.1-10-07.2-01 [§ 35.190]
§ 35.204	Permissible molybdenum-99, strontium-82, and strontium-85 concentrations	33.1-10-07.2-01 [§ 35.204]
§ 35.290	Training for imaging and localization studies	33.1-10-07.2-01 [§ 35.290]
§ 35.300	Use of unsealed byproduct material for which a written	33.1-10-07.2-01 [§ 35.300]



directive is required

§ 35.390	Training for use of unsealed byproduct material for which a written directive is required	33.1-10-07.2-01 § [35.390]
§ 35.392	Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries)	33.1-10-07.2-01 [§ 35.392]
§ 35.394	Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries)	33.1-10-07.2-01 [§ 35.394]
§35.396	Training for the parenteral administration of unsealed byproduct material requiring a written directive	33.1-10-07.2-01 § [35.396]
§ 35.400	Use of sources for manual Brachytherapy	33.1-10-07.2-01 [§ 35.400]
§ 35.433	Strontium-90 sources for ophthalmic treatments	33.1-10-07.2-01 [§ 35.433]
§ 35.490	Training for use of manual brachytherapy sources	33.1-10-07.2-01 [§ 35.490]
§ 35.491	Training for ophthalmic use of strontium-90	33.1-10-07.2-01 [§ 35.491]
§ 35.500	Use of sealed sources and medical devices for diagnosis	33.1-10-07.2-01 [§ 35.500]
§ 35.590	Training for use of sealed sources and medical devices for diagnosis	33.1-10-07.2-01 [§ 35.590]

§ 35.600	Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit	33.1-10-07.2-01 [§ 35.600]
§ 35.610	Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	33.1-10-07.2-01 [§ 35.610]
§ 35.655	Full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units	33.1-10-07.2-01 [§ 35.655]
§ 35.690	Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	33.1-10-07.2-01 [§ 35.690]
§ 35.2024	Records of authority and responsibilities for radiation protection programs	33.1-10-07.2-01 [§ 35.2024]
§ 35.2310	Records of safety instruction	33.1-10-07.2-01 [§ 35.2310]
§ 35.2655	Records of full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units	33.1-10-07.2-01 [§ 35.2655]
§ 35.3045	Report and notification of a medical event	33.1-10-07.2-01 [§ 35.3045]
§ 35.3204 new	Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations	33.1-10-07.2-01 [§ 35.3204]
§ 37.7(a)	Communications	33.1-10-22-01 [§ 37.7(a)]
§ 37.77	Advance notification of shipment of category I quantities of radioactive	33.1-10-22-01 [§ 37.77]

	material	
§ 37.81(g)	Reporting of events	33.1-10-22-01 [§ 37.81(g)]
§ 70.5	Communications	33.1-10-17-01 [§ 70.5]
§ 70.32	Conditions of licenses	33.1-10-17-01 [§ 70.32]
§ 71.97	Advance notification of shipment of irradiated reactor fuel and nuclear waste	33.1-10-13.1-01 [§ 71.97]
§ 34.101(c)	Notifications	33.1-10-05.1-01 [§34.101(c)]
§ 37.23(b)(2)	Access authorization program requirements	33.1-10-22-01 [§ 37.23(b)(2)]
§ 37.43(d)(2), (d)(3) introductory text, (d)(3)(i), (d)(5) through (7), and (d)(8)(ii)	General security program requirements	33.1-10-22-01 [§ 37.43(d)(2), (d)(3) introductory text, (d)(3)(i), (d)(5) through (7), and (d)(8)(ii)]
§ 37.45(b)	LLEA coordination	33.1-10-22-01 [§ 37.45(b)]
§ 37.77(a)(1)	Advance notification of shipment of category I quantities of radioactive material	33.1-10-22-01 [§ 37.77(a)(1)]
§ 71.97(c)(3)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	33.1-10-13.1-01 [§ 71.97(c)(3)]
§ 37.23(b)(2)	Access authorization program requirements	33.1-10-22-01 [§ 37.23(b)(2)]
§ 37.27(c)(1) and (2)	Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material	33.1-10-22-01 [§ 37.27(c)(1) and (2)]
§ 37.7(a)	Communications	33.1-10-22-01 [§ 37.7(a)]
§ 71.1	Communications and	33.1-10-13.1-01 [§ 71.1]

records

§ 71.17(c)(3)	General License: NRC approved package	33.1-10-13.1-01 [§ 71.17(c)(3)]
§ 71.95	Reports	33.1-10-13.1-01 [§ 71.95]
§ 71.101	Quality Assurance requirements	33.1-10-13.1-01 [§ 71.101]

The proposed rule amendments are not expected to have an impact on the regulated community in the excess of \$50,000.

The proposed rules may be reviewed at the Department's office located at 918 E Divide Avenue, Bismarck, ND 58501-1947 or on the Department's website at: <https://deq.nd.gov/PublicNotice.aspx>. A copy of the proposed rule amendments may be requested by writing to the North Dakota Department of Environmental Quality, Radiation Control Program at the above address, emailing [ram@nd.gov](mailto:ram@nd.gov) or calling (701)328-5166. Written or oral comments on the proposed rule amendments sent to the above mailing address, email address or telephone number and received by January 31, 2021 will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Department at the above address or telephone number at least two days prior to the public hearing.

DUE TO COVID-19 and the limited number of people that can be accommodated due to limited capacity, we encourage written or oral comments be submitted as set forth above. There will be real time public streaming of the public hearing through a Microsoft Teams meeting. No testimony will be accepted through the Microsoft Teams meeting. Information concerning listening access by telephone or through Microsoft Teams can be obtained by calling (701)328-5166 or can be found on the Department's website at: <https://deq.nd.gov/PublicNotice.aspx>.

Dated this 14<sup>th</sup> day of December, 2020.

David Stradinger  
Manager  
Radiation Control Program

The DEQ has testified to several bills during the 2021 legislative session. Some of the key bills that may be of interest are:

Bill	Status	Title	Comments
<a href="#"><u>HB 1059</u></a>	House: PASSED	Requiring excavators to call 911 upon damage releasing toxic gas	The DEQ <u>testified in support.</u>
<a href="#"><u>HB 1073</u></a>	House: PASSED	Criminal history background checks for applicants for licenses and permits issued by the DEQ	The DEQ <u>testified in support.</u>
<a href="#"><u>HB 1079</u></a>	House: PASSED	Relating to the Uniform Environmental Covenants Act.	The DEQ <u>testified in support.</u>
<a href="#"><u>HB 1183</u></a>	House: PASSED	Requiring LPHUs to adopt the technical guide for onsite wastewater recycling treatment and establishing a committee	The DEQ <u>testified in support.</u>
<a href="#"><u>HB 1259</u></a>	House: PASSED	Relating to participation in a state or national wastewater surveillance system.	The DEQ <u>testified neutral.</u>
<a href="#"><u>HB 1348</u></a>	House: DEFEATED	Prohibits the testing of wastewater for genetic material or disease	The DEQ <u>testified in opposition.</u>
<a href="#"><u>HB 1401</u></a>	House: DEFEATED	Relating to monitoring and regulation of special waste in ground water	The DEQ <u>testified in opposition.</u>
<a href="#"><u>SB 2024</u></a>	House: PASSED	NDDEQ appropriations bill	The DEQ <u>testified in support.</u>
<a href="#"><u>SB 2052</u></a>	House: DEFEATED	Relating to boiler inspections	The DEQ <u>testified in support.</u> Moved to DEQ Appropriations bill.
<a href="#"><u>SB 2070</u></a>	Senate: PASSED	Relating to the regulated substance response (Mini Superfund Bill)	The DEQ <u>testified in support.</u>
<a href="#"><u>SB 2098</u></a>	House: PASSED	Relating to abandoned vehicles	The DEQ <u>testified in support.</u>
<a href="#"><u>SB 2237</u></a>	Senate: PASSED	Limitations on regulation of coal-fueled electric generating units	The DEQ <u>testified in support.</u>
<a href="#"><u>SB 2238</u></a>	Senate: PASSED	Relating to the state regional haze plan	The DEQ <u>testified in support.</u>
<a href="#"><u>SB 2337</u></a>	Senate: DEFEATED	Relating to bid requirements for public improvements	The DEQ <u>testified in opposition.</u>
<a href="#"><u>SB 2342</u></a>	Senate: DEFEATED	Relating to healthy soil grant and healthy soil assessment and education programs	The DEQ <u>testified in support.</u>