

Amended Section 111(d)/129 Plan
for
Commercial and Industrial Solid Waste Incineration Units

to

U.S. Environmental Protection Agency
Region VIII

from

ND Department of Environmental Quality
Division of Air Quality
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I. Demonstration of Legal Authority

This plan is applicable to all areas of North Dakota except those areas considered “Indian country”. The term “Indian country” is defined in 18 U.S.C. § 1151 and 40 C.F.R. § 171.3 as:

- a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;*
- b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and*
- c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.*

Consistent with the statutory definition of Indian country, as well as federal case law interpreting this statutory language, lands held by the federal government in trust for Indian tribes that exist outside of formal reservations are informal reservations and, thus, are Indian country.

<https://www.epa.gov/pesticide-applicator-certification-indian-country/definition-indian-country>)

The North Dakota Department of Environmental Quality (formerly the Department of Health’s Environmental Health Section – the “Department”) has previously demonstrated its authority to adopt and implement the regulations under 40 CFR 60. This has been done many times when the Department has adopted the numerous New Source Performance Standards. Adequate legal authority has also been demonstrated with the Title V program and numerous State Implementation Plan revisions. A copy of the North Dakota Air Pollution Control Law (North Dakota Century Code Chapter 23.1-06) is included in Section IX. of this plan.

60.26(a)(1) - Adopt emission standards and compliance schedules applicable to designated facilities.

The Department has the authority to adopt standards of performance and compliance schedules under NDCC 23.1-06-04.1.f., h. and l. which state:

The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:

- f. Provide rules relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that before commencing construction or modification of any*

such source, the owner or operator shall submit the information necessary to permit the department to make this determination.

h. Formulate and adopt emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.

i. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended, the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. The rules may include enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives, including fees, marketable permits, and auctions of emissions rights, as provided by the Act. The department shall develop and implement the federal programs if the department determines that doing so benefits the state.

60.26(a)(2) - Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.

The Department has this authority under NDCC 23.1-06-14, Enforcement -Penalties-Injunctions, which states:

1. A person that willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, punishment must be a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.

2. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

3. A person that knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or that falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

4. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.

5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin a threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

In addition, NDCC 23.1-06-04.1.e states:

The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:

e. Issue orders necessary to effectuate the purposes of this chapter and enforce the orders by all appropriate administrative and judicial procedures.

Further, NDAC 33.1-15-01-17, Enforcement states:

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.

2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.

a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

(1) A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33.1-15-14-06.

(2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33.1-15-14-06 and incorporated in a federally enforceable title V permit to operate.

(3) Compliance test methods specified in this article.

b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

(1) Any federally enforceable monitoring or testing methods, including those under title 40 Code of Federal Regulations parts 50, 51, 60, 61, 63, and 75.

(2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a.

3.
 - a. *No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.*
 - b. *No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.*

60.26(a)(3) - Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

The Department has this authority under several sections of the NDCC and NDAC. NDCC 23.1-06-04.1.j and NDCC 23.1-06-08.2. NDCC 23.1-06-04.1.j states:

The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:

- j. *Require the owner or operator of a regulated air contaminant source to establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods; sample emissions in accordance with those methods at designated locations and intervals, and using designated procedures; and provide other information as may be required.*

NDCC 23.1-06-08.2 states:

2. *A person operating or responsible for the operation of air contaminant sources of any class for which reporting is required shall make reports containing information the department deems relevant to air pollution.*

NDCC 23.1-06-11, Right of Onsite Inspections, provides the Department the authority to conduct inspections as follows:

1. *Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and related rules. If requested, the owner or operator of the premises must receive a report setting forth all facts found which relate to compliance status.*
2. *The department may conduct tests and take samples of air contaminants, fuel, process material, and other materials that may affect emission of air contaminants from any source, and may have access to and copy any records required by department rules to be maintained, and may inspect monitoring equipment located on the premises. Upon request of the department, the person responsible for the source to be tested shall provide*

necessary holes in stacks or ducts and other safe and proper sampling, and testing facilities exclusive of instruments and sensing devices necessary for proper determination of the emission of air contaminants. If an authorized representative of the department, during the course of an inspection, obtains a sample of air contaminant, fuel, process material, or other material, the representative shall issue a receipt for the sample obtained to the owner or operator of, or person responsible for, the source tested.

3. To ascertain the state of compliance with this chapter and any applicable rules, a duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

NDAC 33.1-01-12, Measurement of emissions of air contaminants, states:

1. Sampling and testing. The department may reasonably require any person responsible for emission of air contaminants to make or have made tests, at a reasonable time or interval, to determine the emission of air contaminants from any source, for the purpose of determining whether the person is in violation of any standard under this article or to satisfy other requirements under the North Dakota Century Code chapter 23.1-06. All tests shall be made and the results calculated in accordance with test procedures approved or specified by the department. All tests shall be conducted by reputable, qualified personnel. The department shall be given a copy of the test results in writing and signed by the person responsible for the tests. The owner or operator of a source shall notify the department using forms supplied by the department, or its equivalent, at least thirty calendar days in advance of any tests of emissions of air contaminants required by the department. Advanced notification for all other testing will be consistent with the requirements of the appropriate regulations but in no case will be less than thirty calendar days. If the owner or operator of a source is unable to conduct the performance test on the scheduled date, the owner or operator of a source shall notify the department as soon as practicable when conditions warrant and shall coordinate a new test date with the department. Failure to give the proper notification may prevent the department from observing the test. If the department is unable to observe the test because of improper notification, the test results may be rejected.

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

60.26(a)(4) - Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to

make such data available to the public as reported and as correlated with applicable standards.

The Department has this authority under NDCC 23.1-06-04.1.j which states:

The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:

j. Require the owner or operator of a regulated air contaminant source to establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods; sample emissions in accordance with those methods at designated locations and intervals, and using designated procedures; and provide other information as may be required.

The authority to make data available to the public is contained in NDCC 23.1-06-12, Confidentiality of Records, which states:

1. Any record, report, or information obtained under this chapter must be available to the public. However, upon a showing satisfactory to the department that disclosure to the public of a part of the record, report, or information, other than emission data, to which the department has access under this chapter, would divulge trade secrets, the department shall consider that part of the record, report, or information confidential.

2. This section may not prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local air pollution control laws, or when relevant in any proceeding under this chapter.

NDAC 33.1-15-01.16.1 also states:

1. Public inspection. Any record, report, or information obtained or submitted pursuant to this article will be available to the public for inspection and copying during normal working hours unless the department certifies that the information is confidential. Anyone requesting department assistance in collecting, copying, certifying, or mailing public information must tender, in advance, the reasonable cost of those services.

The Department will implement the emission guidelines under 40 CFR 60, Subpart DDDD, for existing Commercial and Industrial Solid Waste Incineration Units through rules. The emissions guidelines have been adopted by reference into Chapter 33.1-15-12 of the North Dakota Administrative Code (NDAC). A copy of NDAC 33.1-15-12 is included in Section IX of this plan. No other agency has been designated to carry out any portion of this plan.

The laws and rules cited in this section are current as of the date of submittal of this plan. The laws can be found in the North Dakota Century Code at <https://www.legis.nd.gov/general->

[information/north-dakota-century-code](https://www.legis.nd.gov/information/acdata/pdf/33.1-15-12.pdf) and the rules in the North Dakota Administrative Code at <https://www.legis.nd.gov/information/acdata/pdf/33.1-15-12.pdf>.

II. Standards of Performance and Compliance Schedules

The Department will use state rules adopted into NDAC 33.1-15-12 as the mechanism for implementing the emission guidelines (copy included). North Dakota Century Code 23.1-06-04 gives the Department the authority to enforce any properly adopted rule (see Section I.). The Model Rule (40 CFR 60.2575 - 2875 including Tables 1-9) has been adopted by reference.

Table 1 of Subpart DDDD has been modified to indicate that sources subject to the rules for commercial construction on or before November 30, 1999, the final compliance date is established as December 1, 2005. For sources that commenced construction on or before June 4, 2010, the final compliance date is established as February 7, 2018. No extension of these compliance dates has been provided; therefore, no requirements for increments of progress or compliance schedules are included in the plan.

III. Source Inventory

The following sources, but not limited to this list, appear to be subject to the Emission Guidelines in 40 CFR 60, Subpart DDDD. Sources not included in this list are still subject to the requirements of this plan and the rules under NDAC 33.1-15-12 if they meet the applicability requirements. Should other sources be discovered subsequent to public review, final adoption, and EPA approval of this plan, there will be no need to reopen this plan. Any newly discovered sources are bound by the compliance times established in NDAC 33.1-15-12, Subpart DDDD.

A. Sources Currently Operating Existing Commercial and Industrial Solid Waste Incinerators subject to the emission guidelines.

Facility	Type	Location
Markwed Excavating	Air Curtain Incinerator	Bismarck

B. Pathological Waste Incinerators

1. Animal Incinerators

USDA Research Center	Fargo
Kindness Animal Hospital (Inactive)	Grand Forks
Souris Valley Humane Society	Minot
Casselton Veterinary Services	Casselton
NDSU - Van Es Hall	Fargo
Pet Services, Inc.	Abercrombie
Dakota Pet Crematorium	St. Anthony
Loving Paws Pet Crematorium	Minot
Robert Eastgate-Thomas Vetin Funeral Home	Bismarck
West River Vet Clinic	Hettinger

Western Veterinary Clinic
Steele Veterinary Services

Williston
Steele

2. Human Crematoriums

Riverside Cemetery Assoc. (2)
Bismarck Funeral Home
Highland Cemetery Assoc.
North Valley Crematory
Stevenson Funeral Home
Sunset Memorial Gardens
EAE Enterprises
Red River Valley Funeral & Cremation Services
Sunset Memorial Gardens
John Deere Seeding Group
Branick Industries
CNH Industrial America, LLC
Great Plains Technical Services
Steffes Corp.
Flanders Electric, Inc. -Western
Bobcat Company
Bobcat Company

Fargo
Bismarck
Jamestown
Grand Forks
Dickinson
Bismarck
Devils Lake
West Fargo
Minot
Valley City
Fargo
Fargo
Bismarck
Dickinson
Bismarck
Gwinner
Bismarck

C. Rack/Part Reclamation Units

D. Materials Recovery Units

Ray Birnbaum

Hankinson

E. Hospital/Medical/Infectious Waste Incinerators
None

F. Commercial and Industrial Solid Waste Incinerators that are shutdown yet capable of operating
None

G. Sources Currently Operating Units Subject to 40 CFR 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units.

Facility	Type	Location
City of Mandan	Air Curtain Incinerator	Mandan

IV. Emission Inventory

A. Estimated Emissions (2018)

Estimated emissions from the currently operating CISWI's subject to the emission guidelines are indicated in the following table:

Emissions Inventory
CISWI Units
2018

Company	Facility	Location	Incinerator Type	Material Burned (tons)	Particulate Matter (tons)	Sulfur Dioxide (tons)	Nitrogen Oxides (tons)	Carbon Monoxide (tons)	Cadmium (lb)	Dioxins/Furans (lb)	Hydrogen Chloride (tons)	Lead (lb)	Mercury (lb)
Markwed Excavating ^b			ACD	850	7.3	1	4.4	16.2	<1	3x10 ⁻⁵	<1	<1	<1

ACD = Air Curtain Destructor

- a. Includes sunflower hulls
- b. Based on most recent data

B. Emission Estimation Methods

Emissions were estimated using the emission factors listed in AP-42, Section 1.6.

C. Annual Emissions Reporting

The Department will submit an update of the emission inventory for sources that achieve compliance, sources that are new or modified, sources that cease operation or sources that were not in operation when this plan was prepared and started operation during the reporting period. Emissions data will be reported to EPA's Emissions Inventory System (EIS), or other applicable emissions inventory system, as specified in 40 CFR 60, Appendix D.

V. Emission Limitations

Since the model rule under 40 CFR 60, Subpart DDDD is incorporated by reference into NDAC 33.1-15-12, the rules are as protective as the Emission Guidelines.

VI. Testing, Monitoring, Recordkeeping and Reporting

The requirements of the model rule under 40 CFR 60, Subpart DDDD are incorporated by reference into NDAC 33.1-15-12, and are thus as stringent as the Emission Guidelines.

VII. Progress Reports

The Department will submit, annually, a report to EPA on the compliance status, enforcement actions, identification of sources that have ceased operation or started operation, emission inventory information for sources that have started operation, updated emission inventory and compliance information, and copies of technical reports on all performance testing and monitoring for CISWI's subject to the emission guidelines. The first progress report will be submitted one year after EPA approval of this plan.

VIII. Public Hearing Record

The following items are included to demonstrate adequate public participation in the development of this plan:

- A. Notice of Public Hearing with affidavit of publication.
- B. Public Hearing Transcript with a list of witnesses and any written testimony submitted.
- C. Notice of the hearing sent to the EPA Regional Administrator and neighboring states.
- D. Certification that the public hearing was held in accordance with Subpart B and state procedures (Legal Opinion).

E. Response to public comments.

X. Attachments

NDCC 23.1-06, Air Pollution Control

NDAC 33.1-15-12, Standards of Performance for New Stationary Sources

CHAPTER 23.1-06 AIR POLLUTION CONTROL

23.1-06-01. Definitions.

For purposes of this chapter:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination of solid, liquid, gas, or odorous substance.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
3. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
6. "Asbestos contractor" means any person that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any individual engaged in the abatement of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material, except for individuals engaged in abatement at their private residence.
8. "Department" means the department of environmental quality.
9. "Emission" means a release of air contaminants into the ambient air.
10. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
11. "Friable asbestos material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
12. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination that can reasonably be expected to cause or induce emissions of air contaminants.
13. "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than one-half percent by weight.

23.1-06-02. Declaration of public policy and legislative intent.

It is the public policy of this state and the legislative intent of this chapter to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property, to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience of the people, and to facilitate the enjoyment of the natural attractions of this state.

23.1-06-03. Environmental review advisory council - Public hearing and rule recommendations.

Repealed by S.L. 2019, ch. 216, § 5.

23.1-06-04. Power and duties of the department.

1. The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:

- a. Encourage the voluntary cooperation of persons to achieve the purposes of this chapter.
 - b. Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.
 - c. Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement, and control.
 - d. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
 - e. Issue orders necessary to effectuate the purposes of this chapter and enforce the orders by all appropriate administrative and judicial procedures.
 - f. Provide rules relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that before commencing construction or modification of any such source, the owner or operator shall submit the information necessary to permit the department to make this determination.
 - g. Establish ambient air quality standards for the state which may vary according to appropriate areas.
 - h. Formulate and adopt emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.
 - i. Hold hearings relating to the administration of this chapter, and compel the attendance of witnesses and the production of evidence.
 - j. Require the owner or operator of a regulated air contaminant source to establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods; sample emissions in accordance with those methods at designated locations and intervals, and using designated procedures; and provide other information as may be required.
 - k. Provide by rules a procedure for handling applications for a variance for any person that owns or is in control of any plant, establishment, process, or equipment. The granting of a variance is not a right of the applicant but must be in the discretion of the department.
 - l. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended, the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. The rules may include enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives, including fees, marketable permits, and auctions of emissions rights, as provided by the Act. The department shall develop and implement the federal programs if the department determines that doing so benefits the state.
 - m. Provide by rules a program for implementing lead-based paint remediation training, certification, and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
2. After consultation with the advisory council, the department may adopt, amend, and repeal rules under this chapter.

23.1-06-05. Licensing of asbestos and lead-based paint contractors and certification of asbestos and lead-based paint workers.

1. The department shall administer and enforce a licensing program for asbestos contractors and lead-based paint contractors and a certification program for asbestos workers and lead-based paint workers. To do so, the department shall:

- a. Require training of, and to examine, asbestos workers and lead-based paint workers.
 - b. Establish standards and procedures for the licensing of contractors, and the certification of asbestos workers engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended.
 - c. Establish standards and procedures for licensing contractors and certifying lead-based paint workers engaging in the abatement of lead-based paint, and establish performance standards for lead-based paint abatement in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
 - d. Issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, renew certificates, and suspend or revoke certificates for cause after notice and opportunity for hearing.
 - e. Establish an annual fee and renewal fees for licensing asbestos contractors and lead-based paint contractors and certifying asbestos and lead-based paint workers, and establish examination fees for asbestos and lead-based paint workers under section 23.1-06-10. The annual, renewal, and examination fees for lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.
 - f. Establish indoor environmental nonoccupational air quality standards for asbestos.
 - g. Adopt and enforce rules as necessary for the implementation of this section.
2. For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

23.1-06-06. Sulfur dioxide ambient air quality standards more strict than federal standards prohibited.

The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the federal Clean Air Act, or for which there are no corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the federal Clean Air Act. Any intervention levels or standards set forth in the rules may not be more strict than federal levels or standards recommended or adopted under the federal program. In adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory corresponding federal rules or standards.

23.1-06-07. Requirements for adoption of air quality rules more strict than federal standards.

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days before the hearing which clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:
 - a. "Cost-benefit analysis" means both the analysis and the written document that contains:
 - (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions, including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.
 - (2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department may not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.
 - b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources, and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:
 - (1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.

- (2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.
 - (3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.
 - (4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department, in preparing the risk assessment, shall:
 - (a) Rely only upon environmental protection agency-approved air dispersion models.
 - (b) Identify the assumptions, inferences, and models that materially affect the outcome.
 - (c) Explain the basis for any choices.
 - (d) Identify any policy decisions or assumptions.
 - (e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.
 - (f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.
 - (5) The range and distribution of exposures and risks derived from the risk assessment.
- c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the environmental review advisory council.
4. This section applies to any petition submitted to the department under section 23.1-01-04 which identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23.1-01-04. This section also applies to any petitions filed under section 23.1-01-04 affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23.1-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to new rules governing those standards.

23.1-06-08. Classification and reporting of air pollution sources.

1. After consultation with the environmental review advisory council the department, by rule, may classify air contaminant sources according to levels and types of emissions and other criteria that relate to air pollution, and may require reporting for any class. Classifications made under this subsection may apply to the state as a whole or to any designated area of the state, and must be made with special reference to effects on health, economic, and social factors and physical effects on property.
2. A person operating or responsible for the operation of air contaminant sources of any class for which reporting is required shall make reports containing information the department deems relevant to air pollution.

23.1-06-09. Permits or registration.

1. A person may not construct, install, modify, use, or operate an air contaminant source designated by regulation, capable of causing or contributing to air pollution, either directly or indirectly, without a permit from the department or in violation of any conditions imposed by the permit.
2. The department shall provide for the issuance, suspension, revocation, and renewal of permits that it requires under this section.

3. The department may require applications for permits to be accompanied by plans, specifications, and other information it deems necessary.
4. Possession of an approved permit or registration certificate does not relieve any person of the responsibility to comply with applicable emission limitations or with any other law or rule, and does not relieve any person from the requirement to possess a valid contractor's license issued under chapter 43-07.
5. The department by rule may provide for registration and registration renewal of certain air contaminant sources in lieu of a permit.
6. The department may exempt by rule certain air contaminant sources from the permit or registration requirements in this section when the department makes a finding the exemption will not be contrary to section 23.1-06-02.

23.1-06-10. Fees - Deposit in operating fund.

The department by rule may prescribe and provide for the payment and collection of reasonable fees for permits and registration certificates. The fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting an inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-06-11. Right of onsite inspection.

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and related rules. If requested, the owner or operator of the premises must receive a report setting forth all facts found which relate to compliance status.
2. The department may conduct tests and take samples of air contaminants, fuel, process material, and other materials that may affect emission of air contaminants from any source, and may have access to and copy any records required by department rules to be maintained, and may inspect monitoring equipment located on the premises. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and other safe and proper sampling, and testing facilities exclusive of instruments and sensing devices necessary for proper determination of the emission of air contaminants. If an authorized representative of the department, during the course of an inspection, obtains a sample of air contaminant, fuel, process material, or other material, the representative shall issue a receipt for the sample obtained to the owner or operator of, or person responsible for, the source tested.
3. To ascertain the state of compliance with this chapter and any applicable rules, a duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

23.1-06-12. Confidentiality of records.

1. Any record, report, or information obtained under this chapter must be available to the public. However, upon a showing satisfactory to the department that disclosure to the public of a part of the record, report, or information, other than emission data, to which the department has access under this chapter, would divulge trade secrets, the department shall consider that part of the record, report, or information confidential.
2. This section may not prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any

federal, state, or local air pollution control laws, or when relevant in any proceeding under this chapter.

23.1-06-13. Administrative procedure and judicial review.

Any proceeding under this chapter for the issuance or modification of rules and regulations, including emergency orders relating to control of air pollution, or determining compliance with rules and regulations of the department, must be conducted in accordance with chapter 28-32. Appeals from the proceeding may be taken under chapter 28-32. When an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order must be effective immediately, but on application to the department an interested person must be afforded a hearing before the environmental review advisory council within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. Except as provided for in this section, notice of any hearing held under this chapter must be issued at least thirty days before the date specified for the hearing.

23.1-06-14. Enforcement - Penalties - Injunctions.

1. A person that willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, punishment must be a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. A person that knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or that falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
4. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.
5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin a threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

23.1-06-15. Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the person making the odor

complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
 - c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.
3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department of environmental quality, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department of environmental quality. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover

- on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department of environmental quality has established a specific limitation by rule.
 6. For purposes of this section:
 - a. "Business" means a commercial building used primarily to carry on a for-profit or nonprofit business which is not residential and not used primarily to manufacture or produce raw materials, products, or agricultural commodities;
 - b. "Campground" means a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis;
 - c. "Church" means a building owned by a religious organization and used primarily for religious purposes;
 - d. "Park" means a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law;
 - e. "Public building" means a building owned by a county, city, township, school district, park district, or other unit of local government; the state; or an agency, industry, institution, board, or department of the state; and
 - f. "School" means a public school or nonprofit, private school approved by the superintendent of public instruction.
 7.
 - a. In a county or township that does not regulate the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or section 58-03-11.1, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
 - (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
 - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
 - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [.80 kilometer].
 - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
 - (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].
 - b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is closer.
 - c. For purposes of this section:
 - (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
 - (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
 - (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
 - (4) One cow-calf pair equals 1.0 animal unit;
 - (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

- (6) One weaned swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
 - (7) One horse equals 2.0 animal units;
 - (8) One sheep or weaned lamb equals 0.1 animal unit;
 - (9) One turkey equals 0.0182 animal unit;
 - (10) One chicken equals 0.01 animal unit;
 - (11) One duck or goose equals 0.2 animal unit; and
 - (12) Any weaned livestock not listed in paragraphs 1 through 11 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms], whether single or combined animal weight.
- d. In a county or township that regulates the nature, scope, or location of an animal feeding operation under section 11-33-02.1 or 58-03-11.1, an applicant for an animal feeding operation permit shall submit to the department with the permit application the zoning determination made by the county or township under subsection 9 of section 11-33-02.1 or subsection 9 of section 58-03-11.1, unless the animal feeding operation is in existence by January 1, 2019, and there is no change in animals or animal units which would result in an increase in the setbacks provided for in this section. The department may not impose additional odor setback requirements.
 - e. An animal feeding operation is not subject to zoning regulations adopted by a county or township after the date an application for the animal feeding operation is submitted to the department, provided construction of the animal feeding operation commences within three years from the date the application is submitted. Unless there is a change to the location of the proposed animal feeding operation, this exemption remains in effect if the department requires the applicant to submit a revised application.
- 8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.
 - 9. A county or township may not regulate or impose restrictions or requirements on animal feeding operations or other agricultural operations except as permitted under sections 11-33-02.1 and 58-03-11.1.

CHAPTER 33.1-15-12

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Section

- 33.1-15-12-01 [Reserved]
- 33.1-15-12-01.1 Scope
- 33.1-15-12-02 Standards of Performance

33.1-15-12-01. [Reserved].

33.1-15-12-01.1. Scope.

Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on July 1, 2015 2019, which are listed under section 33.1-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard. Reference to part 60 within the subparts means this chapter.

History: Effective January 1, 2019.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-12-02. Standards of performance.

Subpart A - General provisions.

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

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

Subpart C - Emission guidelines and compliance times.

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

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

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.
2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.
3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.
4. Complete onsite construction or installation of the air pollution control device or devices or

process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.

5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.
6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

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

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

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

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

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

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

- ~~(c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002, for the emission guidelines promulgated on September 15, 1997, and not later than October 6, 2014, for the emission guidelines promulgated on October 6, 2009, provided the facility owner or operator complies with the following:~~

- ~~1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.~~
- ~~2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device within nine months of state plan approval.~~
- ~~3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.~~
- ~~4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.~~
- ~~5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.~~
- ~~6. Begins initiation of site preparation for installation of the air pollution control device within~~

~~twenty-two months after state plan approval.~~

- ~~7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.~~
- ~~8. Starts up the air pollution control device within twenty-eight months after state plan approval.~~
- ~~9. Notifies the department of the performance test thirty days prior to the test.~~
- ~~10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.~~
- ~~11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.~~

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

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

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

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

Subpart Cf – Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

For purposes of this subpart, a state plan implementing subpart Cc of this part means the North Dakota section 111(d) plan for municipal solid waste landfills that implements the requirements of subpart Cc of this chapter.

*60.30f(a) is deleted.

*60.30f(b) is deleted.

*60.30f(c) – The first sentence is deleted and replaced with the following:

The following authorities will be retained by the United States environmental protection agency.

60.31f(c) is deleted and replaced with the following:

(c) For purposes of obtaining a title V permit to operate, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirements to obtain a title V permit to operate under section 33.1-15-14-06 unless the landfill is otherwise subject to section 33.1-15-14-06. For submitting a timely application for a title V permit to operate, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters on the effective date of the U.S. environmental protection agency's approval of North Dakota's plan under section 111(d) of the federal clean air act, and not otherwise subject to the requirements of section 33.1-15-14-06, becomes subject to the requirements of subparagraph 33.1-15-14-06.4.a(1)(a) ninety days after the effective date of such section 111(d) approval, even if the design capacity report is submitted earlier.

60.31f(d) – The first sentence is deleted and replaced with the following:

(d) When a municipal solid waste landfill subject to this subpart is closed as defined in this subpart, the owner or operator is no longer subject to the requirement to maintain a title v permit to operate under section 33.1-15-14-06 for the landfill if the landfill is not otherwise subject to the requirements of section 33.1-15-14-06 and either of the following are met:

*60.33f(a) – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill subject to the provisions of this subpart and having a design capacity greater than or equal to 2.5 million megagrams by mass and 2.5 million cubic meters by volume shall collect and control municipal solid waste landfill emissions at each municipal solid waste landfill that meets the following conditions:

*60.33f(b) – The first sentence is deleted and replaced by the following:

Each owner or operator of a municipal solid waste landfill shall install a gas collection and control system which meets the requirements in paragraph(b)(1) through (3) and (c) of this section at each municipal solid waste landfill meeting the conditions in paragraph (a) of this section.

*60.33f(c) – The first sentence is deleted and replace with the following:

Each owner or operator of a municipal solid waste landfill subject to the provisions for the control of the gas collected from within the landfill through the use of control devices shall comply with the following requirements, except as provided in section 60.24.

*60.33f(d) – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the department as provided in section 60.38f(a).

*60.33f(e) – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters shall either install a collection and control system as provided in paragraphs (b) and (c) of this section or calculate an initial nonmethane organic compounds emission rate for the landfill using the procedures specified in section 60.35f(a).

*60.34f – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill subject to provisions of this subpart shall comply with the applicable provisions of the operational standards in this section for a municipal solid waste landfill with a gas collection and control system used to comply with the provisions of section 60.33f(b) and (c).

*60.35f – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill subject to the provisions of this subpart shall comply with the applicable provisions in this section to calculate the landfill nonmethane organic compounds emission rate or to conduct a surface emission monitoring demonstration.

Other methods for determining the NMOC concentration or site-specific methane generation constant must be approved by the EPA administrator.

*60.36f – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the applicable compliance provisions in this section.

*60.37f – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the applicable monitoring provisions in this section, except as provided in 60.38f(d)(2).

*60.38f – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the reporting provisions listed in this section, as applicable, except as provided by section 60.24 and 60.38f(d)(2).

*60.38f(a)(2) – In this subparagraph, administrator means the administrator of the United States environmental protection agency or the administrator’s authorized representative.

*60.38f(d) – The first sentence is deleted and replaced with the following:

The department shall review and approve the site-specific design plan for each gas collection and control system as outlined in the 111(d) plan for municipal solid waste landfills subject to the provisions of this subpart.

*60.39f – The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the applicable recordkeeping provisions in this section.

*60.40f – The first sentence is deleted and replace by the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart and required to install an active collection system shall comply with the applicable specifications for active collection systems in this section.

*60.41f – The definition of administrator is deleted and replaced with the following:

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

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

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

*The limits and other requirements for mercury are deleted.

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

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

Subpart E - Standards of performance for incinerators.

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

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

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants. Subpart H

- Standards of performance for sulfuric acid plants. Subpart I -

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

Standards of performance for petroleum refineries.

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

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

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

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

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

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

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

Subpart O - Standards of performance for sewage treatment plants.

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

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

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

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

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

Subpart Y - Standards of performance for coal preparation plants. Subpart Z

- Standards of performance for ferroalloy production facilities.

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

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

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

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

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

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

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

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

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

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

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

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

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

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

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

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

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

Subpart XX - Standards of performance for bulk gasoline terminals.

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

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

Subpart CCC - [Reserved]

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

Subpart EEE - [Reserved]

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

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

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

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

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

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

Subpart JJJ - Standards of performance for petroleum drycleaners.

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

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

Subpart MMM - [Reserved]

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

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

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

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

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

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

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

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

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

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

Subpart XXX – Standards of performance for municipal solid waste landfills that commenced construction, reconstruction or modification after July 17, 2014.

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

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

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

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

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

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

Table 1 to Subpart DDDD - Model Rule Increments of Progress and Compliance Schedules	
CISWI Units That Commenced Construction on or Before November 30, 1999	
Comply with these increments of progress	By these dates
Increment 1—Submit final control plan	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2— Final compliance	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

Incinerator CISWI units that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001, but no later than August 7, 2013. CISWI units other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013.	
Comply with these increments of progress	By these dates
Increment 1—Submit final control plan	One year after EPA approval of the state plan or February 7, 2017, whichever comes first.
Increment 2— Final compliance	Three years after EPA approval of the state plan or February 7, 2018, whichever comes first.

Subpart GGGG - [Reserved]

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

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

Subpart KKKK - Standards of performance for stationary combustion turbines.

Subpart OOOO – Standards of performance for crude oil and natural gas production, transmission and distribution for which construction, modification or reconstruction commenced after August 23, 2011, and on or before September 18, 2015.

Subpart OOOOa – Standards of performance for crude oil and natural gas facilities for which construction, modification or reconstruction commenced after September 18, 2015.

Subpart TTTT – Standards of performance for greenhouse gas emissions for electric generating units.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures. Appendix I

Appendis I - Removable label and owner's manual.

History: Effective January 1, 2019.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21