

NOTICE OF INTENT TO AMEND NORTH DAKOTA ADMINISTRATIVE CODE  
CHAPTERS 33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06 RELATING TO  
IDENTIFICATION OF HAZARDOUS WASTE, STANDARDS FOR GENERATORS, AND  
STANDARDS FOR PERMITTED FACILITIES

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 (N.D. Admin. Code) chapters 33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06 at the following time and location:

2nd Floor Conference Room  
North Dakota Department of Environmental Quality  
4201 Normandy St, Bismarck, ND 58503-1324  
May 27, 2026  
1:00 P.M. CT

The purpose of the proposed amendments is to correct grammatical errors and to update the language in the administration code to reflect the Federal rules and regulations involving hazardous waste, Resource Conservation and Recovery Act (RCRA), and generators of hazardous waste.

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

The proposed rules may be reviewed at the Department’s office located at 4201 Normandy St, Bismarck, ND 58503-1324 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, Hazardous Waste Program at the above address or calling (701) 328-5166. Written comments on the proposed rule amendments sent to the above mailing address and received by June 7, 2026, will be fully considered.

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. To attend the public hearing via Microsoft Teams, attendees may dial in by calling 701-328-0950 and entering phone conference ID 729 153 746#. To attend by computer or mobile app, [click here](#).

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 below at least five days prior to the public hearing. The Department will consider every request for reasonable accommodation to provide an accessible meeting facility or other accommodation for people with disabilities, language interpretation for people with limited English proficiency (LEP), and translations of written material necessary to access programs and information. Language assistance services are available free of charge to you. To request accommodations or language assistance, contact the Department’s Non-discrimination/EJ Coordinator at (701) 328-5150 or [deqEJ@nd.gov](mailto:deqEJ@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888.

REGULATORY ANALYSIS PURSUANT TO  
NORTH DAKOTA CENTURY CODE § 28-32-08

TO AMEND NORTH DAKOTA ADMINISTRATIVE CODE CHAPTERS  
33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06 RELATING TO IDENTIFICATION  
OF HAZARDOUS WASTE, STANDARDS FOR GENERATORS, AND STANDARDS  
FOR PERMITTED FACILITIES

The following analysis is prepared to comply with the requirements for changes to the North Dakota Administrative Code (N.D.A.C.). Under N.D.C.C. § 28-32-08, this regulatory analysis is not required. However, for consistency purposes, the North Dakota Department of Environmental Quality (NDDEQ) prepared this regulatory analysis.

1. Who are the classes of persons who will probably be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule? **The most affected class of persons will be the small quantity generators since they will no longer need to submit physical a biennial report.**
2. What is the probable impact, including economic impact, of the proposed rule? **No probable impact is expected, most of the corrections are grammatical in nature.**
3. What is the probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues? **No probable costs to the agency are expected as result of the rule changes.**
4. What were the alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency/board and why was each method rejected in favor of the proposed rule? **There were no alternative methods.**
5. Please explain the information and data assessment as well as how the amounts of impact were determined, to the extent practicable? **No impact is expected; the rule changes are proposed to correct grammatical errors and to update the language in the administration code to reflect the Federal rules and**

**regulations involving hazardous waste, Resource Conservation and Recovery Act (RCRA), and generators of hazardous waste.**

TAKINGS ASSESSMENT PURSUANT TO  
NORTH DAKOTA CENTURY CODE § 28-32-09

TO AMEND NORTH DAKOTA ADMINISTRATIVE CODE CHAPTERS  
33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06 RELATING TO  
IDENTIFICATION OF HAZARDOUS WASTE, STANDARDS FOR GENERATORS,  
AND STANDARDS FOR PERMITTED FACILITIES

1. Assess the likelihood that the proposed rule may result in a taking or regulatory taking. **No takings or regulatory takings are expected.**
2. Clearly and specifically identify the purpose of the proposed rule. **The purpose of the proposed rule is to correct grammatical errors, remove the requirement for small quantity generators to submit a physical biennial report.**
3. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners. **These amendments are expected to enhance clarity of the rules and reduce the need for additional paperwork required of small quantity generators.**
4. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking. **No takings are expected as a result of the rule changes; therefore, no potential costs to the government are expected.**
5. Identify the source of payment within the agency's budget for any compensation that may be ordered. **See 4 above.**
6. Certify that the benefits of the proposed rule exceed the estimated compensation costs. **No expected costs are associated with the amendments.**

SMALL ENTITY REGULATORY ANALYSIS PURSUANT TO  
NORTH DAKOTA CENTURY CODE § 28-32-08.1

TO AMEND NORTH DAKOTA ADMINISTRATIVE CODE CHAPTERS  
33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06 RELATING TO IDENTIFICATION  
OF HAZARDOUS WASTE, STANDARDS FOR GENERATORS, AND STANDARDS  
FOR PERMITTED FACILITIES

None of the rules amended under North Dakota Administrative Code chapters 33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06 were mandated by federal law.

The amended rules are proposed to correct grammatical errors and to update the language in the administration code to reflect the Federal rules and regulations involving hazardous waste, Resource Conservation and Recovery Act (RCRA), and generators of hazardous waste.

The following methods were considered for reducing impact on small entities:

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?

**Yes. The proposed amendments provide less stringent reporting requirements for small entities. The expected result is to decrease the number of violations.**

2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities? To what results?

**See 1 above.**

3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what results?

**See 1 above.**

4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?

**See 1 above.**

5. Was exemption of small entities from all or any part of the requirements in the proposed rules considered? To what result?

**See 1 above.**

SMALL ENTITY ECONOMIC IMPACT STATEMENT PURSUANT TO  
NORTH DAKOTA CENTURY CODE § 28-32-08.1  
TO AMEND NORTH DAKOTA ADMINISTRATIVE CODE  
33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06– Identification of Hazardous  
Waste, Standards for Generators, and Standards for Permitted Facilities

1. Which small entities are subject to the proposed rule?

**Small Quantity Generators are subject to the proposed rule changes to the effect that they will no longer be required to submit biennial reports.**

2. What are the administrative and other costs required for compliance with the proposed rule?

**No costs are expected as result of the proposed amendments.**

3. What is the probable cost and benefit to private persons and consumers who are affected by the proposed rule?

**See 2 above.**

4. What is the probable effect of the proposed rule on state revenues?

**The proposed rules are expected to have no effect on state revenues.**

5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

**The proposed rule amendments are expected to be less intrusive than the current rules. No costs are expected as result of the proposed amendments.**

## Yearly Fiscal Note for Implementing Rules:

### **COST TO AGENCY AND EFFECT ON STATE REVENUES**

#### **N.D.A.C. CHAPTERS 33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06** **Identification of Hazardous Waste, Standards for Generators, and Standards for** **Permitted Facilities**

The North Dakota Department of Environmental Quality, Hazardous Waste Program is amending North Dakota Administrative Code chapters 33.1-24-02, 33.1-24-03, 33.1-24-05, and 33.1-24-06.

It is anticipated that there will be no additional costs to implement and enforce the proposed rule changes and no other fiscal impact on state revenues or expenditures. The changes are proposed to correct grammatical errors and to update the language in the administration code to reflect the Federal rules and regulations involving hazardous waste, Resource Conservation and Recovery Act (RCRA), and generators of hazardous waste.

## NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTH DAKOTA ADMINISTRATIVE CODE § 33.1-24-02-06  
is being amended as follows:

### 33.1-24-02-06. Requirements for recyclable materials and universal waste.

1. The 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. 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 33.1-24-05-201 through 33.1-24-05-209, 33.1-24-05-230 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, 33.1-24-05-820 through 33.1-24-05-929, and all applicable provisions in sections 33.1-24-05-250 through 33.1-24-05-299 and chapters 33.1-24-06 and 33.1-24-07:
    - (1) Recyclable materials used in a manner constituting disposal. See sections ~~(33.1-24-05-201 through 33.1-24-05-209).~~
    - (2) Hazardous wastes burned ~~(as defined in subsection 1 of section 33.1-24-05-525)~~ or processed in boilers a boiler or and industrial ~~furnaces~~ furnace that are not regulated under by sections 33.1-24-05-144 through 33.1-24-05-151 are regulated by sections 33.1-24-05-525 through 33.1-24-05-549 as specified in subsection 1 of section 33.1-24-05-525.
    - (3) Recyclable materials from which precious metals are reclaimed. See ~~(sections 33.1-24-05-230 through 33.1-4-05-234).~~
    - (4) Spent lead-acid batteries that are being reclaimed. See ~~(sections 33.1-24-05-235 through 33.1-24-05-249).~~
  - c. The following recyclable materials are not subject to chapters 33.1-24-03 through 33.1-24-07 and are not subject to notification requirements for:
    - (1) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.
    - (2) Scrap metal that is not excluded by subdivision 33.1-24-02-04(1)(m).
    - (3) Fuels 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. ~~(this~~ This exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, when such recovered oil is already excluded under by subdivision l of subsection 1 of section 33.1-24-02-04).
    - (4) Subdivision c also applies to the following:

- (a) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, when such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under section 33.1-24-05-611 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
    - (b) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, when such hazardous wastes are reintroduced into a refining process after a point in which contaminants are removed, so long as the fuel meets the used oil fuel specification under section 33.1-24-05-611; and
    - (c) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under section 33.1-24-05-611.
  - d. Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of chapters 33.1-24-01 through 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-1149, and subsection 5 of 33.1-24-06-16 but is regulated under sections 33.1-24-05-600 through 33.1-24-05-689. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Such term includes oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.
  - e. Hazardous waste that is exported or imported for the purpose of recovery is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59.
2. Generators and transporters of recyclable materials are subject to the applicable requirements of chapters 33.1-24-03 and 33.1-24-04 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 sections 33.1-24-05-01 through 33.1-24-05-143, sections 33.1-24-05-191 through 33.1-24-05-299, sections 33.1-24-05-400 through 33.1-24-05-474, 33.1-24-05-525 through 33.1-24-05-549, sections 33.1-24-05-820 through 33.1-24-05-1149, chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, except as provided in subsection 1. The recycling process itself is exempt from regulation except as provided in subsection 4 of section 33.1-24-02-06.
  - b. Recyclable materials which are not stored before they are recycled are subject to the following requirements, except as provided in subsection 1:
    - (1) Notification requirements;

- (2) Sections 33.1-24-05-38 and 33.1-24-05-399 ~~(dealing with the use of the manifest and manifest discrepancies)~~;
  - (3) Subsection 4 of section 33.1-24-02-06; and
  - (4) The owner or operator shall complete and submit environmental protection agency form 8700-13 A/B to the regional administrator by March first of the following even-numbered year and must cover activities during the previous year.
4. ~~The owner or operator shall complete and submit environmental protection agency form 8700-13 A/B to the regional administrator by March first of the following even-numbered year and must cover activities during the previous year.~~ Owners or operators of permitted hazardous waste facilities with hazardous waste management units that recycle hazardous wastes are subject to the requirements of sections 33.1-24-05-400 through 33.1-24-05-449, subsection 5 of section 33.1-24-06-16, or sections 33.1-24-05-950 through 33.1-24-05-1149.
  5. The following wastes are exempt from regulation under chapters 33.1-24-03 through 33.1-24-06, except as specified in sections 33.1-24-05-700 through 33.1-24-05-799, and are ~~therefore~~ not fully regulated as hazardous waste. The ~~wastes listed in this subsection~~ following wastes are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799:
    - a. Batteries as described in section 33.1-24-05-702;
    - b. Pesticides as described in section 33.1-24-05-703;
    - c. Mercury-containing equipment as described in section 33.1-24-05-704; ~~and~~
    - d. Lamps as described in section 33.1-24-05-705; and
    - e. Aerosol cans as described in section 33.1-24-05-706.

**History:** Effective January 1, 2019; amended effective July 1, 2020; amended effective 2026.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 33.1-24-03

§§ 33.1-24-03-03, 33.1-24-03-14, 33.1-24-03-26, and 33.1-24-03-29 and APPENDIX I are being amended as follows:

**33.1-24-03-03. Identification number, registration certificate, and generator category determination.**

1. A generator may not treat, store, dispose of, transport, or offer for transportation of hazardous waste without having received an identification number and a registration certificate from the department.
2. A generator shall determine its generator category. A generator's category is based on the amount of hazardous waste generated each month. This category may change from month to month. ~~The procedures to determine a generator's category are listed in subdivisions a and b~~ and is determined using the following procedures:
  - a. A generator who generates either acute hazardous waste or nonacute hazardous waste in a calendar month shall determine its generator category for that month by:
    - (1) Counting the total amount of acute hazardous or nonacute hazardous waste generated in the calendar month;
    - (2) Subtracting from the total any amounts of waste exempt from counting as described by section 33.1-24-02-04; and
    - (3) Determining the resulting generator category using table 1.
  - b. A generator who generates both acute hazardous waste and nonacute hazardous waste in the same calendar month shall determine its generator category for that month by:
    - (1) Separately counting the total amount of acute hazardous waste and the total amount of nonacute hazardous waste generated in the calendar month;
    - (2) Subtracting from the totals any amounts of waste exempt from counting as described by section 33.1-24-02-04;
    - (3) Separately determining resulting generator categories for the quantities of acute hazardous waste and nonacute hazardous waste using table 1; and
    - (4) Applying the more stringent generator category to the accumulation and management of both acute hazardous waste and nonacute hazardous waste generated for that month.

<b>Quantity of Acute Hazardous Waste Generated in a Calendar Month</b>	<b>Quantity of Nonacute Hazardous Waste Generated in a Calendar Month</b>	<b>Quantity of Residues From a Cleanup of Acute Hazardous Waste Generated in a Calendar Month</b>	<b>Generator Category</b>
Greater than 1 kg	Any amount	Any amount	Large quantity

(2.2 lbs)			generator
Any amount	Greater than or equal to 1,000 kg (2,200 lbs)	Any amount	Large quantity generator
Any amount	Any amount	Greater than 100 kg (220 lbs)	Large quantity generator
Less than or equal to 1 kg (2.2 lbs)	Between 100 kg (220 lbs) and 1,000 kg (2,200 lbs)	Less than or equal to 100 kg (220 lbs)	Small quantity generator
Less than or equal to 1 kg (2.2 lbs)	Less than or equal to 100 kg (220 lbs)	Less than or equal to 100 kg (220 lbs)	Very small quantity generator

- c. When making the monthly determinations required by this section, the generator shall include all hazardous waste that it generates, except hazardous waste that:
- (1) Is excluded from regulation under subsections 3 through 6 of section 33.1-24-02-04, subdivision c of subsection 1 of section 33.1-24-02-06, subdivision a of subsection 1 of section 33.1-24-02-07, and subsection 7 of section 33.1-24-02-04;
  - (2) Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in section 33.1-24-01-04;
  - (3) Is a material recycled, without prior storage or accumulation, only in an onsite process, under the requirements of subdivision b of subsection 3 of section 33.1-24-02-06;
  - (4) Is managed as part of an episodic event in compliance with section 33.1-24-03-34;
  - (5) Is used oil managed under the requirements listed in 33.1-24-05-600 through 33.1-24-05-699;
  - (6) Is spent lead-acid batteries managed under the requirements of 33.1-24-05-235;
  - (7) Is universal waste managed under the requirements of 33.1-24-05-700 through 33.1-24-05-799; or
  - (8) Is a hazardous waste pharmaceutical, as defined in section 33.1-24-05-310, that is subject to or managed in accordance with sections 33.1-24-05-310 through 33.1-24-05-320 or is a hazardous waste pharmaceutical that is also a drug enforcement administration controlled substance and is conditionally exempt under section 33.1-24-05-316.
- d. When determining the quantity of hazardous waste generated in a calendar month, a generator need not include:
- (1) Hazardous waste when it is removed from onsite accumulation, so long as the hazardous waste was previously counted once;
  - (2) Hazardous waste generated by onsite treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted ~~once~~; and

- (3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been previously counted ~~once~~.
  - e. ~~Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes.~~ Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to section 33.1-24-03-26 even though the resultant mixture exceeds the quantity limits identified in the definition of a very small quantity generator at section 33.1-24-01-04; unless the mixture exhibits one or more of the characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14. If the mixed wastes exhibit a characteristic of hazardous waste, the mixture must be included in all hazardous waste counts for that month.
  - f. Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid wastes. These mixtures are subject to the following:
    - (1) The mixture rule in paragraph 4 of subdivision b of subsection 1 of section 33.1-24-02-03, subdivisions b and c of subsection 2 of 33.1-24-02-03, and paragraph 1 of subdivision a of subsection 7 of section 33.1-24-02-03;
    - (2) The prohibition of dilution rule in subsection 1 of section 33.1-24-05-252;
    - (3) The land disposal restriction requirements of section 33.1-24-05-280 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic;
    - (4) The hazardous waste determination requirements of section 33.1-24-03-02; and
    - (5) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly generated hazardous waste. The mixture must be included in all hazardous waste counts for that month.
  - g. Based on the generator category as determined under this section, the generator shall meet the applicable requirements listed in sections 33.1-24-03-26, 33.1-24-03-28, and 33.1-24-03-29.
3. A generator who has not received an identification number and a registration certificate may obtain one by applying to the department using environmental protection agency form 8700-12. Upon receiving the request, the department will assign an identification number and issue a registration certificate to the generator.
  4. A generator may not offer the generator's hazardous waste to transporters that have not received an identification number and a transporter permit, or to treatment, storage, or disposal facilities that have not received an identification number and applied for a hazardous waste permit.
  5. A recognized trader may not arrange for import or export of hazardous waste without having received an environmental protection agency identification number from the department.
  6. The department may assess and collect reasonable fees for the issuance of registration certificates.

## 7. Re-notification.

- a. A small quantity generator must re-notify the department starting in 2029 and every four years thereafter using environmental protection agency form 8700-12. This re-notification shall be submitted by September 1st of each year in which re-notifications are required.

b. A large quantity generator shall re-notify the department by March 1 of each even-numbered year using environmental protection agency Form 8700-12. A large quantity generator may submit this re-notification as part of its Biennial Report required under 33.1-24-03-14.

**History:** Effective January 1, 2019; amended effective July 1, 2020; July 1, 2021; amended effective , 2026.

**General Authority:** NDCC 23.1-04-03, 23.1-04-09

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05, 23.1-04-09; S.L. 2017, ch. 199, § 19

### **33.1-24-03-14. Biennial reporting.**

1. A generator who is a large quantity generator for at least one month of an odd-numbered year and ships any hazardous waste offsite to a treatment, storage, or disposal facility within the United States shall prepare and submit a single copy of a biennial report to the department by March first of each even-numbered year for the previous year. The biennial report must be submitted on department-approved forms, 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 in the United States to which waste was shipped during the reporting year;
  - d. The name and identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;
  - e. A description, hazardous waste number ~~(from chapter 33.1-24-02)~~, department of transportation hazard class, and quantity of each hazardous waste shipped offsite to a treatment, storage, or disposal facility within the United States. This information must be listed by identification number of each offsite facility to which waste was shipped;
  - f. 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~~process generating the waste actually achieved during the year in comparison to the previous year to the extent such information is available for years prior to 1984, the physical state, and the type of hazardous waste; and
  - h. The certification signed by the generator or authorized representative.
2. Any generator who treats, stores, or disposes of hazardous waste onsite shall submit a biennial report covering those wastes in accordance with the provisions of chapters 33.1-24-05 and 33.1-24-06.
3. Reporting for exports of hazardous waste is not required on the biennial report form. A separate annual report requirement is set forth in section 33.1-24-03-23.

**History:** Effective January 1, 2019; amended effective , 2026.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### 33.1-24-03-26. Conditions for exemption for a very small quantity generator.

Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of chapters 33.1-24-03 through ~~33.1-24-07~~33.1-24-07, except section 33.1-24-03-01, section 33.1-24-03-02, subsection 2 of section 33.1-24-03-03, and section 33.1-24-03-26, and the notification requirements of section 33.1-24-03-03 and the very small quantity generator may accumulate hazardous waste onsite without complying with such requirements. The conditions for exemption are as follows:

1. In a calendar month, the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in section 33.1-24-01-04;
2. The very small quantity generator complies with the hazardous waste determination requirements of section 33.1-24-03-02;
3. If the very small quantity generator accumulates at any time greater than one kilogram [2.2 pounds] of acute hazardous waste or one hundred kilograms [220 pounds] 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 acute hazardous waste listed in section 33.1-24-02-16 and subsection 5 of section 33.1-24-02-18, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:
  - a. Such waste is held onsite for no more than ninety days beginning on the date when the accumulated wastes exceed the amounts provided above; and
  - b. The conditions for exemption in section 33.1-24-03-29.
4. If the very small quantity generator accumulates at any time one thousand kilograms [2,200 pounds] or greater of nonacute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:
  - a. Such waste is held onsite for no more than one hundred eighty days, or two hundred seventy days, if applicable, beginning on the date when the accumulated waste ~~exceed~~exceeds the amounts provided above;
  - b. The quantity of waste accumulated onsite never exceeds six thousand kilograms [13,200 pounds]; and
  - c. The conditions for exemption in section 33.1-24-03-28.
5. A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in subsections 3 and 4 must either treat or dispose of its hazardous waste in an onsite facility or ensure delivery to an offsite treatment, storage, or disposal facility, either of which, if located in the United States, is:
  - a. Permitted under chapter 33.1-24-06, or in interim status under section 33.1-24-06-16;
  - b. Authorized to manage hazardous waste by a state with a hazardous waste management program approved under title 40, CFR Code of Federal Regulations, section 271;
  - c. Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to section 33.1-20-06.1;
  - d. Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit, is subject to

the requirements under title 40, CFR Code of Federal Regulations, sections 257.5 through 257.30;

- e. A facility which:
    - (1) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
    - (2) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.
  - f. For universal waste managed under sections 33.1-24-05-700 through 33.1-24-05-799, a universal waste handler or destination facility subject to the requirements of those sections;
  - g. A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:
    - (1) The very small quantity generator and the large quantity generator are under the control of the same person as defined in section 33.1-24-01-04. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in section 33.1-24-01-04 shall not be deemed to "control" such generators.
    - (2) The very small quantity generator marks its container of hazardous waste with:
      - (a) The words "hazardous waste"; and
      - (b) An indication of the hazards of the contents. ~~(examples~~Examples include the applicable hazardous waste ~~characteristic~~characteristics of ~~(i.e.,~~ ignitable, corrosive, reactive, or toxic); hazard communication consistent with the department of transportation requirements at title 49, Code of Federal Regulations, part 172 subpart E ~~(labeling)~~ or subpart F ~~(placarding)~~; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29, Code of Federal Regulations, 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);
  - h. For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of subsection 10 of section 33.1-24-02-04.
  - i. A reverse distributor, as defined in section 33.1-24-05-310, if the hazardous waste pharmaceutical is a potentially creditable hazardous waste pharmaceutical generated by a health care facility, as defined in section 33.1-24-05-310.
  - j. A health care facility, as defined in section 33.1-24-05-310, which meets the conditions in subsection 12 of section 33.1-24-05-312 and subsection 2 of section 33.1-24-05-313 as applicable, to accept noncreditable hazardous waste pharmaceuticals from an offsite health care facility that is a very small quantity generator.
6. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
7. A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with subsection 2 of section 33.1-24-03-34.

**History:** Effective July 1, 2020; amended effective July 1, 2021~~;~~; amended effective \_\_\_\_\_, 2026.

**General Authority:** NDCC 23.1-04-03

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

**33.1-24-03-29. Conditions for exemption for a large quantity generator that accumulates hazardous waste.**

A large quantity generator may accumulate hazardous waste onsite without a permit or interim status, and without complying with the requirements of sections 33.1-24-05-01 through 33.1-24-05-249, sections 33.1-24-05-300 through 33.1-24-05-599, chapter 33.1-24-06, and chapter 33.1-24-07, provided that all of the following conditions for exemption are met:

1. **Accumulation.** A large quantity generator accumulates hazardous waste onsite for no more than ninety days, unless in compliance with the accumulation time limit extension in subsection 2 or F006 accumulation conditions for exemption in subsection 3. The following accumulation conditions also apply:
  - a. **Accumulation of hazardous waste in containers.** If the hazardous waste is placed in containers, the large quantity generator must comply with the following:
    - (1) **Air emission standards.** The applicable requirements of sections 33.1-24-05-400 through 33.1-24-05-474;
    - (2) **Condition of containers.** If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;
    - (3) **Compatibility of waste with container.** The large quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;
    - (4) **Management of containers.**
      - (a) A container holding hazardous waste ~~always~~**must**~~must~~ **always** be closed during accumulation, except when it is necessary to add or remove waste.
      - (b) A container holding hazardous waste may not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.
    - (5) **Inspections.** At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph 2 of subdivision a of subsection 1 ~~of section 33.1-24-03-29 of this section~~ for remedial action required if deterioration or leaks are detected.
    - (6) **Special conditions for accumulation of ignitable and reactive wastes.**
      - (a) Containers holding ignitable or reactive waste must be located at least fifteen meters [50 feet] from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

- (b) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction, including the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks whether static, electrical, or mechanical, spontaneous ignition ~~(e.g., from heat-producing chemical reactions)~~, and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(7) **Special conditions for accumulation of incompatible wastes.**

- (a) Incompatible wastes, or incompatible wastes and materials, including those listed in appendix III of chapter 33.1-24-05, may ~~not~~ only be placed in the same container; ~~unless if the requirements detailed in~~ subsection 2 of section 33.1-24-05-08 ~~is~~ are complied with.
  - (b) Hazardous waste may ~~not~~ only be placed in an unwashed container that previously held an incompatible waste or material. ~~(see appendix III of chapter 33.1-24-05), if the requirements of subsection 2 of section 33.1-24-05-08 are met.~~
  - (c) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.
- b. **Accumulation of hazardous waste in tanks.** If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of sections 33.1-24-05-103 through subsection 3 of section 33.1-24-05-110 ~~Closure and postclosure care and~~, section 33.1-24-05-113 ~~Waste analysis and trial tests, as well as~~ and the applicable requirements of sections 33.1-24-05-400 through 33.1-24-05-474.
- c. **Accumulation of hazardous waste on drip pads.** If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:
- (1) The applicable drip pad requirements of sections 33.1-24-05-501 through 33.1-24-05-524;
  - (2) The large quantity generator shall remove all wastes from the drip pad at least once every ninety days. Any hazardous wastes that are removed from the drip pad are then subject to the ninety-day accumulation limit in subsection 1 of this section and section 33.1-24-03-27, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and
  - (3) The large quantity generator shall maintain onsite at the facility the following records readily available for inspection:
    - (a) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and
    - (b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

- d. **Accumulation of hazardous waste in containment buildings.** If the waste is placed in containment buildings, the large quantity generator shall comply with sections 33.1-24-05-475 through 33.1-24-05-500. The generator shall label its containment building with the words "hazardous waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons onsite, and also in a conspicuous place provide an indication of the hazards of the contents. ~~(examples~~Examples include the applicable hazardous waste ~~characteristic~~characteristics ~~of (i.e.,~~ ignitable, corrosive, reactive, or toxic); hazard communication consistent with the department of transportation requirements at title 49, Code of Federal Regulations, part 172 subpart E ~~(labeling)~~ or subpart F ~~(placarding)~~; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29, Code of Federal Regulations, 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);. The generator must also maintain:
- (1) The professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476. This certification must be in the generator's files prior to operation of the unit; and
  - (2) The following records by use of inventory logs, monitoring equipment, or any other effective means:
    - (a) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or
    - (b) Documentation that the unit is emptied at least once every ninety days.
    - (c) Inventory logs or records with the above information must be maintained onsite and readily available for inspection.
- e. **Labeling and marking of containers and tanks.**
- (1) **Containers.** A large quantity generator shall mark or label its containers with the following:
    - (a) The words "hazardous waste";
    - (b) An indication of the hazards of the contents. ~~(examples~~Examples include the applicable hazardous waste ~~characteristic~~characteristics ~~of (i.e.,~~ ignitable, corrosive, reactive, or toxic); hazard communication consistent with the department of transportation requirements at title 49, Code of Federal Regulations, part 172 subpart E ~~(labeling)~~ or subpart F ~~(placarding)~~; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29, Code of Federal Regulations, 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and
    - (c) The date upon which each period of accumulation begins clearly visible for inspection on each container.
  - (2) **Tanks.** A large quantity generator accumulating hazardous waste in tanks shall do the following:
    - (a) Mark or label its tanks with the words "hazardous waste";

- (b) Mark or label its tanks with an indication of the hazards of the contents. ~~(examples~~Examples include the applicable hazardous waste ~~characteristic~~characteristics of ~~(i.e.,~~ ignitable, corrosive, reactive, or toxic); hazard communication consistent with the department of transportation requirements at title 49, Code of Federal Regulations, part 172 subpart E ~~(labeling)~~ or subpart F ~~—(placarding)~~; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29, Code of Federal Regulations, 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);
  - (c) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within ninety days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within ninety days of first entering; and
  - (d) Keep inventory logs or records with the above information onsite and readily available for inspection.
- f. **Emergency procedures.** The large quantity generator complies with the standards in sections 33.1-24-05-15 through 33.1-24-05-36.
- g. **Personnel training.**
- (1) Facility personnel must successfully complete a program of classroom instruction, online training, ~~(e.g., such as~~ computer-based or electronic training), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described in subparagraph b.
    - (a) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.
    - (b) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:
      - [1] Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
      - [2] Key parameters for automatic waste feed cut-off systems;
      - [3] Communications or alarm systems;
      - [4] Response to fires or explosions;
      - [5] Response to ground-water contamination incidents; and
      - [6] Shutdown of operations.
  - (2) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations title 29, Code of Federal Regulations, section 1910.120(p)(8) and section 1910.120(q), the large quantity

generator is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the conditions of exemption in this section.

- (3) Facility personnel shall successfully complete the program required in subdivision g of subsection 1 of section 33.1-24-03-29 within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees may not work in unsupervised positions until they have completed the training standards of subdivision g of subsection 1 of section 33.1-24-03-29.
  - (4) Facility personnel shall take part in an annual review of the initial training required in subdivision g of subsection 1 of section ~~33.1-24-03-28~~33.1-24-03-29.
  - (5) The large quantity generator shall maintain the following documents and records at the facility:
    - (a) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
    - (b) A written job description for each position listed under subparagraph a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;
    - (c) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subparagraph a;
    - (d) Records that document that the required training or job experience has been given to, and completed by, facility personnel.
  - (6) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.
- h. **Closure.** A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:
- (1) **Notification for closure of a waste accumulation unit.** A large quantity generator shall perform one of the following when closing a waste accumulation unit:
    - (a) Place a notice in the operating record within thirty days after closure identifying the location of the unit within the facility; or
    - (b) Meet the closure performance standards of paragraph 3 for container, tank, and containment building waste accumulation units or paragraph 4 for drip pads and notify environmental protection agency following the procedures in paragraph 2 for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.
  - (2) **Notification for closure of the facility.** A large quantity generator shall:

- (a) Notify the department using form 8700-12 no later than thirty days prior to closing the facility.
  - (b) Notify the department using form 8700-12 within ninety days after closing the facility that it has complied with the closure performance standards of paragraph 3 or 4. If the facility cannot meet the closure performance standards of paragraph 3 or 4, it shall notify the department using form 8700-12 that it will close as a landfill under the standards of section 33.1-24-05-180 in the case of a container, tank, or containment building unit, or for a facility with drip pads, notify using form 8700-12 that it will close under the standards of subsection 3 of section 33.1-24-05-506.
  - (c) A large quantity generator may request additional time to close, but it must notify the department using form 8700-12 within seventy-five days after the date provided in subparagraph a to request an extension and provide an explanation as to why the additional time is required.
- (3) **Closure performance standards for container, tank systems, and containment building waste accumulation units.** At closure, the generator shall close the waste accumulation unit or facility in a manner that:
- (a) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.
  - (b) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units, including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless subsection 4 of section 33.1-24-02-03 applies.
  - (c) Any hazardous waste generated in the process of closing either the generator's facility or unit accumulating hazardous waste must be managed in accordance with all applicable standards of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-250 through 33.1-24-05-399, including removing any hazardous waste contained in these units within ninety days of generating it and managing these wastes in a Resource Conservation and Recovery Act Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility.
  - (d) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in subparagraph b of paragraph 3 of subdivision h of subsection 1 of section 33.1-24-03-29, then the waste accumulation unit is considered to be a landfill and the generator shall close the waste accumulation unit and perform postclosure care in accordance with the closure and ~~post-closure~~ **postclosure** care requirements of section 33.1-24-05-180. In addition, for the purposes of closure, postclosure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator shall meet all of the requirements for landfills specified in sections 33.1-24-05-59 through 33.1-24-05-88.
- (4) **Closure performance standards for drip pad waste accumulation units.** At closure, the generator shall comply with the closure requirements of paragraph 2 of subdivision h of subsection 1 of section 33.1-24-03-29 and subparagraphs a and c

of paragraph 3 of subdivision h of subsection 1 of section 33.1-24-03-29, and sections 33.1-24-05-505 and 33.1-24-05-506.

- (5) The closure requirements of paragraph subdivision h of this subsection do not apply to satellite accumulation areas.
- i. **Land disposal restrictions.** The large quantity generator complies with all applicable requirements in sections 33.1-24-05-250 through 33.1-24-05-399.
2. **Accumulation time limit extension.** A large quantity generator who accumulates hazardous waste for more than ninety days is subject to the permit requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, unless it 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. **Accumulation of F006.** A large quantity generator that also generates wastewater treatment sludges from electroplating operations that meet the listing description for the environmental protection agency hazardous waste number F006, may accumulate F006 waste onsite for more than ninety days, but not more than one hundred eighty days without being subject to chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, provided that it complies with all of the following additional conditions for exemption:
  - a. The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;
  - b. The F006 waste is legitimately recycled through metals recovery;
  - c. No more than twenty thousand kilograms [\[44092 pounds\]](#) of F006 waste is accumulated onsite at any one time; and
  - d. The F006 waste is managed in accordance with the following:
    - (1) If the F006 waste is placed in containers, the large quantity generator must comply with the applicable conditions for exemption in subdivision a of subsection 1 of section 33.1-24-03-29;
    - (2) If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption of subdivision b of subsection 1 of section 33.1-24-03-29;
    - (3) If the F006 is placed in containment buildings, the large quantity generator must comply with sections 33.1-24-05-475 through 33.1-24-05-477 and has placed its professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476 in the facility's files prior to operation of the unit. The large quantity generator must maintain the following records:
      - (a) A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the large quantity generator is complying with the procedures; or

- (b) Documentation that the unit is emptied at least once every one hundred eighty days.
- (4) The large quantity generator is exempt from all the requirements in sections 33.1-24-05-57 through 33.1-24-05-88, except for those referenced in subdivision h of subsection 1 of section 33.1-24-05-29.
- (5) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;
- (6) While being accumulated onsite, each container and tank is labeled or marked clearly with:
  - (a) The words "hazardous waste"; and
  - (b) An indication of the hazards of the contents. ~~(examples~~Examples include the applicable hazardous waste ~~characteristic~~characteristics of ~~(i.e.,~~ ignitable, corrosive, reactive, or toxic); hazard communication consistent with the department of transportation requirements at title 49, Code of Federal Regulations, part 172 subpart E ~~(labeling)~~ or subpart F ~~(placarding)~~; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29, Code of Federal Regulations, 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).
- (7) ~~The~~If the large quantity generator complies with the requirements in subdivisions e and f.
- e. **F006 transported over two hundred miles.** A large quantity generator that also generates wastewater treatment sludges from electroplating operations that meet the listing description for the environmental protection agency hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more for offsite metals recovery, may accumulate F006 waste onsite for more than ninety days, but not more than two hundred seventy days without being subject to chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, if the large quantity generator complies with all of the conditions for exemption in subdivisions a through d of subsection 3 of section 33.1-24-03-29.
- f. **F006 accumulation time extension.** A large quantity generator accumulating F006 in accordance with subdivisions a through d of subsection 3 of section 33.1-24-03-29 that accumulates F006 waste onsite for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more), or who accumulates more than twenty thousand kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, unless the generator has been granted an extension to the one hundred-day (or two hundred seventy-day if applicable) period or an exception to the twenty thousand kilogram accumulation limit. Such extensions and exceptions may be granted by environmental protection agency if F006 waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than twenty thousand kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the regional administrator on a case-by-case basis.

4. **Consolidation of hazardous waste received from very small quantity generators.** Large quantity generators may accumulate onsite hazardous waste received from very small quantity generators under control of the same person ~~(as defined in section 33.1-24-01-04)~~, without a storage permit or interim status and without complying with the requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, provided that the generators comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.
- a. The large quantity generator notifies the department at least thirty days prior to receiving the first shipment from a very small quantity generator using environmental protection agency form 8700-12;
  - b. Identifies on the form the name and site address for the very small quantity generator as well as the name and business telephone number for a contact person for the very small quantity generator; and
  - c. Submits an updated Site identification form (environmental protection agency form 8700-12) within thirty days after a change in the name or site address for the very small quantity generator.
  - d. The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.
  - e. The large quantity generator complies with the independent requirements identified in subdivision c of subsection 1 of section 33.1-24-03-01 and the conditions for exemption in this section for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in subdivision e of subsection 1 of section 33.1-24-03-29, the large quantity generator shall label the container or unit with the date accumulation started (i.e., the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated onsite.
5. **Rejected load.** A large quantity generator that sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of section 33.1-24-05-39 may accumulate the returned waste onsite in accordance with subsections 1 through 4. Upon receipt of the returned shipment, the generator must:
- a. Sign item 18c of the manifest, if the transporter returned the shipment using the original manifest; or
  - b. Sign item 20 of the manifest, if the transporter returned the shipment using a new manifest.

**History:** Effective July 1, 2020; amended effective July 1, 2021; amended effective \_\_\_\_\_, 2026.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

## APPENDIX I

### UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (Environmental Protection Agency Forms 8700-22 and 8700-22A and Their Instructions)

United States Environmental Protection Agency Form 8700-22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.
2. State and federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to use this form (8700-22) and, if necessary, the continuation sheet (form 8700-22A) for both interstate and intrastate transportation of hazardous waste.
3. State regulations also require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete the following information:
  - a. State regulations under section 33.1-24-03-16 (additional reporting) requires the generator to provide the department with a signed copy of the manifest when first signed by the generator and transporter and as signed by and received from the designated facility or alternate facility.

\* \* \* \* \*

The following statement must be included with each uniform hazardous waste manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: thirty minutes for generators, ten minutes for transporters, and twenty-five minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing, and transmitting the form. Any correspondence regarding the Paperwork Reduction Act burden statement for the manifest must be sent to the director of the collection strategies division in environmental protection agency's office of information collection at the following address: United States Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Do not send the completed form to this address.

#### I. Instructions for generators

##### Item 1. Generator's identification number

Enter the generator's environmental protection agency twelve digit identification number, or the state generator identification number if the generator site does not have an environmental protection agency identification number.

##### Item 2. Page 1 of \_\_

Enter the total number of pages used to complete this manifest (for example, the first page (environmental protection agency form 8700-22) plus the number of continuation sheets (environmental protection agency form 8700-22A), if any).

##### Item 3. Emergency response phone number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;
2. Reach a phone that is monitored twenty-four hours a day at all times the waste is in transportation (including transportation-related storage); and
3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup or incident mitigation, or both, information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

NOTE: Emergency response phone number information should only be entered in item 3 when there is one phone number that applies to all the waste materials described in item 9b. If a situation (for example, consolidated shipments) arises where more than one emergency response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in item 9b.

#### **Item 4. Manifest tracking number**

This unique tracking number must be preprinted on the manifest by the forms printer.

#### **Item 5. Generator's mailing address, phone number, and site address**

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or the generator's authorized agent may be reached to provide instructions in the event the designated, or alternate, or both, (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

#### **Item 6. Transporter 1 company name and identification number**

Enter the company name and environmental protection agency identification number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

#### **Item 7. Transporter 2 company name and identification number**

If applicable, enter the company name and environmental protection agency identification number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here. If more than two transporters are needed, use a continuation sheet or sheets (environmental protection agency form 8700-22A).

#### **Item 8. Designated facility name, site address, and identification number**

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the environmental protection agency twelve digit identification number of the facility.

#### **Item 9. United States department of transportation description (including proper shipping name, hazard class or division, identification number, and packing group)**

**Item 9a.** If the wastes identified in item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this item next to the corresponding hazardous material identified in item 9b.

**Item 9b.** Enter the United States department of transportation proper shipping name, hazard class or division, identification number (UN/NA) and packing group for each waste as identified

**in 49 CFR 172. Include technical name or names and reportable quantity references, if applicable.**

NOTE: If additional space is needed for waste descriptions, enter these additional descriptions in item 27 on the continuation sheet (environmental protection agency form 8700-22A). Also, if more than one emergency response phone number applies to the various wastes described in either item 9b or item 27, enter applicable emergency response phone numbers immediately following the shipping descriptions for those items.

**Item 10. Containers (number and type)**

Enter the number of containers for each waste and the appropriate abbreviation from table I (below) for the type of container.

---

**Table I - Types of Containers**

---

BA	=	Burlap, cloth, paper, or plastic bags
CF	=	Fiber or plastic boxes, cartons, cases
CM	=	Metal boxes, cartons, cases (including roll-offs)
CW	=	Wooden boxes, cartons, cases
CY	=	Cylinders
DF	=	Fiberboard or plastic drums, barrels, kegs
DM	=	Metal drums, barrels, kegs
DT	=	Dump truck
DW	=	Wooden drums, barrels, kegs
HG	=	Hopper or gondola cars
TC	=	Tank cars
TP	=	Portable tanks
TT	=	Cargo tanks (tank trucks)

---

**Item 11. Total quantity**

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow the generator to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

**Item 12. Units of measure (weight or volume)**

Enter, in designated boxes, the appropriate abbreviation from table II (below) for the unit of measure.

---

**Table II - Units of Measure**

---

G	=	Gallons (liquids only)
K	=	Kilograms
L	=	Liters (liquids only)
M	=	Metric tons (1000 kilograms)

- N = Cubic meters
- P = Pounds
- T = Tons (2000 pounds)
- Y = Cubic yards

---

NOTE: Tons, metric tons, cubic meters, and cubic yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

### **Item 13. Waste codes**

Enter up to six federal and state waste codes to describe each waste stream identified in item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

### **Item 14. Special handling instructions and additional information**

1. Generators may enter any special handling or shipment specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in item 12.
2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are reshipped under a second manifest; and the specification of polychlorinated biphenyl waste descriptions and polychlorinated biphenyl out of service dates required under 40 CFR 761.207. Generators; however, cannot be required to enter information in this space to meet state regulatory requirements.

### **Item 15. Generator's or offeror's certifications**

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of the Resource Conservation and Recovery Act are also certifying that they have complied with the waste minimization requirements. The generator's certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, or placarded, or both, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the primary exporter, I certify that the contents of this consignment conform to the terms of the attached environmental protection agency acknowledgment of consent". When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.
2. Generator or offeror personnel may preprint the words, "on behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator or offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

NOTE: All of the above information except the handwritten signature required in item 15 may be preprinted.

## **II. Instructions for international shipment block**

### **Item 16. International shipments**

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the United States customs when exporting the waste across United States borders.

## **III. Instructions for transporters**

### **Item 17. Transporters' acknowledgments of receipt**

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters. If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

NOTE: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the international shipments block. Transporters carrying exports may also have responsibilities to enter information in the international shipments block. See above instructions for item 16.

## **IV. Instructions for owners and operators of treatment, storage, and disposal facilities**

### **Item 18. Discrepancy**

#### **Item 18a. Discrepancy indication space**

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by subsection 2 of section 33.1-24-05-39) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in subsections 3, 4, and 5 of section 33.1-24-02-07.
2. For rejected loads and residues (subsections 4, 5, and 6 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16), check the appropriate box if the shipment is a rejected load (for example, rejected by the designated or alternate facility, or both, and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in item 14, the special handling block and additional information block of the additional manifests.

3. Owners or operators of facilities located in unauthorized states (for example, states in which the environmental protection agency administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within fifteen days of receiving the waste must submit to their regional administrator a letter with a copy of the manifest at issue describing the discrepancy and attempts to reconcile it (subsection 3 of section 33.1-24-05-39 and the applicable requirements of subsection 5 of section 33.1-24-06-16).
4. Owners or operators of facilities located in authorized states (for example, those states that have received authorization from the environmental protection agency to administer the hazardous waste management program) should contact their state agency for information on where to report discrepancies involving "significant differences" to state officials.

**Item 18b. Alternate facility (or generator) for receipt of full load rejections**

Enter the name, address, phone number, and environmental protection agency identification number of the alternate facility which the rejecting treatment, storage, or disposal facility has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting treatment, storage, or disposal facility may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

**Item 18c. Alternate facility (or generator) signature**

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial treatment, storage, or disposal facility.

**Item 19. Hazardous waste report management method codes**

Enter the most appropriate hazardous waste report management method code for each waste listed in item 9. The hazardous waste report management method code is to be entered by the first treatment, storage, or disposal facility that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the treatment, storage, or disposal facility.

**Item 20. Designated facility owner or operator certification of receipt (except as noted in item 18a)**

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the manifest by signing and entering the date of receipt or rejection where indicated. Since the facility certification acknowledges receipt of the waste except as noted in the discrepancy space in item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in item 18a. Fully rejected wastes may be forwarded or returned using item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the manifest by signing and entering the date they received or rejected the waste in item 18c. Partially rejected wastes and residues must be reshipped under a new manifest, to be initiated and signed by the rejecting treatment, storage, or disposal facility as offeror of the shipment.

**Manifest continuation sheet**

Instructions - continuation sheet, environmental protection agency form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used - press down hard.

This form must be used as a continuation sheet to form 8700-22 if:

1. More than two transporters are to be used to transport the waste; or
2. More space is required for the United States department of transportation descriptions and related information in item 9 of environmental protection agency form 8700-22. State and federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (environmental protection agency form 8700-22) and, if necessary, this continuation sheet (environmental protection agency form 8700-22A) for both interstate and intrastate transportation.

**Item 21. Generator's identification number**

Enter the generator's environmental protection agency twelve digit identification number or, the state generator identification number if the generator site does not have an environmental protection agency identification number.

**Item 22. Page \_\_\_ -**

Enter the page number of this continuation sheet.

**Item 23. Manifest tracking number**

Enter the manifest tracking number from item 4 of the manifest form to which this continuation sheet is attached.

**Item 24. Generator's name -**

Enter the generator's name as it appears in item 5 on the first page of the manifest.

**Item 25. Transporter - company name**

If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "transporter" the order of the transporter. For example, transporter three company name. Also, enter the environmental protection agency twelve digit identification number of the transporter described in item 25.

**Item 26. Transporter - company name**

If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "transporter" the order of the transporter. For example, transporter four company name. Each continuation sheet can record the names of two additional transporters. Also enter the environmental protection agency twelve digit identification number of the transporter named in item 26.

**Item 27. United States department of transportation description including proper shipping name, hazardous class, and identification number (UN/NA)**

For each row enter a sequential number under item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for item 9 of the manifest for the information to be entered.

**Item 28. Containers (number and type)**

Refer to the instructions for item 10 of the manifest for information to be entered.

**Item 29. Total quantity**

Refer to the instructions for item 11 of the manifest form.

**Item 30. Units of measure (weight or volume)**

Refer to the instructions for item 12 of the manifest form.

**Item 31. Waste codes**

Refer to the instructions for item 13 of the manifest form.

**Item 32. Special handling instructions and additional information**

Refer to the instructions for item 14 of the manifest form.

**Transporters****Item 33. Transporter - acknowledgment of receipt of materials**

Enter the same number of the transporter as identified in item 25. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 25. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**Item 34. Transporter - acknowledgment of receipt of materials**

Enter the same number of the transporter as identified in item 26. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 26. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**Owner and operators of treatment, storage, or disposal facilities****Item 35. Discrepancy indication space**

Refer to item 18. This space may be used to more fully describe information on discrepancies identified in item 18a of the manifest form.

**Item 36. Hazardous waste report management method codes**

For each field here, enter the sequential number that corresponds to the waste materials described under item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

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Please print or type. Form assigned for use on area (12-digit typewriter.)

Form Approved OMB No. 2000-0685 Expires 2-30-97

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No.	Manifest Document No.	2. Page 1 of		Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address				A. State Manifest Document Number			
4. Generator's Phone ( )				B. State Generator's ID			
5. Transporter 1 Company Name		6. US EPA ID Number		C. State Transporter's ID			
7. Transporter 2 Company Name		8. US EPA ID Number		D. Transporter's Phone			
9. Designated Facility Name and Site Address		10. US EPA ID Number		E. State Transporter's ID			
				F. Transporter's Phone			
				G. State Facility's ID			
				H. Facility's Phone			
11. US DOT Description (including Proper Shipping Name, Hazard Class and ID Number)		12. Containers		13. Total		14. Unit	
		No. Type		Quantity		Wt/Vol	
a.							
b.							
c.							
d.							
J. Additional Descriptions for Materials Listed Above				K. Handling Codes for Wastes Listed Above			
15. Special Handling Instructions and Additional Information							
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this compartment are fully and accurately described above by proper shipping name and are classified, labeled, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the alternative method of incineration, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment. OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.							
Printed/Typed Name				Signature		Month Day Year	
17. Transporter 1 Acknowledgment of Receipt of Materials				Signature		Month Day Year	
Printed/Typed Name				Signature		Month Day Year	
18. Transporter 2 Acknowledgment of Receipt of Materials				Signature		Month Day Year	
Printed/Typed Name				Signature		Month Day Year	
19. Discrepancy Indication Space							
20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.							
Printed/Typed Name				Signature		Month Day Year	

[INSERT BELOW IMAGE]

Please print or type. Form Approved, OMB No. 2050-0039

<b>UNIFORM HAZARDOUS WASTE MANIFEST</b>		1. Generator ID Number	2. Page 1 of	3. Emergency Response Phone	4. Manifest Tracking Number				
		5. Generator's Name and Mailing Address <small>Generator's Site Address (if different than mailing address)</small>							
Generator's Phone:									
6. Transporter 1 Company Name				U.S. EPA ID Number					
7. Transporter 2 Company Name				U.S. EPA ID Number					
8. Designated Facility Name and Site Address				U.S. EPA ID Number					
Facility's Phone:									
GENERATOR	9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers		11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes		
			No.	Type					
		1.							
		2.							
		3.							
	4.								
14. Special Handling Instructions and Additional Information									
15. <b>GENERATOR/SOFFEROR'S CERTIFICATION:</b> I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.									
Generator's/Offenor's Printed/Typed Name		Signature		Month	Day	Year			
16. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S.						Port of entry/exit: _____			
Transporter signature (for exports only): _____						Date leaving U.S.: _____			
TRANSPORTER	17. Transporter Acknowledgment of Receipt of Materials								
	Transporter 1 Printed/Typed Name		Signature		Month	Day	Year		
	Transporter 2 Printed/Typed Name		Signature		Month	Day	Year		
DESIGNATED FACILITY	18. Discrepancy								
	18a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection								
	18b. Alternate Facility (or Generator)				Manifest Reference Number:		U.S. EPA ID Number		
	Facility's Phone:								
	18c. Signature of Alternate Facility (or Generator)				Month	Day	Year		
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)									
	1.	2.	3.	4.					
20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a									
Printed/Typed Name		Signature		Month	Day	Year			

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Please print or type. Form designed for use on size 11-1/2 sheet paper.

<b>UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)</b>		21. Generator's US EPA ID No.	Manifest Date/Time No.	22. Page	Information in the shaded areas is not required by Federal law.
23. Generator's Name				L. State Manifest Generation Number	
				M. State Generator's ID	
24. Transporter Company Name		25. US EPA ID Number		N. State Transporter's ID	
26. Transporter Company Name		27. US EPA ID Number		O. Transporter's Phone	
28. Transporter Company Name		29. US EPA ID Number		P. State Transporter's ID	
28. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)		30. Container No.	30. Total Quantity	31. Unit Measure	# Waste No.
a.					
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i.					
S. Additional Descriptors for Materials Listed Above				T. Handling Codes for Wastes Listed Above	
32. Special Handling Instructions and Additional Information					
33. Transporter Acknowledgment of Receipt of Materials				Date	
Printed/Typed Name				Month Day Year	
Signature				Date	
34. Transporter Acknowledgment of Receipt of Materials				Date	
Printed/Typed Name				Month Day Year	
Signature				Date	
35. Discrepancy Indication (Optional)					

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Please print or type. Form Approved, OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)		21. Generator ID Number	22. Page	23. Manifest Tracking Number			
24. Generator's Name							
25. Transporter _____ Company Name				U.S. EPA ID Number			
26. Transporter _____ Company Name				U.S. EPA ID Number			
27a. HM	27b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	28. Containers		29. Total Quantity	30. Unit Wt./Vol.	31. Waste Codes	
		No.	Type				
32. Special Handling Instructions and Additional Information							
TRANSPORTER	33. Transporter _____ Acknowledgment of Receipt of Materials						
	Printed/Typed Name	Signature			Month	Day	Year
TRANSPORTER	34. Transporter _____ Acknowledgment of Receipt of Materials						
	Printed/Typed Name	Signature			Month	Day	Year
DESIGNATED FACILITY	35. Discrepancy						
	36. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)						

**CHAPTER 33.1-24-05**  
**STANDARDS FOR TREATMENT, STORAGE, AND DISPOSAL FACILITIES AND FOR THE**  
**MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF**  
**HAZARDOUS WASTE MANAGEMENT FACILITIES**

Section

33.1-24-05-54	General Ground Water Monitoring Requirements
33.1-24-05-81	Wording of the Instruments
33.1-24-05-311	Applicability
33.1-24-05-423	Standards - Compressors
33.1-24-05-451	Definitions
33.1-24-05-457	Standards - Closed-Vent Systems and Control Devices
33.1-24-05-525	Applicability to Hazardous Waste Burned in Boilers and Industrial Furnaces
33.1-24-05-535	Waiver of Destruction and Removal Efficiency Trial Burn for Boilers

**33.1-24-05-54. General ground water monitoring requirements.**

The owner or operator shall comply with the following requirements for any ground water monitoring program developed to satisfy section 33.1-24-05-55, 33.1-24-05-56, or 33.1-24-05-57:

1. The ground water monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depth to yield ground water samples from the uppermost aquifer that:
  - a. Represent the quality of background ground water that has not been affected by leakage from a regulated unit. A determination of background ground water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:
    - (1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and
    - (2) Sampling at other wells will provide an indication of background ground water quality that is representative or more representative than that provided by the upgradient wells.
  - b. Represent the quality of ground water passing the point of compliance.
  - c. Allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.
2. If a facility contains more than one regulated unit, separate ground water monitoring systems are not required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the ground water in the uppermost aquifer.
3. All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground water samples. The annular space, i.e., the space between the borehole and well casing, above the sampling depth must be sealed to prevent contamination of samples and the ground water.
4. The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of

ground water quality below the waste management area. At a minimum, the program must include procedures and techniques for:

- a. Sample collection;
  - b. Sample preservation and shipment;
  - c. Analytical procedures; and
  - d. Chain of custody control.
5. The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents in ground water samples.
  6. The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.
  7. In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance points the number and kinds of samples collected to establish background must be appropriate for the form of statistical test employed following generally accepted statistical principles. The sample site must be as large as necessary to ensure with reasonable confidence that a contaminant released to ground water from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which must be specified in the unit permit upon approval by the department. This sampling procedure must be:
    - a. A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifers effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or
    - b. An alternate sampling procedure proposed by the owner or operator and approved by the department.
  8. The owner or operator will specify one of the following statistical methods to be used in evaluating ground water monitoring data for each hazardous constituent which, upon approval by the department, will be specified in the unit permit. The statistical test chosen must be conducted separately for each hazardous constituent in each well. Where practical quantification limits are used in any of the following statistical procedures to comply with subdivision e of subsection 9, the practical quantification limits must be proposed by the owner or operator and approved by the department. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in subsection 9.
    - a. A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance wells mean and the background mean levels for each constituent.
    - b. An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance wells median and the background median levels for each constituent.

- c. A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
  - d. A control chart approach that gives control limits for each constituent.
  - e. Another statistical test method submitted by the owner or operator and approved by the department.
9. Any statistical method chosen under subsection 8 for specification in the unit permit shall comply with the following performance standards, as appropriate:
- a. The statistical method used to evaluate ground water monitoring data must be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.
  - b. If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test must be done at a type one error level no less than one hundredth for each testing period. If a multiple comparisons procedure is used, the type one experiment wise error rate for each testing period must be no less than five hundredths; however, the type one error of no less than one hundredth for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
  - c. If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values must be proposed by the owner or operator and approved by the department if the department finds it to be protective of human health and the environment.
  - d. If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be proposed by the owner or operator and approved by the department if the department finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background ~~data-base~~database, the data distribution, and the range of the concentration values for each constituent of concern.
  - e. The statistical method must account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit approved by the department under subsection 8 that is used in the statistical method must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
  - f. If necessary, the statistical method must include procedures to control or correct for seasonal and ~~spacia~~spatial variability as well as temporal correlation in the data.
10. Ground water monitoring data collected in accordance with subsection 7 including actual levels of constituents must be maintained in the facility operating record. The department shall specify in the permit when the data must be submitted for review.

**History:** Effective January 1, 2019; amended effective \_\_\_\_\_.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### **33.1-24-05-81. Wording of the instruments.**

1. Trust agreement and certification of acknowledgment.
  - a. A trust agreement for a trust fund as specified in section 33.1-24-05-77 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 Department of Environmental Quality, "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 EPA identification number, name, address, and the current closure or postclosure, or both, cost estimates or portions thereof for which financial assurance is demonstrated by this AGREEMENT].~~ This AGREEMENT pertains to the facilities and cost estimates identified on the attached Schedule A. Schedule A should list the following for each facility: identification number assigned by the environmental protection agency, facility name and address, the current closure, post closure, 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 ~~of~~ 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 principal and income of the FUND and keep the FUND invested as a single FUND, without distinction between principal 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 the trustee's 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 acquired 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 created 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 compromise 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 the 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 successor 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 date 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 omission 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 33.1-24-05-81 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 33.1-24-05-77.

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 33.1-24-05-77 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)]

EPA Identification number, name, address, and closure or postclosure, or both, amount(s) 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 Department of Environmental Quality (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 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 23.1-04 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 amount(s) identified above for the facility,

Or, if the PRINCIPAL shall fund the standby trust fund in such amount(s) 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 33.1-24-05, 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 33.1-24-05-81 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 co-surety, 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 ~~of~~and postclosure care, as specified in subsection 3 of section 33.1-24-05-77, 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)]

\_\_\_\_\_

EPA 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 Department of Environmental Quality (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 23.1-04 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~~therefore, the conditions of this obligation are that if the PRINCIPAL shall faithfully perform closure, when 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 33.1-24-05 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 33.1-24-05 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 33.1-24-05 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 33.1-24-05, 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 33.1-24-05-81 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 co-surety, 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 33.1-24-05-77, 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

Director, North Dakota Department of Environmental Quality

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 23.1-04".

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 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 33.1-24-05-81 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 [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce", or "the Uniform Commercial Code"]

5. A certificate of insurance as specified in subsection 5 of section 33.1-24-05-77 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 [EPA](#) 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 33.1-24-05-77, 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 Department of Environmental Quality (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 33.1-24-05-81 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 letter from the chief financial officer, as specified in subsection 6 of section 33.1-24-05-77, 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 Department of Environmental Quality].

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 for closure and/or postclosure costs, as specified in sections 33.1-24-05-74 through 33.1-24-05-88.

[Fill out the following five 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 its [EPA](#) identification number, name, address, and current closure and/or postclosure 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 33.1-24-05-74 through 33.1-24-05-88. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. This firm guarantees, through the guarantee specified in sections 33.1-24-05-74 through 33.1-24-05-88, the closure or postclosure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33.1-24-05-74 through 33.1-24-05-88 or equivalent or substantially equivalent state mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator of the following underground injective control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 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, year-end 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 33.1-24-05-77 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-77 are used.]

**Alternative I**

1. Sum of current closure and postclosure cost estimate (total of all cost estimates shown in the five paragraphs above).	\$	_____
*2. Total liabilities (if any portion of the closure or postclosure cost estimate 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 90% of firm's assets are located in the United States).	\$	_____
	Yes	No
10. Is line 3 at least \$10 million?	_____	_____
11. Is line 3 at least 6 times line 1?	_____	_____
12. Is line 7 at least 6 times line 1?	_____	_____
*13. Are at least 90% of firm's assets located in the United States? If not, complete line 14.	_____	_____
14. Is line 9 at least 6 times line 1?	_____	_____

- 15. Is line 2 divided by line 4 less than 2.0? \_\_\_\_\_
- 16. Is line 8 divided by line 2 greater than 0.1? \_\_\_\_\_
- 17. Is line 5 divided by line 6 greater than 1.5? \_\_\_\_\_

**Alternative II**

- 1. Sum of current closure and postclosure cost estimates (total of all cost estimates shown in the five 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 "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 90% of firm's assets are located in the United States). \$ \_\_\_\_\_

- |   | Yes   | No    |
|---|-------|-------|
| 7. Is line 5 at least \$10 million?   | _____ | _____ |
| 8. Is line 5 at least 6 times line 1?   | _____ | _____ |
| *9. Are at least 90% of firm's assets located in the United States? If not, complete line 10. | _____ | _____ |
| 10. Is line 6 at least 6 times line 1?  | _____ | _____ |

I hereby certify that the wording of this letter is identical to the wording specified in subsection 6 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

- 7. A letter from the chief financial officer, as specified in subsection 6 of section 33.1-24-05-79, 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:

[Address to North Dakota Department of Environmental Quality].

I am the chief financial officer of [firm'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 and/or postclosure care" if applicable] as specified in sections 33.1-24-05-74 through 33.1-24-05-88.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its [EPA](#) identification number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88:

The firm identified above guarantees, through the guarantee specified in sections 33.1-24-05-74 through 33.1-24-05-88, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the owner or operator \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following five 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 [EPA](#) identification number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or postclosure care or liability coverage is demonstrated through the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88. The current closure and ~~or~~ postclosure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.

2. The firm identified above guarantees, through the guarantee specified in sections 33.1-24-05-74 through 33.1-24-05-88, the closure and postclosure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or postclosure care so guaranteed are shown for each facility: \_\_\_\_\_.

3. In states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure or postclosure cost estimates covered by such a test are shown for each facility: \_\_\_\_\_.

4. The firm 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 to the DEPARTMENT through the financial test or any other financial assurance mechanisms specified in sections 33.1-24-05-74 through 33.1-24-05-88 or equivalent or substantially equivalent state mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: \_\_\_\_\_.

5. This firm is the owner or operator or guarantor of the following underground injective control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 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, year-end financial statements for the latest completed fiscal year, ended [date].

**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 33.1-24-05-79 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-79 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 90% of assets are located in the United States, give total United States assets.	\$	_____
	Yes	No
7. Is line 5 at least \$10 million?	_____	_____
8. Is line 4 at least 6 times line 1?	_____	_____
9. Is line 5 at least 6 times line 1?	_____	_____
*10. Are at least 90% of assets located in the United States? If not, complete line 11.	_____	_____
11. Is line 6 at least 6 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 90% of assets are located in the United States).	\$	_____
	Yes	No
7. Is line 5 at least \$10 million?	_____	_____
8. Is line 5 at least 6 times line 1?	_____	_____
9. Are at least 90% of assets located in the United States? If not, complete line 10.	_____	_____
10. Is line 6 at least 6 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 33.1-24-05-77 and paragraph 1 of subdivision a of subsection 6 of section 33.1-24-05-79 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-77 and paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-79 are 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 90% of assets are located in the United States).	\$	_____
	Yes	No
12. Is line 5 at least \$10 million?	_____	_____
13. Is line 5 at least 6 times line 3?	_____	_____

- 14. Is line 9 at least 6 times line 3? \_\_\_\_\_
- \*15. Are at least 90% of assets located in the United States?  
If not, complete line 16. \_\_\_\_\_
- 16. Is line 11 at least 6 times line 3? \_\_\_\_\_
- 17. Is line 4 divided by line 6 less than 2.0? \_\_\_\_\_
- 18. Is line 10 divided by line 4 greater than 0.1? \_\_\_\_\_
- 19. Is line 7 divided by line 8 greater than 1.5? \_\_\_\_\_

**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 90% of assets are located in the United States). \$ \_\_\_\_\_

- |  | Yes   | No    |
|--|-------|-------|
| 9. Is line 7 at least \$10 million?  | _____ | _____ |
| 10. Is line 7 at least 6 times line 3?   | _____ | _____ |
| *11. Are at least 90% of assets located in the United States?<br>If not, complete line 12. | _____ | _____ |
| 12. Is line 8 at least 6 times line 3?   | _____ | _____ |

I hereby certify that the wording of this letter is identical to the wording specified in subsection 7 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

[Date] \_\_\_\_\_

8. Corporate Guarantee

a. A corporate guarantee, as specified in subsection 6 of section 33.1-24-05-77, 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. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33.1-24-05-75 to the DEPARTMENT.

#### 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 33.1-24-05-77.
2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: [EPA](#) 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 33.1-24-05-59 through 33.1-24-05-73 for the closure and postclosure care of facilities as identified above.
4. For value received from [owner or operator], guarantor guarantees to the DEPARTMENT that in the event that [owner or operator] fails to perform [insert "closure", "postclosure care", or "closure and postclosure care"] of the above facility(ies) in accordance with the closure or postclosure plans and other permit or interim status requirements when required to do so, the guarantor shall do so or establish a trust fund as specified in sections 33.1-24-05-74 through 33.1-24-05-88, as applicable, in the name of [owner or operator] in the amount of the current closure or postclosure cost estimates as specified in sections 33.1-24-05-74 through 33.1-24-05-88.
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 DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate financial assurance as specified in sections 33.1-24-05-74 through 33.1-24-05-88, 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 DEPARTMENT by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.
7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure or postclosure care, the guarantor shall establish alternate financial assurance as specified in sections 33.1-24-05-74 through 33.1-24-05-88, 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 sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of sections 33.1-24-05-74 through 33.1-24-05-88 for the above-listed facilities, except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate closure and/or postclosure care coverage complying with section 33.1-24-05-77.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator] obtains, and the DEPARTMENT approves, alternate closure or postclosure, or both, care coverage complying with section 33.1-24-05-77 or 33.1-24-05-78 or both.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by the [owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in sections 33.1-24-05-74 through 33.1-24-05-88, as applicable, and obtain written approval of such assurance from the DEPARTMENT within ninety days after a notice of cancellation by the guarantor is received by the DEPARTMENT from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. 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 and/or postclosure 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 8 of section 33.1-24-05-81 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: \_\_\_\_\_

b. A guarantee, as specified in subsection 7 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the state of \_\_\_\_\_" and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33.1-24-05-75", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

#### Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 7 of section 33.1-24-05-79.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: [EPA](#) identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state.] This corporate guarantee satisfies Resource Conservation Recovery Act third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody, or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

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 DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate liability coverage as specified in section 33.1-24-05-79, 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 liability coverage unless [owner or operator] has done so.

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

7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in section 33.1-24-05-79 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this AGREEMENT to take into account amendment or modification of the liability requirements set by section 33.1-24-05-79, provided that such modification shall become effective only if the DEPARTMENT does not disapprove the modification within thirty days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of section 33.1-24-05-79 for the above-listed facility(ies), except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate liability coverage complying with section 33.1-24-05-79.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee one hundred twenty days following receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert ~~principal~~Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$\_\_\_\_\_.

[Signatures] \_\_\_\_\_

Principal \_\_\_\_\_

(Notary) Date \_\_\_\_\_

[Signatures] \_\_\_\_\_

Claimant(s) \_\_\_\_\_

(Notary) Date \_\_\_\_\_

(b) A valid final court order establishing a judgment against the ~~principal~~Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the ~~principal's~~Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in subdivision b of subsection 8 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor] \_\_\_\_\_  
[Authorized signature for guarantor] \_\_\_\_\_  
[Name of person signing] \_\_\_\_\_  
[Title of person signing] \_\_\_\_\_  
Signature of witness or notary: \_\_\_\_\_

9. A hazardous waste facility liability endorsement as required in section 33.1-24-05-79 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 33.1-24-05-79. The coverage applies at [list [EPA](#) 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.
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 33.1-24-05-79.
  - (c) When requested by the North Dakota Department of Environmental Quality (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, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, 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.
  - (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 \_\_\_\_\_, 20\_\_\_\_. The effective date of said policy is \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in subsection 9 of North Dakota Administrative Code section 33.1-24-05-81, 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]

10. A certificate of liability insurance as required in section 33.1-24-05-79 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 33.1-24-05-79. The coverage applies at [list [EPA](#) 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 33.1-24-05-79.
  - (c) When requested by the North Dakota Department of Environmental Quality (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 insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or

operator of the hazardous waste management facility, 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.

- (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 evidenced by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in subsection 710 of North Dakota Administrative Code section 33.1-24-05-81, 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]

- 11. A letter of credit, as specified in subsection 8 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit  
Name and Address of Issuing Institution  
North Dakota Department of Environmental Quality

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in the favor of ["any and all third-party liability claimants" or insert name of TRUSTEE of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] United States dollars \$\_\_\_\_\_ per occurrence and the annual aggregate amount of [in words] United States dollars \$\_\_\_\_\_, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] United States dollars \$\_\_\_\_\_ per occurrence, and the annual aggregate amount of [in words] United States dollars \$\_\_\_\_\_, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. \_\_\_\_\_, and [insert the following language if the letter of credit is being used without a standby trust fund]: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's], hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[\_\_\_\_\_]. We hereby certify that the claim does not apply to any of the following:

- (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] \_\_\_\_\_

GRANTOR \_\_\_\_\_

[Signatures] \_\_\_\_\_

Claimant(s) \_\_\_\_\_

or (2) a valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

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 you, the DEPARTMENT, 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.

When 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.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage"].

We certify that the wording of this letter of credit is identical to the wording specified in subsection 11 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

12. A surety bond, as specified in subsection 9 of section 33.1-24-05-79, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], surety company(ies), of [Insert surety(ies) place of business].

EPA Identification number, name, and address for each facility guaranteed by this bond:

	Sudden Accidental Occurrences	Nonsudden Accidental Occurrences
Penal Sum Per Occurrence	[Insert Amount]	[Insert Amount]
Annual Aggregate	[Insert Amount]	[Insert Amount]

Purpose: This is an AGREEMENT between the surety(ies) and the principal under which the surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

- (1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.
- (2) Rules and regulations of the United States environmental protection agency (~~EPA~~), particularly 40 CFR ["264.147" or "265.147"] (if applicable).
- (3) Rules and regulations of the governing state agency [particularly section 33.1-24-05-79 and subsection 5 of section 33.1-24-06-16 of the North Dakota Administrative Code] (if applicable).

Conditions:

(1) The principal is subject to the applicable governing provisions that require the principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

- (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the principal will satisfy valid third-party liability claims, as described in condition 1.

(3) If the principal fails to satisfy a valid third-party liability claim, as described above, the surety(ies) becomes liable on this bond obligation.

(4) The surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$ [\_\_\_\_\_].

[Signature]

Principal

[Notary] [Date]

[Signature(s)]  
Claimant(s)  
[Notary] [Date]

or (b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) 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. In no event shall the obligation of the surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the surety(ies) furnish(es) notice to the DEPARTMENT forthwith of all claims filed and payments made by the surety(ies) under this bond.

(7) The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and the DEPARTMENT provided, however, the cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the principal and the DEPARTMENT, as evidenced by the return receipt.

(8) The principal may terminate this bond by sending written notice to the surety(ies) and to the DEPARTMENT.

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

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the principal and surety(ies) have executed this 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 12 of section 33.1-24-05-81, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

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

CORPORATE SURETY(IES)

State of incorporation: \_\_\_\_\_

Liability limit: \$ \_\_\_\_\_

[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

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

Bond premium: \$ \_\_\_\_\_

13. TRUST AGREEMENT

a. A TRUST AGREEMENT, as specified in subsection 10 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

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 Department of Environmental Quality (DEPARTMENT) has established certain regulations applicable to the GRANTOR, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a trust to assure all or part of such financial responsibility 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.** This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a trust fund, hereinafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden or nonsudden, or both] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amount of \_\_\_\_\_ [up to \$1 million] per occurrence and \_\_\_\_\_ [up to \$2 million] annual aggregate for sudden accidental occurrences and \_\_\_\_\_ [up to \$3 million] per occurrence and \_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or ~~AGREEMENT~~ agreement. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or ~~AGREEMENT~~ agreement.

(b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

(A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert GRANTOR];

(2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert GRANTOR];

(4) Personal property in the care, custody, or control of [insert GRANTOR];

(5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the property, which is acceptable to the TRUSTEE, 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 shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall 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 Bodily Injury or Property Damage.** The TRUSTEE shall satisfy a third-party liability claim by making payments from the FUND only upon receipt of one of the following documents:

(a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR'S] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

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

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal 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 the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance 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:

(i) 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 acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) 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 a state government; and

(iii) 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~~**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 created 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. 81a-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 limiting 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 shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other 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 shall 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 corporate 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 compromise 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 shall be paid from the FUND.

**Section 10. Annual Valuations.** 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 shall 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 shall constitute 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 the 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 shall be 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 shall not be 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 successor 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 date 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 shall be paid as provided in Section 9.

**Section 14. Instructions to the TRUSTEE.** All orders, requests, and instructions by the GRANTOR to the TRUSTEE shall 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 amendments 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 shall be in writing, signed by the DEPARTMENT, or its designees, and the TRUSTEE shall act and shall 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 DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the department, except as provided for herein.

**Section 15. Notice of Nonpayment.** If a payment for bodily injury or property damage is made under Section 4 of this trust, the TRUSTEE shall notify the GRANTOR of such payment and the amount(s) thereof within five working days. The GRANTOR shall, on or before the anniversary date of the establishment of the FUND following such notice, either make payments to the TRUSTEE in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the TRUSTEE that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the GRANTOR does not either make payments to the TRUSTEE or provide the TRUSTEE with such proof, the TRUSTEE shall within ten working days after the anniversary date of the establishment of the FUND provide a written notice of nonpayment to the DEPARTMENT.

**Section 16. Amendment of AGREEMENT.** This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE, and the ~~appropriate DEPARTMENT administrator~~ 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 shall be irrevocable and shall continue 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, shall be delivered to the GRANTOR.

The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

**Section 18. Immunity and Indemnification.** The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, 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 shall 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 shall 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 shall 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 affixed 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 subsection 13 of section 33.1-24-05-81, as such regulations were 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 10 of section 33.1-24-05-79.

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]

14. Standby TRUST AGREEMENT

a. A standby TRUST AGREEMENT, as specified in subsection 8 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## Standby TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT", entered into as of [date] by and between [name of the owner or operator] a [name of a 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 Department of Environmental Quality (DEPARTMENT) has established certain regulations applicable to the GRANTOR, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility 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.** This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

**Section 3. Establishment of FUND.** The GRANTOR and the TRUSTEE hereby establish a standby trust fund, hereafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of \_\_\_\_\_ [up to \$1 million] per occurrence and \_\_\_\_\_ [up to \$2 million] annual aggregate for sudden accidental occurrences and \_\_\_\_\_ [up to \$3 million] per occurrence and \_\_\_\_\_ [up to \$6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or AGREEMENT agreement. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law, or any similar law.

(c) Bodily injury to:

- (1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or
- (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

- (A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and
- (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.
- (e) Property damage to:
  - (1) Any property owned, rented, or occupied by [insert GRANTOR];
  - (2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;
  - (3) Property loaned by [insert GRANTOR];
  - (4) Personal property in the care, custody, or control of [insert GRANTOR];
  - (5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the proceeds of the letter of credit deposited into the FUND. Such proceeds 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 shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall 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 Bodily Injury or Property Damage.** The TRUSTEE shall satisfy a third-party liability claim by drawing on the letter of credit described in schedule B and by making payments from the FUND only upon receipt of one of the following documents:

- (a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

~~Certification of Valid Claim~~ **Certification of Valid Claim**

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR'S] hazardous waste treatment, storage, or disposal facility should be paid in the amount of \$[\_\_\_\_\_].

[Signatures] \_\_\_\_\_

Grantor \_\_\_\_\_

[Signatures] \_\_\_\_\_

Claimant(s) \_\_\_\_\_

(b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

**Section 5. Payments Comprising the FUND.** Payments made to the TRUSTEE for the FUND shall consist of the proceeds from the letter of credit drawn upon by the TRUSTEE in accordance with the requirements of subsection 11 of section 33.1-24-05-81 and Section 4 of this AGREEMENT.

**Section 6. TRUSTEE Management.** The TRUSTEE shall invest and reinvest the principal 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 the trustee's 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:

- (i) 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), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) 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 a state government; and
- (iii) 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 created 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 limiting 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 shall be bound to see to the

application of the purchase money or to inquire into the validity or expediency of any such sale or other 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 shall 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 corporate 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 compromise 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 to the TRUSTEE shall be paid from the FUND.

**Section 10. 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 the 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 11. TRUSTEE Compensation.** The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

**Section 12. Successor TRUSTEE.** The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be 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 successor 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 date 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 shall be paid as provided in Section 9.

**Section 13. Instructions to the TRUSTEE.** All orders, requests, certifications of valid claims, and instructions to the TRUSTEE shall 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 amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S 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 and/or the DEPARTMENT, except as provided for herein.

**Section 14. 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 15. Irrevocability and Termination.** Subject to the right of the parties to amend this AGREEMENT as provided in Section 14, this trust shall be irrevocable and shall continue until terminated at the written ~~AGREEMENT~~ 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, shall be paid to the GRANTOR.

The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternative financial assurance as specified in this section.

**Section 16. Immunity and Indemnification.** The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR and the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall 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 17. Choice of Law.** This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

**Section 18. 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 shall 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 affixed 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 subsection 14 of section 33.1-24-05-81 as such regulations were 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 standby trust fund as specified in subsection 8 of section 33.1-24-05-79. State requirements may differ on the proper content of this acknowledgment.

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]

**History:** Effective January 1, 2019; amended effective \_\_\_\_\_.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

**33.1-24-05-282. Treatment standards expressed as specified technologies.**

NOTE: For the requirements previously found in this section in Table 2 - Technology-Based Standards By Resource Conservation Recovery Act Waste Code, and Table 3 - Technology-Based Standards for Specific Radioactive Hazardous Mixed Waste, refer to section 33.1-24-05-280.

1. The following wastes in the table in section 33.1-24-05-280 "Treatment Standards for Hazardous Wastes", for which standards are expressed as a treatment method rather than a concentration level, must be treated using the technology or technologies specified in the table entitled "Technology Codes and Description of Technology-Based Standards" in this section.

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
ADGAS:	Venting of compressed gases into an absorbing or reacting media (for example, solid or liquid) venting can be accomplished through physical release utilizing valves/piping, physical penetration of the container, and/or penetration through detonation.
AMLGM:	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents, such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semi-solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG:	Biodegradation of organics or nonmetallic inorganics (for example, degradable inorganics that contain the elements of phosphorus,

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
CARBN:	<p>nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).</p> <p>Carbon adsorption (granulated or powdered) of nonmetallic inorganics, organo-metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough (for example, total organic carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.</p>
CHOXD:	<p>Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) hypochlorite (e.g. bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV-assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permangantes; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.</p>
CHRED:	<p>Chemical reduction utilizing the following reducing reagents (or waste reagents) or combinations of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali salts or sulfites, bisulfites, metabisulfites, and polyethylene glycols (for example, NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.</p>
CMBST:	<p>High temperature organic destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of sections 33.1-24-05-144 through 33.1-24-05-159, sections 33.1-24-05-525 through 33.1-24-05-549, or subsection 5 of section 33.1-24-06-16, and in other units operated in accordance with applicable technical operating requirements; and certain noncombustive technologies, such as the catalytic extraction process.</p>
DEACT:	<p>Deactivation to remove the hazardous characteristics of a waste due to its ignitability, corrosivity, and/or reactivity.</p>

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
FSUBS:	Fuel substitution in units operated in accordance with applicable technical operating requirements.
HLVIT:	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
IMERC:	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of sections 33.1-24-05-144 through 33.1-24-05-159. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (for example, high or low mercury subcategories).
INCIN:	Incineration in units operated in accordance with the technical operating requirements of sections 33.1-24-05-144 through 33.1-24-05-159.
LLEXT:	Liquid-liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that must undergo further treatment as specified in the standard.
MACRO:	Macroencapsulation with surface coating materials such as polymeric organics (e.g. resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to section 33.1-24-01-04.
NEUTR:	Neutralization with the following reagents (or waste reagents) or combinations of reagents: (1) acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.
NLDBR:	No land disposal based on recycling.
POLYM:	Formation of complex high-molecular weight solids through polymerization of monomers in high-total organic carbon D001 nonwastewaters which are chemical components in the manufacture of plastics.
PRECP:	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, <del>fluorides</del> <u>fluorides</u> , or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) lime (for example, containing oxides and/or hydroxides of calcium and/or magnesium); (2) caustic (for example, sodium and/or potassium hydroxides); (3) soda ash (for example, sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional flocculating, coagulation, or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
RBERY:	Thermal recovery of Beryllium.
RCGAS:	Recovery/reuse of compressed gases, including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
RCORR:	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) distillation (for example, thermal concentration); (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and/or (5) incineration for the recovery of acid - Note: This does not preclude the use of other physical phase separation or concentration techniques, such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RLEAD:	Thermal recovery of lead in secondary lead smelters.
RMERC:	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit (or facility) must be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (for example, high or low mercury subcategories).
RMETL:	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) ion exchange; (2) resin or solid (for example, zeolites) adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystallization; (6) ultrafiltration; and/or (7) simple precipitation (for example, crystallization) - Note: This does not preclude the use of other physical phase separation or concentration techniques, such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RORGS:	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid-liquid extraction; (7) precipitation/crystallization (including freeze crystallization); or (8) chemical phase separation techniques (for example, addition of acids, bases, demulsifiers, or similar chemicals) - Note: This does not preclude the use of other physical phase separation techniques, such as a decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RTHRM:	Thermal recovery of metals or inorganics from nonwastewaters in units identified as industrial furnaces according to subdivisions a, f, g, k, and l of subsection 45 of section 33.1-24-01-04 under the definition of

**Table 1. Technology Codes and Description of Technology-Based Standards**

Technology Code	Description of Technology-Based Standards
	"industrial furnaces".
RZINC:	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.
STABL:	Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (for example, fly ash and cement kiln dust) - This does not preclude the addition of reagents (for example, iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
SSTRP:	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as temperature and pressure ranges, have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit, such as the number of separation stages and the internal column design, thus resulting in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard.
WETOX:	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).
WTRRX:	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: When a combination of these technologies (for example, a treatment train) is specified as a single treatment standard, the order of application is specified in section 33.1-24-05-282, table 2 by indicating the five letter technology code that must be applied first, then the designation "fb" (an abbreviation for "followed by"), then the five letter technology code for the technology that must be applied next, and so on.

Note 2: When more than one technology (or treatment train) are specified as alternative treatment standards, the five letter technology codes (or the treatment trains) are separated by a semicolon(;) with the last technology preceded by the word "or". This indicates that any one of these best demonstrated available technologies or treatment trains can be used for compliance with the standard.

2. Any person may submit an application to the administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in subsections 1, 3, and 4 for wastes or specified in table 1 of section 33.1-24-05-285 for hazardous debris. The applicant must submit information demonstrating that the applicant's treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the administrator may approve the use of the alternative treatment method if the administrator finds that the alternative treatment method

provides a measure of performance equivalent to that achieved by methods specified in subsections 1, 3, and 4 for wastes or in table 1 of section 33.1-24-05-285 for hazardous debris. Any approval must be stated in writing and may contain such provisions and conditions as the administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

3. As an alternative to the otherwise applicable sections 33.1-24-05-280 through 33.1-24-05-289 treatment standards, lab packs are eligible for land disposal provided the following requirements are met:
  - a. The lab packs comply with the applicable provisions of section 33.1-24-05-185;
  - b. The lab pack does not contain any of the wastes listed in appendix VIII of chapter 33.1-24-05;
  - c. The lab packs are incinerated in accordance with the requirements of sections 33.1-24-05-144 through 33.1-24-05-159; and
  - d. Any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for such wastes in sections 33.1-24-05-280 through 33.1-24-05-289.
4. Radioactive hazardous mixed wastes are subject to the treatment standards in section 33.1-24-05-280. Where treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards will govern. Where there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste (as designated by environmental protection agency/state waste code) applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in section 33.1-24-05-285.

**History:** Effective January 1, 2019; [amended effective](#).

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### **33.1-24-05-311. Applicability.**

1. A health care facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its nonpharmaceutical hazardous waste, remains subject to section 33.1-24-03-26 and is not subject to sections 33.1-24-05-310 through 33.1-24-05-320, except for sections 33.1-24-05-315 and 33.1-24-05-317, and the optional provisions of section 33.1-24-05-314.
2. A health care facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its nonpharmaceutical hazardous waste, has the option of complying with subsection 4 for the management of its hazardous waste pharmaceuticals as an alternative to complying with section 33.1-24-03-26 and the optional provisions of section 33.1-24-05-314.
3. A health care facility or reverse distributor remains subject to all applicable hazardous waste regulations with respect to the management of its nonpharmaceuticals hazardous waste.
4. With the exception of health care facilities identified in subsection 1, a health care facility is subject to the following in lieu of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-309, 33.1-24-05-400 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819:

- a. Sections 33.1-24-05-312 and 33.1-24-05-315 through 33.1-24-05-318 with respect to the management of:
    - (1) Noncreditable hazardous waste pharmaceuticals; and
    - (2) Potentially creditable hazardous waste pharmaceuticals if they are not destined for a reverse distributor.
  - b. Subsection 1 of section 33.1-24-05-312, section 33.1-24-05-313, sections 33.1-24-05-315 through 33.1-24-05-317, and section 33.1-24-05-319 with respect to the management of potentially creditable hazardous waste pharmaceuticals that are prescription pharmaceuticals and are destined for a reverse distributor.
5. A reverse distributor is subject to sections 33.1-24-05-310 through 33.1-24-05-320 in lieu of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-309, 33.1-24-05-400 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819 with respect to the management of hazardous waste pharmaceuticals.
  6. Hazardous waste pharmaceuticals generated or managed by entities other than health care facilities and reverse distributors, e.g., pharmaceutical manufacturers and reverse logistics centers, are not subject to sections 33.1-24-05-310 through 33.1-24-05-320. Other generators are subject to chapter 33.1-24-03 for the generation and accumulation of hazardous wastes, including hazardous waste pharmaceuticals.
  7. The following are not subject to chapters 33.1-24-01 through 33.1-24-07 except as specified:
    - a. Pharmaceuticals that are not solid waste as defined by section 33.1-24-02-02, **because if** they are legitimately used or reused, e.g., lawfully donated for their intended purpose, or reclaimed.
    - b. Over-the-counter pharmaceuticals, dietary supplements, or homeopathic drugs that are not solid wastes as defined by section 33.1-24-02-02 **because if** they have a reasonable expectation of being legitimately used or reused, e.g., lawfully redistributed for their intended purpose, or reclaimed.
    - c. Pharmaceuticals being managed in accordance with a recall strategy that has been approved by the food and drug administration in accordance with title 21, Code of Federal Regulations, part 7, subpart C. This subpart applies to the management of the recalled hazardous waste pharmaceuticals after the food and drug administration approves the destruction of the recalled items.
    - d. Pharmaceuticals being managed in accordance with a recall corrective action plan that has been accepted by the consumer product safety commission in accordance with title 16, Code of Federal Regulations, part 1115. Sections 33.1-24-05-310 through 33.1-24-05-320 **do not apply** **applies** to the management of the recalled hazardous waste pharmaceuticals after the consumer product safety commission approves the destruction of the recalled items.
    - e. Pharmaceuticals stored according to a preservation order, or during an investigation or judicial proceeding until after the preservation order, investigation, or judicial proceeding, has concluded or a decision is made to discard the pharmaceuticals.
    - f. Investigational new drugs for which an investigational new drug application is in effect in accordance with the food and drug administration's regulations in title 21, Code of Federal Regulations, part 312. Sections 33.1-24-05-310 through 33.1-24-05-320 apply to the management of the investigational new drug after the decision is made to discard the

investigational new drug or the food and drug administration approves the destruction of the investigational new drug, if the investigational new drug is a hazardous waste.

- g. Household waste pharmaceuticals, including those that have been collected by an authorized collector, as defined by the drug enforcement administration, provided the authorized collector complies with the conditional exemption in subdivision a of subsection 1 of section 33.1-24-05-316 and subsection 2 of section 33.1-24-05-316.

**History:** Effective July 1, 2021; amended effective.

**General Authority:** NDCC 23.1-04-03

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### **33.1-24-05-423. Standards - Compressors.**

1. Each compressor must be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections 8 and 9.
2. Each compressor seal system as required in subsection 1 must be:
  - a. Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;
  - b. Equipped with the barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of section 33.1-24-05-430; or
  - c. Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.
3. The barrier fluid must not be a hazardous waste with organic concentrations ten percent or greater by weight.
4. Each barrier fluid system as described in subsections 1 through 3 must be equipped with a sensor that would detect failure of the sealed system, barrier fluid system, or both.
5. Checks.
  - a. Each sensor as required in subsection 4 must be checked daily or must be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.
  - b. The owner or operator shall determine, based on design consideration and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.
6. If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion determined under subdivision b of subsection 5, a leak is detected.
7. Leaks.
  - a. When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33.1-24-05-429.
  - b. A first attempt at repair, for example, tightening the packing gland, shall be made no later than five calendar days after each leak is detected.

8. A compressor is exempt from the requirements of subsections 1 and 2 if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of section 33.1-24-05-430 except as provided in subsection 9.
9. Any compressor that is designed, as described in subdivision b of subsection 7 of section 33.1-24-05-434, for no detectable emissions as indicated by an instrument reading of less than five hundred parts per million above background is exempt from the requirements of subsections 1 through 8 if the compressor:
  - a. Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33.1-24-05-433; and
  - b. Is tested for compliance with subdivision a of subsection 9 initially upon designation, annually, and other times as requested by the department.

**History:** Effective January 1, 2019; amended effective.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### **33.1-24-05-451. Definitions.**

As used in sections 33.1-24-05-450 through 33.1-24-05-474, all terms shall have the meaning given to them as defined below or as defined elsewhere in this article.

1. "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of section 33.1-24-05-454.
2. "Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (for example, a sampling port cap), manually operated (for example, a hinged access lid or hatch), or automatically operated (for example, a spring-loaded pressure relief valve).
3. "Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.
4. "Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.
5. "Enclosure" means any structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.
6. "External floating roof" means a pontoon or double-deck type cover that rests on the surface of a material managed in a tank with no fixed roof.

7. "Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.
8. "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.
9. "Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.
10. "Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.
11. "In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals at 20 degrees Celsius; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kilopascals at 20 degrees Celsius is equal to or greater than twenty percent by weight.
12. "Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.
13. "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.
14. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.
15. "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (for example, temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of sections 33.1-24-05-450 through 33.1-24-05-474, maximum organic vapor pressure is determined using the procedures specified in subsection 3 of section 33.1-24-05-453.
16. "Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.
17. "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in subsection 4 of section 33.1-24-05-453.
18. "Point of waste origination" means as follows:
  - a. When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in chapter 33.1-24-02.

Note: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

- b. When **neither** the facility owner **and/or** operator are ~~not~~ the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.
19. "Point of waste treatment" means the point where a hazardous waste to be treated in accordance with subdivision b of subsection 3 of section 33.1-24-05-452 exits the treatment process. Any waste determination shall be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.
20. "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of sections 33.1-24-05-450 through 33.1-24-05-474, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of **flammable/flammable**, ignitable, explosive, reactive, or hazardous materials.
21. "Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.
22. "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.
23. "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million as determined by direct measurement or by knowledge of the waste in accordance with the requirements of section 33.1-24-05-453. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as  $1.8 \times 10^6$  atmospheres/gram-mole/m<sup>3</sup>) at 25 degrees Celsius must be included. Appendix VI presents a list of compounds known to have a Henry's law constant value less than the cutoff level.
24. "Waste determination" means performing all applicable procedures in accordance with the requirements of section 33.1-24-05-454 to determine whether a hazardous waste meets standards specified in sections 33.1-24-05-450 through 33.1-24-05-474. Examples of a waste determination include performing the procedures in accordance with the requirements of section 33.1-24-05-454 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.
25. "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B (Paint Filter Liquids Test) in "Test Methods for Evaluating

Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33.1-24-01-05. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification". This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

**History:** Effective January 1, 2019; amended effective \_\_\_\_\_.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### **33.1-24-05-457. Standards - Closed-vent systems and control devices.**

1. This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of sections 33.1-24-05-450 through 33.1-24-05-474.
2. The closed-vent system shall meet the following requirements:
  - a. The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection 3.
  - b. The closed-vent system shall be designed and operated in accordance with the requirements specified in subsection 11 of section 33.1-24-05-403.
  - c. In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph 1 or a seal or locking device as specified in paragraph 2. For the purpose of complying with this subdivision, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.
    - (1) If a flow indicator is used to comply with this subdivision, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this subdivision, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.
    - (2) If a seal or locking device is used to comply with this subdivision, the device shall be placed on the mechanism by which the bypass device position is controlled (for example, valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.
  - d. The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in subsection 12 of section 33.1-24-05-403.
3. The control device shall meet the following requirements:
  - a. The control device shall be one of the following devices:

- (1) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least ninety-five percent by weight;
  - (2) An enclosed combustion device designed and operated in accordance with the requirements of subsection 3 of section 33.1-24-05-403; or
  - (3) A flare designed and operated in accordance with the requirements of subsection 4 of section 33.1-24-05-403.
- b. The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs 1 through 6.
- (1) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, shall not exceed two hundred forty hours per year.
  - (2) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during periods of planned routine maintenance.
  - (3) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during a control device system malfunction.
  - (4) The owner or operator shall demonstrate compliance with the requirements of paragraph 1 (for example, planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, shall not exceed two hundred forty hours per year) by recording the information specified in paragraph 5 of subdivision a of subsection 5 of section 33.1-24-05-459.
  - (5) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.
  - (6) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (for example, periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, or fumes, or any combination, to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.
- c. The owner or operator using a carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the following requirements:
- (1) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of subsection 7 or 8 of section 33.1-24-05-403.
  - (2) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of subsection 14 of section 33.1-24-05-403, regardless of the average volatile organic concentration of the carbon.

- d. An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, ~~condenser~~condenser, or carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the requirements of subsection 10 of section 33.1-24-05-403.
- e. The owner or operator shall demonstrate that a control device achieves the performance requirements of subdivision a as follows:
  - (1) An owner or operator shall demonstrate using either a performance test as specified in paragraph 3 or a design analysis as specified in paragraph 4 the performance of each control device except for the following:
    - (a) A flare;
    - (b) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;
    - (c) A boiler or process heater into which the vent stream is introduced with the primary fuel;
    - (d) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under chapter 33.1-24-06 and has designed and operates the unit in accordance with the requirements of sections 33.1-24-05-525 through 33.1-24-05-549; or
    - (e) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with sections 33.1-24-05-525 through 33.1-24-05-549.
  - (2) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in subsection 5 of section 33.1-24-05-403.
  - (3) For a performance test conducted to meet the requirements of paragraph 1, the owner or operator shall use the test methods and procedures specified in subdivisions a through d of subsection 3 of section 33.1-24-05-404.
  - (4) For a design analysis conducted to meet the requirements of paragraph 1, the design analysis shall meet the requirements specified in paragraph 3 of subdivision d of subsection 2 of section 33.1-24-05-405.
  - (5) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subdivision a based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.
- f. If the owner or operator ~~de~~does not agree with the department on a demonstration of control device performance using a design analysis, then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph 3 of subdivision e. The department may choose to have an authorized representative observe the performance test.
- g. The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in subdivision b of subsection 6 and subsection 12 of section 33.1-24-05-403. The readings from each monitoring device required by subdivision b of subsection 6 of section 33.1-24-05-403

shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of section 33.1-24-05-457.

**History:** Effective January 1, 2019; amended effective.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

### **33.1-24-05-525. Applicability to hazardous waste burned in boilers and industrial furnaces.**

1. The regulations of sections 33.1-24-05-525 through 33.1-24-05-549 apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in section 33.1-24-01-04) irrespective of the purpose of burning or processing, except as provided by subsections 2, 3, 4, 7, and 8. In sections 33.1-24-05-525 through 33.1-24-05-549, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of sections 33.1-24-05-529 through 33.1-24-05-532 apply to facilities operating under interim status or under a hazardous waste operating permit as specified in sections 33.1-24-05-527 and 33.1-24-05-528.
2. Integration of the maximum achievable control technology standards.
  - a. Except as provided by subdivisions b through d, the standards ~~efin~~ sections 33.1-24-05-525 through 33.1-24-05-549 do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to hazardous waste permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology requirements of 40 CFR part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the department a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the maximum achievable control technology standards, hazardous waste permit conditions that were based on the standards of sections 33.1-24-05-525 through 33.1-24-05-549 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.
  - b. The following standards continue to apply:
    - (1) If a permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33.1-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, subdivision a of subsection 5 of section 33.1-24-05-527 requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and paragraph 3 of subdivision b of subsection 5 of section 33.1-24-05-527 requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;
    - (2) The closure requirements of subdivision k of subsection 5 of section 33.1-24-05-527 and subsection 12 of section 33.1-24-05-528;
    - (3) The standards for direct transfer of section 33.1-24-05-536;

- (4) The standards for regulation of residues of section 33.1-24-05-537; and
  - (5) The applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-88, 33.1-24-05-420 through 33.1-24-05-474, and subsection 5 of section 33.1-24-06-16.
- c. The owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR section 63.2 and the owner or operator elects not to comply with the emission standards under 40 CFR sections 63.1216, 63.1217, and 63.1218 for particulate matter, semivolatile and low volatile metals, and total chlorine, the owner or operator also remains subject to:
- (1) Section 33.1-24-05-530 - Standards to control particulate matter;
  - (2) Section 33.1-24-05-531 - Standards to control metals emissions, except for mercury; and
  - (3) Section 33.1-24-05-532 - Standards to control hydrogen chloride and chlorine gas.
- d. The particulate matter standard of section 33.1-24-05-530 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR sections 63.1216(e) and 63.1217(e).
3. The following hazardous wastes and facilities are not subject to regulation under sections 33.1-24-05-525 through 33.1-24-05-549:
- a. Used oil burned for energy recovery that is also hazardous waste solely because it exhibits a characteristic of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14. Such used oil is subject to regulation under sections 33.1-24-05-600 through 33.1-24-05-689;
  - b. Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
  - c. Hazardous wastes that are exempt from regulation under section 33.1-24-02-04 and paragraphs 4 through 6 of subdivision c of subsection 1 of section 33.1-24-02-06, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under section 33.1-24-03-26; and
  - d. Coke ovens, if the only hazardous waste burned is hazardous waste number K087, decanter tank tar sludge from coking operations.
4. Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under sections 33.1-24-05-525 through 33.1-24-05-549, except for sections 33.1-24-05-526 and 33.1-24-05-537.
- a. To be exempt from sections 33.1-24-05-527 through 33.1-24-05-536, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of subdivision c, and owners or operators of lead recovery furnaces that are subject to regulation under the secondary lead smelting national emission standard for hazardous air pollutants must comply with the requirements of subsection 8:

- (1) Provide a one-time written notice to the department indicating the following:
    - (a) The owner or operator claims exemption under this subsection;
    - (b) The hazardous waste is burned solely for metal recovery consistent with the provisions of subdivision b;
    - (c) The hazardous waste contains recoverable levels of metals; and
    - (d) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection;
  - (2) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this subsection by using appropriate methods; and
  - (3) Maintain at the facility for at least three years records to document compliance with the provisions of this subsection, including limits on levels of toxic organic constituents and British thermal unit value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.
- b. A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:
- (1) The hazardous waste has a total concentration of organic compounds listed in appendix V of chapter 33.1-24-02 exceeding five hundred parts per million by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the five hundred parts per million limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the five hundred parts per million limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph 3 of subdivision a; or
  - (2) The hazardous waste has a heating value of five thousand British thermal units per pound or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the five thousand British thermal units per pound limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the five thousand British thermal units per pound limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph 3 of subdivision a.
- c. To be exempt from sections 33.1-24-05-527 through 33.1-24-05-536, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the secondary lead smelting national emission standards for hazardous air pollutants), or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, shall provide a one-time written notice to the department identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this subdivision or subdivision a. The owner or operator must comply with the requirements of subdivision a for those wastes claimed to be exempt under that subdivision and must comply with the requirements below for those wastes claimed to be exempt under subdivision a and must comply with the requirements below for those wastes claimed to be exempt under this subdivision.

- (1) The hazardous wastes listed in appendices XXVI, XXVII, and XXVIII of chapter 33.1-24-05, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of subdivision a, provided that:
  - (a) A waste listed in appendix XXVI must contain recoverable levels of lead, a waste listed in appendix XXVII must contain recoverable levels of nickel or chromium, a waste listed in appendix XXVIII must contain recoverable levels of mercury and contain less than five hundred parts per million organic constituents listed in appendix V of chapter 33.1-24-02 and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal;
  - (b) The waste does not exhibit the toxicity characteristic of section 33.1-24-02-14 for an organic constituent;
  - (c) The waste is not a hazardous waste listed in sections 33.1-24-02-15 through 33.1-24-02-19 because it is listed for an organic constituent as identified in appendix IV of chapter 33.1-24-02; and
  - (d) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of subdivision c and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to paragraph 2 of subdivision a and records to document compliance with subdivision c shall be kept for at least three years.
- (2) The department may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XXVI, XXVII, or XXVIII of chapter 33.1-24-05 that contains a total concentration of more than five hundred parts per million toxic organic compounds listed in appendix V of chapter 33.1-24-02, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of sections 33.1-24-05-525 through 33.1-24-05-549. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of sections 33.1-24-05-525 through 33.1-24-05-549 when burning that material. In making the hazard determination, the department will consider the following factors:
  - (a) The concentration and toxicity of organic constituents in the material;
  - (b) The level of destruction of toxic organic constituents provided by the furnace; and
  - (c) Whether the acceptable ambient levels established in appendix XIX or XX of chapter 33.1-24-05 may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average offsite ground level concentration.
5. The standards for direct transfer operations under section 33.1-24-05-536 apply only to facilities subject to the permit standards of section 33.1-24-05-527 or the interim status standards of section 33.1-24-05-528.
6. The management standards for residues under section 33.1-24-05-537 apply to any boiler or industrial furnace burning hazardous waste.
7. Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold,

silver, platinum, palladium, ~~irridium~~iridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under sections 33.1-24-05-525 through 33.1-24-05-549, except for section 33.1-24-05-537. To be exempt from sections 33.1-24-05-526 through 33.1-24-05-536, an owner or operator must:

- a. Provide a one-time written notice to the department indicating the following:
    - (1) The owner or operator claims exemption under this subsection;
    - (2) The hazardous waste is burned for legitimate recovery of precious metal; and
    - (3) The owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subsection;
  - b. Sample and analyze the hazardous waste as necessary to document that the waste contains economically significant amounts of the metals and that the treatment recovers economically significant amounts of precious metals; and
  - c. Maintain at the facility, for at least three years, records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.
8. Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the secondary lead smelting national emission standards for hazardous air pollutants are conditionally exempt from regulation under sections 33.1-24-05-525 through 33.1-24-05-549, except for section 33.1-24-05-526. To be exempt, an owner or operator must provide a one-time notice to the department identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this subsection. The notice also must state that the waste burned has a total concentration of nonmetal compounds listed in appendix V of chapter 33.1-24-02 of less than five hundred parts per million by weight as fired and as provided in paragraph 1 of subdivision b of subsection 4, or is listed in appendix XXVI of chapter 33.1-24-05.

**History:** Effective January 1, 2019; amended effective July 1, 2021; amended effective \_\_\_\_\_.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05, 23.1-04-16; S.L. 2017, ch. 199, § 19

### **33.1-24-05-535. Waiver of destruction and removal efficiency trial burn for boilers.**

Boilers that operate under the special requirements of this section, and that do not burn hazardous waste containing (or derived from) hazardous waste number F020, F021, F022, F023, F026, or F027, are considered to be in conformance with the destruction and removal efficiency standard of subsection 1 of section 33.1-24-05-529, and a trial burn to demonstrate destruction and removal efficiency is waived. When burning hazardous waste:

1. A minimum of fifty percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the department on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The fifty percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;
2. Boiler load shall not be less than forty percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input;

3. Primary fuels and hazardous waste fuels shall have a minimum as-fired heating value of eight thousand British thermal units per pound, and each material fired in a burner where hazardous waste is fired must have a heating value of at least eight thousand British thermal units per pound, as-fired;
4. The device shall operate in conformance with the carbon monoxide standard provided by subdivision a of subsection 2 of section 33.1-24-05-529. Boilers subject to the waiver of the destruction and removal efficiency trial burn provided by this section are not eligible for the alternative carbon monoxide standard provided by subsection 3 of section 33.1-24-05-529;
5. The boiler must be a water tube type boiler that does not feed fuel using a stoker or stoker type ~~machanism~~mechanism; and
6. The hazardous waste shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:
  - a. Viscosity. The viscosity of the hazardous waste fuel as-fired shall not exceed three hundred SSU;
  - b. Particle size. When a high pressure air or steam atomizer, low pressure atomizer, or mechanical atomizer is used, seventy percent of the hazardous waste fuel must pass through a ~~200~~two hundred mesh (74 micron) screen, and when a rotary cup atomizer is used, seventy percent of the hazardous waste must pass through a ~~400~~one hundred mesh (150 micron) screen;
  - c. Mechanical atomization systems. Fuel pressure within a mechanical atomization system and fuel flow rate shall be maintained within the design range taking into account the viscosity and volatility of the fuel;
  - d. Rotary cup atomization systems. Fuel flow rate through a rotary cup atomization system must be maintained within the design range taking into account the viscosity and volatility of the fuel.

**History:** Effective January 1, 2019; amended effective.

**General Authority:** NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

**APPENDIX XIX**

<b>Reference Air Concentrations*</b>		
<b>Constituent</b>	<b>CAS No.</b>	<b>Reference Air <del>Concentration</del> Concentration (µg/m<sup>3</sup>)</b>
Acetaldehyde	75-07-0	10
Acetonitrile	75-05-8	10
Acetophenone	98-86-2	100
Acrolein	107-02-8	20
Aldicarb	116-06-3	1
Aluminum Phosphide	20859-73-8	0.3
Allyl Alcohol	107-18-6	5
Antimony	7440-36-0	0.3
Barium	7440-39-3	50
Barium Cyanide	542-62-1	50
Bromomethane	74-83-9	0.8
Calcium Cyanide	592-01-8	30
Carbon Disulfide	75-15-0	200
Chloral	75-87-6	2
Chlorine (free)		0.4
2-Chloro-1,3-butadiene	126-99-8	3
Chromium III	16065-83-1	1000
Copper Cyanide	544-92-3	5
Cresols	1319-77-3	50
Cumene	98-82-8	1
Cyanide (free)	57-12-15	20
Cyanogen	460-19-5	30
Cyanogen Bromide	506-68-3	80
Di-n-butyl Phthalate	84-74-2	100
o-Dichlorobenzene	95-50-1	10
p-Dichlorobenzene	106-46-7	10
Dichlorodifluoromethane	75-71-8	200
2,4-Dichlorophenol	120-83-2	3
Diethyl Phthalate	84-66-2	800
Dimethoate	60-51-5	0.8
2,4-Dinitrophenol	51-28-5	2
Dinoseb	88-85-7	0.9
Diphenylamine	122-39-4	20

Reference Air Concentrations*		
Constituent	CAS No.	Reference Air <del>Concentration</del> <u>Concentration</u> ( $\mu\text{g}/\text{m}^3$ )
Endosulfan	115-29-1	0.05
Endrin	72-20-8	0.3
Fluorine	7782-41-4	50
Formic Acid	64-18-6	2000
Glycidyaldehyde	765-34-4	0.3
Hexachlorocyclopentadiene	77-47-4	5
Hexachlorophene	70-30-4	0.3
Hydrocyanic Acid	74-90-8	20
Hydrogen Chloride	7647-01-1	7
Hydrogen Sulfide	7783-06-4	3
Isobutyl Alcohol	78-83-1	300
Lead	7439-92-1	0.09
Maleic Anhydride	108-31-6	100
Mercury	7439-97-6	0.3
Methacrylonitrile	126-98-7	0.1
Methomyl	16752-77-5	20
Methoxychlor	72-43-5	50
Methyl Chlorocarbonate	79-22-1	1000
Methyl Ethyl Ketone	78-93-3	80
Methyl Parathion	298-00-0	0.3
Nickel Cyanide	557-19-7	20
Nitric Oxide	10102-43-9	100
Nitrobenzene	98-95-3	0.8
Pentachlorobenzene	608-93-5	0.8
Pentachlorophenol	87-86-5	30
Phenol	108-95-2	30
M-Phenylenediamine	108-45-2	5
Phenylmercuric Acetate	62-38-4	0.075
Phosphine	7803-51-2	0.3
Phthalic Anhydride	85-44-9	2000
Potassium Cyanide	151-50-8	50
Potassium Silver Cyanide	506-61-6	200
Pyridine	110-86-1	1
Selenious Acid	7783-60-8	3

Reference Air Concentrations*		
Constituent	CAS No.	Reference Air <del>Concentration</del> Concentration ( $\mu\text{g}/\text{m}^3$ )
Selenourea	630-10-4	5
Silver	7440-22-4	3
Silver Cyanide	506-64-9	100
Sodium Cyanide	143-33-9	30
Strychnine	57-24-9	0.3
1,2,4,5-Tetrachlorobenzene	95-94-3	0.3
2,3,4,6-Tetrachlorophenol	58-90-2	30
Tetraethyl Lead	78-00-2	0.0001
Tetrahydrofuran	109-99-9	10
Thallic Oxide	1314-32-5	0.3
Thallium	7440-28-0	0.5
Thallium (I) Acetate	563-68-8	0.5
Thallium (I) Carbonate	6533-73-9	0.3
Thallium (I) Chloride	7791-12-0	0.3
Thallium (I) Nitrate	10102-45-1	0.5
Thallium Selenite	12039-52-0	0.5
Thallium (I) Sulfate	7446-18-6	0.075
Thiram	137-26-8	5
Toluene	108-88-3	300
1,2,4-Trichlorobenzene	120-82-1	20
Trichloromonofluoromethane	75-69-4	300
2,4,5-Trichlorophenol	95-95-4	100
Vanadium Pentoxide	1314-62-1	20
Warfarin	81-81-2	0.3
Xylenes	1330-20-7	80
Zinc Cyanide	557-21-1	50
Zinc Phosphide	1314-84-7	0.3

\*The reference air concentration for other appendix V of chapter 33.1-24-02 constituents not listed herein or in appendix XX of chapter 33.1-24-05 is  $0.1 \mu\text{g}/\text{m}^3$ .

## APPENDIX XXIX

### Metal-Bearing Wastes Prohibited From Dilution in a Combustion Unit According to Subsection 3 of Section 33.1-24-05-252<sup>1</sup>

Waste Code	Waste Description
D004	Toxicity characteristic for arsenic.
D005	Toxicity characteristic for barium.
D006	Toxicity characteristic for cadmium.
D007	Toxicity characteristic for <del>chromium</del> <u>chromium</u> .
D008	Toxicity characteristic for lead.
D009	Toxicity characteristic for mercury.
D010	Toxicity characteristic for selenium.
D011	Toxicity characteristic for silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-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.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.

Waste Code	Waste Description
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid $H_3AsO_4$ .
P011	Arsenic oxide $As_2O_5$ .
P012	Arsenic trioxide.
P013	Barium cyanide.
P015	Beryllium.
P029	Copper cyanide $Cu(CN)$ .
P074	Nickel cyanide $Ni(CN)_2$ .
P087	Osmium tetroxide.
P099	Potassium silver cyanide.
P104	Silver cyanide.
P113	Thallic oxide.
P114	Thallium (I) selenite.
P115	Thallium (I) sulfate.
P119	Ammonium vanadate.
P120	Vanadium oxide $V_2O_5$ .
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.

<sup>1</sup>A combustion unit is defined as any thermal technology subject to sections 33.1-24-05-144 through 33.1-24-05-159 or sections 33.1-24-05-525 through 33.1-24-05-549.

**CHAPTER 33.1-24-06  
PERMITS**

NORTH DAKOTA ADMINISTRATIVE CODE § 33.1-24-06-01  
is being amended as follows:

Section

33.1-24-06-01 Application for a Permit

**33.1-24-06-01. 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 33.1-24-06-17. Persons currently authorized with interim status shall apply for permits when required by the department. Persons covered by permits by rule (section 33.1-24-06-18) need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in section 33.1-24-06-19. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in section 33.1-24-06-20. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivision a or subdivision b may be eligible for a standardized permit under sections 33.1-24-06-45 through 33.1-24-06-85. Procedures for application and issuance of standardized permits are found in sections 33.1-24-07-40 through 33.1-24-07-54, and sections 33.1-24-06-45 through 33.1-24-06-85.
  - a. The facility generates hazardous waste and then nonthermally treats, or stores hazardous waste onsite in tanks, containers, or containment buildings; or
  - b. The facility receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores, or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.
2. **Who must have a permit?** North Dakota Century Code chapter 23.1-04 requires that a permit be obtained for the treatment, storage, or disposal of any hazardous waste as identified or listed in chapter 33.1-24-02. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivisions a and b of subsection 1 of section 33.1-24-06-48, may be eligible for a standardized permit under sections 33.1-24-06-45 through 33.1-24-06-85. 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 33.1-24-05-53, including any extension of that period under subsection 3 of section 33.1-24-05-53. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure according to section 33.1-24-05-64 after January 26, 1983, must have postclosure permits, unless they demonstrate closure by removal as provided under subdivisions d and e. If a postclosure permit is required, the permit must address applicable chapter 33.1-24-05 ground water monitoring, unsaturated zone monitoring, corrective action, and postclosure care. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a postclosure permit under this section.
  - 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 33.1-24-06-20). 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 1 of section 33.1-24-06-18.

- (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 2 of section 33.1-24-06-18.

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

- (1) Generators who accumulate hazardous waste onsite ~~for less than time periods as provided in section 33.1-24-03-12~~in compliance with all of the conditions for exemption provided in sections 33.1-24-03-26, 33.1-24-03-28, and 33.1-24-03-29.
- (2) Farmers who dispose of pesticide containers from their own use as provided in section 33.1-24-03-40.
- (3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation by section 33.1-24-02-04 or 33.1-24-03-26.
- (4) Owners or operators of totally enclosed treatment facilities as defined in section 33.1-24-01-04.
- (5) Owners or operators of elementary neutralization units or wastewater treatment units as defined in section 33.1-24-01-04.
- (6) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of section 33.1-24-03-08 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 33.1-24-05-90 and 33.1-24-05-91, and subsection 2 of section 33.1-24-05-08.
- (8) Universal waste handlers and universal waste transporters as defined in section 33.1-24-01-04 managing the wastes listed below. These handlers are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799.
  - (a) Batteries as described in section 33.1-24-05-702;
  - (b) Pesticides as described in section 33.1-24-05-703;
  - (c) Mercury containing equipment as described in section 33.1-24-05-704; ~~and~~
  - (d) Lamps as described in section 33.1-24-05-705; and
  - (e) Aerosol cans as described in section 33.1-24-05-706.
- (9) 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.
- [4] An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 33.1-24-01-04.

- (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.
- (c) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed and its disposition.

(10) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in subsection 11 of section 33.1-24-05-310. Reverse distributors are subject to regulation under sections 33.1-24-05-310 through 33.1-24-05-320 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

- c. Permits for less than an entire facility. The department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.
- d. Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under chapter 33.1-24-05 standards must obtain a postclosure permit unless they can demonstrate to the department that the closure met the standards for closure by removal or decontamination in section 33.1-24-05-122, subsection 5 of section 33.1-24-05-167, or section 33.1-24-05-135 respectively. The demonstration may be made in the following ways:
  - (1) If the owner or operator has submitted a part B application for a postclosure permit, the owner or operator may request a determination, based on information contained in the application, that chapter 33.1-24-05 closure by removal standards were met. If the department believes that chapter 33.1-24-05 standards were met, the department will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in subdivision e.
  - (2) If the owner or operator has not submitted a part B application for a postclosure permit, the owner or operator may petition the department for a determination that a postclosure permit is not required because the closure met the applicable chapter 33.1-24-05 closure standards.
    - (a) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit

closed under requirements that met or exceeded the chapter 33.1-24-05 closure by removal standard.

- (b) The department shall approve or deny the petition according to the procedures outlined in subdivision e.

e. Procedures for closure equivalency determination.

- (1) If a facility owner or operator seeks an equivalency demonstration under subdivision d, the department will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within thirty days from the notice. The department will also, in response to a request, or at the department's own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the closure period. 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.)
  - (2) The department will determine whether the chapter 33.1-24-05 closure met the standards for closure by removal or decontamination in section 33.1-24-05-122, subsection 5 of section 33.1-24-05-167, or section 33.1-24-05-135 respectively within ninety days of its receipt. If the department finds that the closure did not meet the applicable chapter 33.1-24-05 standards, the department will provide the owner or operator with a written statement of the reasons why the closure failed to meet chapter 33.1-24-05 standards. The owner or operator may submit additional information in support of an equivalency demonstration within thirty days after receiving such written statement. The department will review any additional information submitted and make a final determination within sixty days.
  - (3) If the department determines that the facility did not close in accordance with chapter 33.1-24-05 closure by removal standards, the facility is subject to postclosure permitting requirements.
- 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 the department's 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. The department may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.
  - 5. **Information requirements.** All applicants for hazardous waste permits shall provide the information required by section 33.1-24-06-17 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 33.1-24-06-17) 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 33.1-24-05; or
  - (b) Thirty days after the date they first become subject to the standards set forth in chapter 33.1-24-05;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 33.1-24-01 through 33.1-24-05.
- (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 33.1-24-07.

b. New hazardous waste management facilities.

- (1) 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 (including both part A and part B) may be filed anytime after promulgation of those standards in sections 33.1-24-05-89, 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.

**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 newly listed or designated wastes; or
    - (2) As necessary to comply with the provisions of section 33.1-24-06-16 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 is not authorized to treat, store, or 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). Any hazardous waste management facility with an effective permit and intending to be covered by a standardized permit, shall submit a notice of intent as described in subdivision a of subsection 4 of section 33.1-24-06-02, 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 or notices of intent to be submitted later than the expiration date of the existing permit, except as allowed by subdivision b of subsection 4 of section 33.1-24-06-02.
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; and
    - (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.
11. **General requirements.** The department may require a permittee or an applicant to submit information in order to establish permit conditions under subdivision b of subsection 2 of section 33.1-24-06-05 and subsection 1 of section 33.1-24-06-06.
12. If the department concludes, based on one or more of the factors listed in subdivision a that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the department shall require the additional information or assessments necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health or the environment, or both, resulting from both direct and indirect exposure pathways. The department may also require a permittee or applicant to provide information necessary to determine whether such assessments should be required.

- a. The department shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:
- (1) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;
  - (2) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;
  - (3) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);
  - (4) Identities and quantities of other offsite sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;
  - (5) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;
  - (6) Volume and types of wastes, for example wastes containing highly toxic constituents;
  - (7) Other onsite sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;
  - (8) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and
  - (9) Such other factors as may be appropriate.
- b. [Reserved].

**History:** Effective January 1, 2019; amended effective July 1, 2021, **amended affected** \_\_\_\_\_.

**General Authority:** NDCC 23.1-04-03

**Law Implemented:** NDCC 23.1-04-03, 23.1-04-05, 23.1-04-08; S.L. 2017, ch. 199, § 19