

**NORTH DAKOTA**  
**DEPARTMENT OF HEALTH**  
**Departmental Memorandum**

TO: File

FROM: Division of Water Quality

RE: Comments on Proposed Amendments and Adoption of Administrative Rules Relating to the Pretreatment Regulations

Bismarck, ND

DATE: June 22, 2018

---

On May 18, 2018, the North Dakota Department of Health (department) held a public hearing to allow the public to submit information concerning the proposed amendments of N.D. Admin Code ch. 33-16-01.1 and the adoption of N. D. Admin Code ch. 33.1-16-01.1.

The purpose of the proposed amendments to Pretreatment Regulations, N. D. Admin. ch. 33-16-01.1, is to update the department's rules to provide clarification and reflect the change in U. S. Environmental Protection Agency rules regarding the Pretreatment Regulations program. In addition, pursuant to Senate Bill No. 2327, the department's Environmental Health Section Chief is proposing to adopt the department's rules relating to the Pretreatment Regulations program N.D. Admin. Code ch. 33-16-01.1 as the North Dakota Department of Environmental Quality's rules in N.D. Admin. Code ch. 33.1-16-01.1, with minor changes to reflect the creation of the new agency.

A Notice of Intent to Amend and Adopt Administrative Rules and Notice of Public Hearing on the proposed rules was issued and posted on the department's web page as well as printed in the county papers of record. The public notice identified the purpose of the proposed rules, changes proposed by the department, where to obtain additional information regarding the proposed rules, where written comments could be directed, as well as the purpose and location of the scheduled public hearing.

The only comments received were those submitted by the U.S. Environmental Protection Agency (EPA). Below are summaries of its comments. Although there are specific responses to each comment, the document should be read in its entirety with the understanding that a response to one comment may be applicable to additional comments.

1. Comment: A recommendation was presented to modify the Categorical Industrial User definition to minimize ambiguity. As written in §33-16-01.1-01(5), “Categorical Industrial User” means an industrial user that is subject to a pretreatment standard for an industry category.

Control authorities may develop local limits, BMPs, or other Pretreatment Standards that apply to an industry category; these are not EPA-promulgated Categorical Pretreatment Standards. In addition, the change will connect with the Categorical Pretreatment Standards proposed to be adopted in §33-16-01.1-01(6).

Department Response: The department concurs with the proposed change which will alleviate any ambiguity with this definition and align with the federal regulations found in 40 CFR 403 and the categorical pretreatment standards proposed to be adopted in NDAC §§ 33-16-01.1-01(5) and 33.1-16-01.1-01(5). The update in NDAC §§ 33-16-01.1-01(5) and 33.1-16-01.1-01(5) will be - “Categorical Industrial User” means an industrial user that is subject to a Categorical Pretreatment Standard or Categorical Standard.

2. Comment: As written in §33-16-01.1-03(5), “when specific prohibitions or limits on pollutants are developed by a POTW in accordance with this section, the limits shall be deemed pretreatment requirements.” It is proposed to strike “pretreatment requirements” and insert “pretreatment standards” in the previous passage.

Department Response: Local Limits are defined in the federal regulations and the department’s rules as pretreatment standards. The department concurs with the proposed change and will modify NDAC §§ 33-16-01.1-03(5) and 33.1-16-01.1-03(5) to strike “pretreatment requirements” and insert “pretreatment standards” to align federal regulations and state pretreatment regulations.

3. Comment: Incorrect reference in § 33-16-01.1-11(2) states: “all reports submitted by a user or POTW shall conform to the signatory requirements of §33-16-01-05”.

Department Response: The department will update the reference in NDAC §§ 33-16-01.1-11(2) and 33.1-16-01.1-11(2) from the NDPDES signatory requirements to reference the signatory requirements for industrial user reports found in NDAC §§ 33-16-01.1-12(12) and 33.1-16-01.1-12(12). This update will help with any ambiguity and further streamline the pretreatment regulations.

4. Comment: The department requires categorical industrial users to submit baseline monitoring reports (BMR) and 90-day compliance reports, in accordance with the pretreatment requirements in 40 CFR 403.12. However, the department’s rules state that the BMR and 90-day reports shall be submitted on appropriate reporting forms, which can be obtained by the department. The EPA is not aware of the BMR and 90-day compliance reports forms created by the department and if the department intends to supply these reporting forms for all CIUs in North Dakota. The department should clarify in the rules that the forms shall be obtained from the department only for those CIUs/SIUs in which the department is the Control Authority. The EPA recommends the department add in accordance with the appropriate regulatory citation in the General Pretreatment Regulations.

Department Response: Several recommendations were included by EPA to modify the rules for clarification on BMR and 90-day compliance reporting procedures to align with 40 CFR 403.12. The department has modified the following rules based on those recommendations submitted by EPA:

- In NDAC §§ 33-16-01.1-12(1)(a) and 33.1-16-01.1-12(1)(a) shall be updated to read, "The baseline monitoring report shall be submitted on the appropriate baseline monitoring reporting form in accordance with 40 CFR 402.12(b)".
- In NDAC §§ 33-16-01.1-12(3) and 33.1-16-01.1-12(3) the first sentence shall be updated to read, "Each categorical industrial user shall submit to the control authority a complete ninety-day compliance report for each applicable pretreatment standard, in accordance with 40 CFR 403.12(d)."
- In NDAC §§ 33-16-01.1-12(3)(a) and 33.1-16-01.1-12(3)(a) shall be updated to read, "For facilities covered when the department is the Control Authority, each ninety-day compliance report shall be submitted on a ninety-day compliance reporting form, which can be obtained from the department."