

Review and Response to Public Comments Received for the Proposed Administrative Rules Related to Onsite Wastewater Treatment Systems

The North Dakota Department of Environmental Quality (department) is conducting a rulemaking proceeding to address proposed rules relating to Onsite Wastewater Treatment Systems. The proposed rules establish procedures governing the licensing, permitting, and installation of onsite wastewater treatment systems. The proposed rules also establish standards for training and installation of onsite wastewater treatment systems.

North Dakota Century Code (NDCC) Ch. 23.1-07.1-02 gives the department authority to adopt rules regarding licensing, permitting, and inspections of onsite wastewater treatment systems.

The proposed rules were released to the public and published on the department's website on April 15, 2026. A public comment hearing was scheduled and held in Bismarck on May 14, 2026. The public comment period ended on May 25, 2026. Public notices of the draft rules, comment period and hearing were published in all official county newspapers in North Dakota and through the department's public notice webpage and public notice email subscription service in April 2026. During the public comment period, the department received both verbal and written comments regarding the proposed rules.

Many comments received were similar in nature and topic. The department has grouped them into general categories to aid in the response. In some cases, similar comments have been summarized so that one response applies to all of them. The transcript of the public comment hearing and copies of all written comments are included as appendices.

Please note that the department is only responding to statements and comments that directly apply to the proposed draft rules. Lack of response to a comment does not indicate that the department agrees that it is accurate. The public hearing was transcribed as accurately as possible, and comments are quoted as stated into the record, with no corrections for grammar or wording.

Additional technical guidance is being developed by the department to provide clarification and additional resources regarding onsite wastewater treatment systems.

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1. Comments related to Chapter 33.1-21-01-03. Definitions

1.1 Comment: Baffle (Bata, Tarno)

Recommendation to revise the definition of "baffle" to recognize that effluent screens may serve the function of a baffle in modern septic tanks.

1.1 Department Response: Thank you for your comment. The definition has been revised to include effluent filters.

1.2 Comment: Bedroom (Schimelfenig)

The proposed definition of "bedroom" is overly broad and requires consideration of potential future room uses.

1.2 Department Response: Thank you for your comment. The definition of "bedroom" supports wastewater design flow calculations and system sizing based on potential occupancy.

1.3 Comment: Cesspool (Bata, Tarno)

Modify the definition of "cesspool" to sewage instead of wastewater.

1.3 Department Response: Thank you for your comment. Use of the word wastewater is consistent with the authorizing law.

1.4 Comment: Clean Sand (Bata, Tarno)

Request for additional guidance regarding the definition of "clean sand" and how compliance with ASTM C-33 would be determined in the field.

1.4 Department Response: Thank you for your comment. The department will be developing a technical manual to provide additional guidance as per NDCC 23.1-07.1-02(2). This technical manual will include the procedure for performing a jar test, soil assessment techniques, as well as additional tables and diagrams to assist with implementation of the rules.

1.5 Comment: Drainfield Rock (Heger)

Drainfield rock should specify the maximum allowed percent of fines.

1.5 Department Response: Thank you for your comment. The department has determined that the existing language provides adequate performance standards without prescribing a specific fines content.

1.6 Comment: Effluent Screen (Bata, Tarno)

Request that "effluent screen" be defined.

1.6 Department Response: Thank you for your comment. The definition of “effluent filter” has been added to NDAC 33.1-21-01-03.

1.7 Comment: Holding Tank (Bata, Tarno)

Holding tanks are defined in the proposed rules but are not otherwise addressed.

1.7 Department Response: Thank you for your comment. Holding tank has been removed from Definitions; see department response 14.2.

1.8 Comment: Limiting Factor (Bata, Heger, Tarno)

Include high permeability in definition of limiting factor. Include redoximorphic features in the definition of limiting factor.

1.8 Department Response: Thank you for your comment. The definition has been revised.

1.9 Comment: Mottling (Duey, Schimelfenig, Tarno)

Remove mottling, replace with “redoximorphic features”.

1.9 Department Response: Thank you for your comment. The department has revised the definition of “redoximorphic features”, making the need to define “mottling” obsolete. “Mottling” has been removed from definitions.

1.10 Comment: Plastic Limit (Bata, Heger, Tarno)

Add that the soil must not be used until it dries out. Reference ASTM D4318 instead of AASHTO T 90-61.

1.10 Department Response: Thank you for your comment. Methods of determining plastic limit will be provided in future technical guide. Refer to responses 1.4 and 11.8.

1.11 Comment: Pressure Distribution (Bata, Tarno)

Add a definition for pressure distribution.

1.11 Department Response: Thank you for your comment. The definition of “pressure distribution” has been added.

1.12 Comment: Redoximorphic Features (Duey)

Refine definition of redoximorphic features.

1.12 Department Response: Thank you for your comment. The definition has been revised.

1.13 Comment: Seepage Bed (Bata, Heger, Tarno)

Add minimum and maximum width to definition of seepage bed. Replace aggregate with "distribution media".

1.13 Department Response: Thank you for your comment. The definition has been revised.

1.14 Comment: Slope (Bata, Tarno)

Slope should be expressed as a percentage.

1.14 Department Response: Thank you for your comment. The definition has been revised.

1.15 Comment: System (Otterness)

Add to treat residential strength wastewater to the definition of "System".

1.15 Department Response: Thank you for your comment. Refer to responses 1.17 and 8.2.

1.16 Comment: Vertical Separation (Bata, Tarno)

Add a definition for vertical separation.

1.16 Department Response: Thank you for your comment. The "Vertical Separation" has been added to Definitions.

1.17 Comment: Domestic Wastewater (Anderson, Bata, Heger, Tarno, Otterness)

Request definitions for sewage, domestic wastewater, residential-strength wastewater, and high-strength wastewater. Recommend establishing wastewater strength criteria, distinguishing residential and commercial waste streams, and clarifying terminology used throughout the rule.

1.17 Department Response: Thank you for your comment. Definitions for sewage, domestic wastewater, residential-strength wastewater, and high-strength wastewater will not be included. Refer to response 8.2.

2. Comments related to Chapter 33.1-21-01-04. Installer Licensing Requirements**2.1 Comment: Applicant Information (Heger, Hovdenes, Anderson, Schmidt, Schimelfenig)**

Application should not include listing counties.

2.1 Department Response: Thank you for your comment. The department has removed the requirement to list counties as part of the license application process.

2.2 Comment: Soil Assessment Endorsement (Schimelfenig, Hovdenes)

Obtaining a soil assessment endorsement and paying the associated fee is unnecessary as soils training is part of standard training.

2.2 Department Response: Thank you for your comment. The department has determined that it is important to have soils assessed by qualified individuals. One option for licensed installers is to obtain additional training outside of standard training for soils assessment and apply for a soil assessment endorsement on their license. In lieu of a soil assessment endorsement, soils can be assessed by a professional soil classifier or the permitting authority or authorized representative of the permitting authority, in accordance with NDAC 33.1-21-01-09(1).

2.3 Comment: License Renewals (Heger, Anderson)

License renewals should be moved to March 31 to allow for training to be completed.

2.3 Department Response: Thank you for your comment. The department has determined to have licenses expire at the end of the calendar year. Installers are not required to renew their license at the time of expiration but are required to renew their license prior to their first installation of the year.

2.4 Comment: Property Owners (Heger, Tarno, Bata, Anderson)

Property owners installing their own system should still be required to have a qualified design completed before installation.

2.4 Department Response: Thank you for your comment. NDCC 23.1-07.1-03(2) states, "An individual is exempt from the licensing requirements of this chapter if the individual is installing an onsite wastewater sewage treatment system on the individual's premises for the individual's use." This exemption is only for the licensing process; individuals are still required to obtain a permit prior to installing a system and all permitting requirements are effective.

2.5 Comment: Other Licensing Requirements (Heger, Anderson)

Other licensing requirements should include onsite wastewater treatment system contractors and soil classifiers required to carry insurance, bonding, or a contractor's license.

2.5 Department Response: Thank you for your comment. NDCC 43-07 describes requirements for contractor's licenses, including liability insurance and required notice of warranty repairs. Requiring additional insurance or bonding under these rules would be considered duplicative.

2.6 Comment: Classes of Licenses (Heger, Anderson)

Classes of licenses should include a “basic installer” and “advanced installer”, determined by education hours, qualifications, and certifications.

2.6 Department Response: Thank you for your comment. The department has reviewed the concept of a tiered licensing structure, and at this time, have determined that a single classification of installer meets the needs for North Dakota. Licenses issued under this chapter are for the installation of an onsite wastewater treatment system. The design of an onsite wastewater treatment system may be done by the installer, the permitting authority, or a consultant, and is ultimately approved by the permitting authority.

2.7 Comment: Grandfathering (Anderson)

The grandfathering of licenses should not be allowed. A one-year grace period to complete testing would be fair.

2.7 Department Response: Thank you for your comment. NDAC 33.1-21-01-05 lays out the training requirements. Existing licensed installers are required to provide documentation of six hours of training when renewing their license the first time under the rules, and ten hours of training every renewal following.

2.8 Comment: Individual Licenses (Windsor)

Licenses should be attached to an individual, not to a company.

2.8 Department Response: Thank you for your comment. Installer licenses are assigned to an individual and are non-transferrable. Companies performing system installations must have a licensed installer.

3. Comments related to Chapter 33.1-21-01-05. Training Requirements

3.1 Comment: Training Hours (Schimelfenig, Hovdenes, Heger)

Training hours for licensed installers should not include soils training and be less than ten hours. New installers should require eighteen to twenty-four hours.

3.1 Department Response: Thank you for your comment. NDAC 33.1-21-01-05(2) requires new installers to complete eighteen hours of training prior to becoming licensed. The department’s internal review has determined that ten hours of continuing education is essential for installers to stay up-to-date with industry standards. Multiple training options are available to obtain the required hours, such as approved online courses, classroom courses, field courses, etc.

3.2 Comment: Soils Training (Hovdenes)

NDAC 33.1-21-01-05(4) should be removed and be part of general education requirements.

3.2 Department Response: Thank you for your comment. Refer to response 2.2.

3.3 Comment: Approved Training (Heger, Anderson, NDOWRA)

Approved trainings should be provided by nonprofits with the state administering examinations. The code should have guidance on who provides the training and how training is developed and approved.

3.3 Department Response: Thank you for your comment. Training required under this chapter shall be reviewed and approved by the department. Training providers with an approved curriculum may employ various tools to assess and document hours and understanding of the training. These include examinations, certification, etc. Refer to response 3.1 for types of training available.

3.4 Comment: Training Required (Heger, Anderson)

Permitting authority staff and system designers should receive the same, or more, level of training as a licensed installer.

3.4 Department Response: Thank you for your comment. It is the responsibility of the permitting authority to ensure that their staff are appropriately trained to implement the permitting requirements of this chapter. This includes the review and approval of the design of an onsite wastewater treatment system. Refer to response 2.6 for further clarification.

4. Comments related to Chapter 33.1-21-01-06. Permits Required

4.1 Comment: Repair (Hovdenes, Schimelfenig)

Repairs should not require a permit.

4.1 Department Response: Thank you for your comment. Permits for septic system repairs ensure the local permitting authority has an opportunity to verify that the cause of the failure has been properly addressed and that the repaired system will adequately protect human health and the environment. Regular system maintenance does not require a permit.

4.2 Comment: Permit Requirements (Bata, Tarno, Schimelfenig)

Permit requirements should include a requirement to submit as-built drawing. Language allowing additional permit conditions required by local authority should be added back in and needs to be further explained.

4.2 Department Response: Thank you for your comment. Local public health units are responsible for administering onsite wastewater permitting programs and may determine

necessary permit information, which could include requiring as-built drawings. Site-specific conditions can be addressed through the permitting process.

4.3 Comment: Professional Engineering (Bata, Tarno)

Aside from flow volume trigger, systems handling high-strength waste require additional engineering.

4.3 Department Response: Thank you for your comment. The minimum design standards laid out in this chapter include a margin of safety when designing for high strength waste. The permitting authority could require a professional engineered design if necessary to protect the environment and public health. Refer to response 4.2.

4.4 Comment: Department Review (Bata, Tarno)

Department review support for engineered systems.

4.3 Department Response: Thank you for your comment. NDCC 23.1-07.1-02(2) states that the department will provide technical assistance to municipalities and local public health units on matters related to onsite wastewater treatment systems.

5. Comments related to Chapter 33.1-21-01-07. General Requirements

5.1 Comment: Natural Soil (Bata, Tarno)

Recommends systems shall not be installed in unsuitable or non-original soil, including compacted fill or scraped areas. (Bata, Tarno)

5.1 Department Response: Thank you for your comment. This recommendation has been added. NDAC 33.1-21-01-07(3) has been updated to include, "Systems should be installed in original natural soil. Unsuitable soils include compacted fill or scraped areas."

5.2 Comment: One Acre (Timmons)

Concerned with one-acre minimum lot size.

5.2 Department Response: Thank you for your comment. Variance from this requirement may be requested from the permitting authority in accordance with NDAC 33.1-21-01-15.

5.3 Comment: Abandoned Tanks (Hovdenes, Schimelfenig)

Add option to remove old tank, leaving old tank in place leads to places for snakes to hibernate.

5.3 Department Response: Thank you for your comment. Removal of tank was added as an option in NDAC 33.1-21-01-07(6). The department determined that crushing and backfilling are still viable options.

5.4 Comment: Approved Materials List (Bata, Hovdenes, Tarno)

The department should maintain and publish a statewide approved material list.

5.4 Department Response: Thank you for your comment. Any materials used in installation of a system must meet the minimum design standards laid out in this chapter. Materials other than specified in this chapter must be approved by the permitting authority per NDAC 33.1-21-01-07(10)

5.5 Comment: Alarms (Anderson, Heger)

Alarm systems should require both audible and visual alarms.

5.5 Department Response: Alarms

Thank you for your comment. This is a performance standard. The requirement for systems utilizing power to have an alarm system is a performance standard. Additional guidance on how to meet this performance standard will be included in the technical guidance. Refer to response 1.4.

5.6 Comment: Site Evaluation (Bata, Heger, Tarno)

Add building type; water supply; easements; floodplain; high water level (if adjacent); Township section range or 911 address; to required information for site evaluations. Recommend including color, texture and structure.

5.6 Department Response: Thank you for your comment. NDAC 33.1-21-01-07(13) states that "All preliminary evaluation reports for proposed sites for the soil treatment area must include, at minimum, the following information:" and includes the following: latitude and longitude in decimal degrees; depth to seasonal high water table, bedrock, and other limiting conditions; soil assessment per NDAC 33.1-21-01-09; slope; existence of lowlands, depressions, rock outcrops; surface water drainage patterns; building location and types being served by the system; water supply source and location; easements; floodplain status; and all legal setback requirements. Soil condition requirements are found in NDAC 33.1-21-01-09(2)(b).

5.7 Comment: Buoyancy Protection (Anderson, Heger)

The requirement for buoyancy protection (The tank must be protected against floatation under high water table conditions) should apply to all systems, not just flood prone areas.

5.7 Department Response: Thank you for your comment. Protection against flotation was moved to from "Flood Prone Areas" to "General Requirements" and NDAC 33.1-21-01-07(8) was updated to read, "Buried system components, including the septic tank, must be protected against flotation under high water table conditions. This must be achieved by weight of the component, earth anchors, or shallow bury depths."

5.8 Comment: Flood Prone Areas – Highest Point (Hovdenes, Schimelfenig)

Requirement that the soil treatment area be located on the "highest feasible area of the lot," may unnecessarily restrict drain field placement.

5.8 Department Response: Thank you for your comment. This requirement is for flood prone areas. The term "feasible" recognizes that site-specific constraints may limit placement options.

5.9 Comment: Flood Prone Areas – Disable Pump (Hovdenes)

Clarification on how to disable pumping station during inundation.

5.9 Department Response: Thank you for your comment. Disabling the pumping station may be accomplished through electrical controls, shutoff devices, or other appropriate design features. Refer to response 1.4.

5.10 Comment: Flood Prone Areas – Back Flow Prevention (Hovdenes)

Back flow prevention belongs in plumbing code.

5.10 Department Response: Thank you for your comment. This requirement stating "the sewer must be designed to prevent back flow of liquid into the building when the system is inundated" has been removed.

5.11 Comment: Flood Prone Areas – Inspection Pipes (Bata, Tarno)

Add requirements for flood-prone areas, including (1) prohibiting inspection pipes and other openings from the distribution media to the soil surface and (2) prohibiting inspection pipes unless the top of the mound is above the 100-year flood elevation.

5.11 Department Response: Thank you for your comment. NDAC 33.1-21-01-13(2)(o) describes the requirements for inspection pipes for soil treatment areas including mound systems.

5.12 Comment: Flood Prone Areas – Floodplain Ordinances (Bata, Tarno)

Add language regarding compliance with floodplain ordinances.

5.12 Department Response: Thank you for your comment. NDCC 61-16.2 addresses floodplain ordinances and permissible uses of floodways. This is out of the scope of these rules.

5.13 Comment: Flood Prone Areas – Mound Placement (Bata, Tarno)

Require mound be placed ½ foot above 10-year flood elevation.

5.13 Department Response: Thank you for your comment. Unlike the 100-year floodplain, which is often mapped by Federal Emergency Management Agency through Flood Insurance Rate Maps (FIRMs), the 10-year flood elevation is rarely mapped for most locations.

5.14 Comment: Setbacks (Schimelfenig)

How will the ordinary high water mark be determined?

5.14 Department Response: Thank you for your comment. Ordinary high water mark determination guidance can be found in NDCC 61-33-01.1.

5.15 Comment: Existing Systems (Bata, Tarno)

Clarify the treatment of existing onsite wastewater systems, including previously approved systems, nonconforming systems, unpermitted systems, systems with surface discharges, and when existing systems must be brought into compliance with current requirements.

5.15 Department Response: Thank you for your comment. A system must generally be brought up to current code during major renovations, change in design flow, or system failure. Otherwise, existing systems are typically "grandfathered", meaning they only needed to comply with the code that was active at the time they were installed. Surface discharges are prohibited.

5.16 Comment: Maintenance (Anderson, Heger)

Add a requirement for system operation and maintenance agreements.

5.15 Department Response: Thank you for the comment. NDCC 23.1-07.1 limits the department's rulemaking authority to licensing, permitting and inspections of onsite wastewater treatment systems. System operation and maintenance are outside the scope of these rules.

6. Comments related to Chapter 33.1-21-01-08. General Prohibitions

6.1 Comment: Floor Drains (Beaudoin)

Clarify that shops mean commercial shops or buildings.

6.1 Department Response: Thank you for your comment. NDAC 33.1-21-01-08(2) has been revised from "Floor drains in shops may not be connected to a system" to "Water from building

footings, sump pumps, drain tile, pools or pool filters, hot tubs, backwash from water treatment devices, or garage or shop drains may not enter the system". Septic systems are designed to process specific daily volumes of wastewater. Large amounts of water from floor washing, melting snow, or sump pumps can easily flood the tank and carry solid waste out into the leach field, destroying it.

6.2 Comment: Wet Conditions (Heger)

Add "as defined by the plastic limit test" to NDAC 33.1-21-01-08(6).

6.2 Department Response: Thank you for your comment. The department made this addition. NDAC 33.1-21-01-08(6) now reads "A soil treatment area may not be installed during wet conditions or other conditions by which the soil would become smeared during construction as defined by the plastic limit test."

6.3 Comment: Easement Required (Schimelfenig)

Request explanation of NDAC 33.1-21-01-08(8).

6.3 Department Response: Thank you for the comment. The prohibition ensures that the land the system is located on and the land that the dwelling or building serviced by the system is located on are legally connected.

7. Comments related to Chapter 33.1-21-01-09. Procedures for Soil Determination and Material Acceptability

7.1 Comment: Soil Assessment (Anderson, Bata, Clark, Heger, Hovdenes, Tarno)

Requirement to have a registered professional soil classifier will add an unnecessary cost to homeowners. All individuals performing soil assessments should meet the same training and qualification requirements, and soil testing needs to be done by certified soil tester or properly trained and educated personnel.

7.1 Department Response: Thank you for your comment. Soil Assessment is an essential part of site evaluation when designing a system. Soils can be assessed by either a professional soil classifier or a licensed installer with a soil assessment endorsement or the permitting authority or an authorized representative of the permitting authority. These options allow for flexibility for both the installers and the permitting authority when it comes to soil assessment. Refer to responses 2.2 and 3.4.

7.2 Comment: Soil Test Locations (Anderson, Heger)

A minimum of three test locations including the worst area on the site.

7.2 Department Response: Thank you for your comment. At least one soil exploration pit or boring is essential, more borings/pits can occur as needed. If the system won't be located in the worst area, there is no need to test at this location.

7.3 Comment: Soil Description (Anderson, Heger)

The soil observation should include texture, structure, and color.

7.3 Department Response: Thank you for your comment. NDAC 33.1-21-01-09(2)(b) has been revised to state "A soil description must be recorded by depth and notations made where texture, structure, and color changes occur..."

7.4 Comment: Limiting Factors (Hovdenes)

The first occurrence of mottling is not always the highest notable water table.

7.4 Department Response: Thank you for your comment. The department replaced "mottling" with "redoximorphic features". NDAC 33.1-21-01-09(2)(c) now reads "Measurements must be made to determine the depth to the limiting factor. This includes the highest notable water table by recording the first occurrence of redoximorphic features observed in the soil boring or excavation as well as identifying active redoximorphic features, if present."

7.5 Comment: Procedures for Soil Determination (Schmidt)

Strike section 33.1-21-01-09 Procedures for Soil Determination in its entirety, remove the requirement for who can perform the soil evaluation, and request that soil borings and percolation tests are conditional requirements.

7.5 Department Response: Thank you for your comment. NDAC 33.1-21-01-09(3) was edited to clarify that percolation tests may not be required. Refer to responses 2.2 and 7.1.

8. Comments related to Chapter 33.1-21-01-10. Design Flows

8.1 Comment: Design Flows for mixed use facilities (Heger)

Mixed-use facilities will require agreement on flows.

8.1 Department Response: Thank you for your comment. NDAC 33.1-21-01-10 states that "Design flows are additive based on all proposed types of occupancy at full capacity." This accounts for mixed-use facilities.

8.2 Comment: Design Flows, Table II (Bata, Heger, Hovdenes, Schmidt, Tarno)

Design Flows found in Table II should differentiate high strength waste and not include pet hair issues.

8.2 Department Response: Thank you for your comment. The differences associated with wastewater strength are of particular importance for non-residential facilities. All else being equal, a soil absorption field will clog more quickly when a stronger wastewater effluent is introduced for dispersal as compared to common residential strength wastes. To account for a possible high strength wastewater and the resulting increase in the rate of soil clogging, NDAC 33.1-21-01-10 Table II lists a design loading rate that is higher in volume of wastewater normally expected to be generated per use. This design loading rate results in the construction of a larger absorption field than would be associated with just using hydraulic loading calculations only. The intended result is the installation of an absorption field having approximately the same life expectancy of a residential system.

Revisions to NDAC 33.1-21-01-10 Table II were made to clarify that discharges from non-domestic sources such as process waste, industrial waste, microbreweries, dog kennels, veterinary clinics, horse barns, etc. are not addressed in this regulation. Such discharges must register as a Class V Injection Well.

8.3 Comment: High Strength (Anderson, Bedard, Heger, Otterness)

Differentiate domestic and high strength wastewater and add additional treatment measures for high strength wastewater.

8.3 Department Response: Thank you for your comment. Refer to response 8.2.

9. Comments related to Chapter 33.1-21-01-11. Design and Construction Requirements for Septic Tanks

9.1 Comment: Tank Certification (Anderson)

Septic tanks should meet recognized certification standards.

9.1 Department Response: Thank you for your comment. NDAC 33.1-21-01-11 provides design requirements for septic tanks.

9.2 Comment: Effluent Filter (Heger, Timmons)

Effluent Filter should be certified to the standard NSF 46. Effluent filters are unnecessary.

9.2 Department Response: Thank you for your comment. The definition for effluent filter was added to NDAC 33.1-21-01-03. Effluent filters are only required when an ejector pump, grinder pump, garbage disposal, or non-clog pump is proposed for use prior to the septic tank, or when the system utilizes a pressurized soil treatment area as stated in NDAC 33.1-21-01-11(h).

9.3 Comment: Tank Capacity (Bata, Bedard, Schmidt, Tarno)

Larger required capacities for commercial system septic tanks to accommodate peak flow and provide additional storage. Larger septic tank sizes for systems with ejector or grinder pumps should apply to commercial systems also.

9.3 Department Response: Thank you for your comment. Please refer to response to comment 8.2. NDAC 33.1-21-01-10 Table II lists a design loading rate that is higher in volume of wastewater normally expected to be generated per use. This design loading rate results in larger septic tanks also.

9.4 Comment: Baffles (Hovdenes, Otterness, Schimelfenig)

Design configuration requirements of septic tank inlets and outlets. Change requirement for Baffles to be integrally cast with the tank and permanently fixed to securely attached to tank.

9.4 Department Response: Thank you for your comment. NDAC 33.1-21-01-11(3)(c)(1) has been revised to state "Sanitary tees and baffles must be permanently and securely attached to the tank."

9.5 Comment: Entrapment Protection (Anderson, Bata, Heger, Otterness, Tarno, Windsor)

Add requirements for safely securing covers and secondary fall protection.

9.5 Department Response: Thank you for your comment. NDAC 33.1-21-01-11(4) has been revised to include a secondary fall protection requirement for new septic tanks. The requirement to safely secure covers is a performance standard. Additional guidance on how to meet this performance standard will be included in the technical guidance. Refer to response 1.4.

9.6 Comment: Tank Design (Bata)

Ensure there are tanks in production that meet the rules and that rules are based on current standards to ensure tanks are properly retaining solids, build to withstand elements etc.

9.6 Department Response: Thank you for your comment. Minimum required design standards for standards are found in NDAC 33.1-21-01-11. To utilize tanks that do not meet these standards, a request for variance following NDAC 33.1-21-01-13 can be submitted.

10. Comments related to Chapter 33.1-21-01-12. Piping, Distribution, and Dosing of Wastewater Effluent

10.1 Comment: Pipe Material (Beaudoin)

Problems with schedule 40 pipe should be able to use 3034.

10.1 Department Response: Thank you for your comment. The proposed 3034 pipe does not meet the strength requirement of schedule 40.

10.2 Comment: Supply Pipe Cleanout (Bata, Tarno)

Add access for cleanouts shall be provided on the supply pipe.

10.2 Department Response: Thank you for your comment. A requirement for supply pipe to have access for cleanouts was added to NDAC 33.1-21-01-12(1).

10.3 Comment: Distribution Method (Hovdenes)

Should include parallel distribution as an option.

10.3 Department Response: Thank you for your comment. Parallel distribution is only used when serial distribution is not an option due to site limitations. Parallel distribution spreads the effluent equally between all the trenches, which can limit the development of a biomat. NDAC 33.1-21-01-12(3)(a) was updated to include the following "If the necessary elevation differences between trenches for serial distribution is unachievable, parallel distribution must be used."

10.4 Comment: Distribution (Anderson, Heger)

Distribution boxes or drop boxes should be required to help system distribute wastewater evenly. Distribution boxes should be installed with speed levelers to adjust for even distribution.

10.4 Department Response: Thank you for your comment. NDAC 33.1-21-01-12(3)(c)(d) was revised to state "c. Distribution boxes must...(3) Have the invert and all outlets set and maintained at the same elevation set with speed levelers."

10.5 Comment: Distribution Orifices (Bata, Tarno)

Provide a table showing required orifice sizes, spacing, and flow.

10.5 Department Response: Thank you for your comment. Refer to response 1.4.

10.6 Comment: Dosing pump discharge line (Heger)

Add that the dosing pump discharge line requires a pressure-rated fitting (threaded union or cam lock).

10.6 Department Response: Thank you for your comment. A requirement for the pump discharge line to have a pressure-rated fitting (threaded union or cam lock) was added to NDAC 33.1-21-01-12(5)(a).

10.7 Comment: Entrapment Protection (Bata, Tarno)

The dosing chamber “covers safely secured” needs to be further defined for safety.

10.7 Department Response: Thank you for your comment. Refer to response 9.6.

10.8 Comment: Dosing Chamber (Heger)

This requirement does not apply to OWTS in all instances. Dosing could be to a media filter or ATU, where a dose of 75 gallons does not make sense. If dosing to a soil treatment area, the max is 25% of the design flow, and the minimum is based on the laterals.

10.8 Department Response: Thank you for your comment. The department removed the minimum dosing volume of 75 gallons. This change is consistent with surrounding state regulations.

10.9 Comment: Pumps (Hovdenes, Schimelfenig)

Why limit gravity distribution pump discharges rates between 10 gallons and 45 gallons per minute?

10.9 Department Response: Thank you for your comment. The gallons per minute limits ensure that effluent reaches the distribution box in sufficient quantity without overwhelming it or causing scouring in the distribution lines. Pumps must have limits so they cannot hydraulically overload the drainfield. Refer to response 6.1.

11. Comments related to Chapter 33.1-21-01-13. Soil Treatment Area

11.1 Comment: Sizing (Anderson, Heger, Schmilfenig)

Dosing requirements should allow flexibility for different system types and advanced treatment units. Allow NSF standard 40 systems to be utilized with a reduction in the required square footage. Chambers should be allowed a reduction in sizing.

11.1 Department Response: Thank you for your comment. Variance from this requirement may be requested from the permitting authority in accordance with NDAC 33.1-21-01-15.

11.2 Comment: Soil Classification (Anderson, Heger)

Should allow soil descriptions instead of relying mainly on perc tests. Add a second chart with texture/structure.

11.2 Department Response: Thank you for your comment. NDAC 33.1-21-01-13(1) Table III was updated to include United States Department of Agriculture (USDA) soil structure type and grade in addition to USDA soil texture. Percolation tests are not required. System absorption

area and mound absorption ratio must be sized using the USDA soil texture and structure or percolation rate. Refer to response 1.4.

11.3 Comment: Loading Rate (Bata, Hovdenes, Schimelfenig, Schmidt, Tarno)

Replace NDAC 33.1-21-01-13(1) Table III with a table that cross-references USDA soil texture classes, percolation rates, and loading rates. Need to add sizing for depth of rock for sidewall allowances.

11.3 Department Response: Thank you for your comment. NDAC 33.1-21-01-13(1) Table III has been revised and includes USDA soil texture, USDA soil structure type and grade, percolation rate of original soil, loading rate and absorption ratio. Additional sidewall allowances for deeper rock or high-capacity chambers are not included.

11.4 Comment: Soils used for Loading Rate (Hovdenes)

Recommends changing using the soil between the bottom of the soil treatment area and the limiting factor to the soil profiles within the trench because if the restricting layer is several feet from disposal area the wrong soil loading rate could be used.

11.4 Department Response: Thank you for your comment. NDAC 33.1-21-01-09(2)(a) was updated to require that soil boring or excavations must be to any limiting layer, groundwater condition, or four feet below the infiltrative surface of the in-situ soil. Additionally, NDAC 33.1-21-01-13(2)(b) was revised to include that the soil loading rate must be determined by the soil between the bottom of the soil treatment area and the bottom of the soil boring or excavation, using the most restrictive layer as the soil loading rate.

11.5 Comment: Vertical Separation (Bata, Otterness, Tarno)

Vertical separation must be at least thirty-six inches. A spelling error was noted in NDAC 33.1-21-01-13(2)(c).

11.5 Department Response: Thank you for your comment. Available research supports effective treatment within the proposed twenty-four-inch vertical separation distance. Increasing the vertical separation distance has potential to limit system design options without a corresponding demonstrated benefit.

11.6 Comment: Gravity in high perc soils (Bedard)

Delete NDAC 33.1-21-01-13(2)(d)(2). No basis for allowing gravity trenches reduced to not more than 15% of total lineal length except to incentivize the better pressure treatment option.

11.6 Department Response: Thank you for your comment. The department has removed the option for trenches or seepage beds with a percolation rate of one-tenth of a minute to five minutes to divide the total dispersal area into multiple units that employ serial distribution, with

each dispersal unit having not greater than fifteen percent of the required bottom absorption area. The options left include pressure distribution or vertical separation distance of at least 5 feet.

11.7 Comment: Vertical Separation in high perc soils (Hovdenes, Schimelfenig, Tarno)

Vertical separation in high perc soils should be three feet.

11.7 Department Response: Thank you for your comment. The requirement to have five feet of vertical separation is to provide adequate treatment in soils where wastewater can move rapidly through the soil profile. Because the rule also allows for pressure distribution, the department did not identify sufficient technical justification to reduce the five-foot vertical separation option to three feet.

11.8 Comment: Soil Moisture (Anderson)

Installation requirements should better address soil moisture and prevent system failures caused by poor construction practices

11.8 Department Response: Thank you for your comment. NDAC 33.1-21-01-13(2)(i) states that excavation must occur when the soil moisture content is less than or equal to the plastic limit.

11.9 Comment: Trench Depth (Timmons)

Should allow for deeper trench depth.

11.9 Department Response: Thank you for your comment. The maximum depth of four feet is needed to ensure the wastewater effluent receives sufficient oxygen for aerobic bacterial breakdown.

11.10 Comment: Trench (Heger)

Replace the word lateral with trenches in NDAC 33.1-21-01-13(2)(k).

11.10 Department Response: Thank you for your comment. The department determined that the use of the word lateral was correct and no change was made.

11.11 Comment: Distribution Media (Otterness)

Revise NDAC 33.1-21-01-13(2)(m) to clarify drainfield rock requirements and allow for other distribution media.

11.11 Department Response: Thank you for your comment. "Drainfield rock" was replaced with "distribution media" in NDAC 33.1-21-01-13(2)(m).

11.12 Comment: Inspection Pipes (Hovdenes)

Inspection pipes could be under four-inch diameter in certain products such as chambers.

11.12 Department Response: Thank you for your comment. The department determined that inspection pipes should not be smaller than four inches in diameter. No changes were made.

11.13 Comment: Vegetative Cover (Schmidt)

Vegetative cover is a landscaping statement and should possibly remove from code.

11.13 Department Response: Thank you for your comment. An appropriate vegetative cover is necessary to stabilize and protect the site.

11.14 Comment: Trench Spacing (Hovdenes, Schimelfenig)

Trench spacing should be six feet center to center, ten feet on slopes is not needed.

11.14 Department Response: Thank you for your comment. The department has reviewed the documentation provided and determined that additional separation on sites exceeding 6% is appropriate. No change was made.

11.15 Comment: At-Grade System (Bata, Heger)

There are many pieces in NDAC 33.1-21-01-13(5) missing. The width is determined using the contour loading rate is 1-12 gallons per foot, not to exceed 15 feet.

11.15 Department Response: Thank you for your comment. General requirements apply to all systems. NDAC 33.1-21-01-13(2) was revised to include contour loading rate.

11.16 Comment: Mounds on Slopes (Anderson, Heger)

Mound systems should be allowed on steeper slopes where conditions allow.

11.16 Department Response: Thank you for your comment. Slopes over twelve percent would require a variance in accordance with NDAC 33.1-21-01-15.

11.17 Comment: Surface Preparation (Heger, Hovdenes, Schimelfenig)

Clarify conditions where soil can be plowed or roughened. Remove plowed.

11.17 Department Response: Thank you for your comment. NDAC 33.1-21-01-13(6)(f)(2) has been revised to replace “plowed or roughened” with “scarification”. This section was also updated to clarify when soil can be scarified.

11.18 Comment: Mound Distribution (Bata, Otterness)

Clarify design specifications when drainfield rock is used as the distribution medium in a mound system.

11.18 Department Response: Thank you for your comment. NDAC 33.1-21-01-13(6)(j)(4) has been revised to state “when using drainfield rock as the distribution medium, a depth of at least nine inches of distribution media must be placed over the bed area below the distribution pipe.”.

11.19 Comment: Mound (Heger, Otterness)

Remove section NDAC 33.1-21-01-13(6)(j)(9)

11.19 Department Response: Thank you for your comment. This section was removed to avoid confusion. Additional guidance for mound construction will be provided in the technical manual. Refer to response 1.4.

11.20 Comment: Mound Sands (Anderson)

Very difficult to find sand with 2% fines, hard to find better than 10%.

11.20 Department Response: Thank you for your comment. Clean sand must conform to ASTM International Standard C-33.

12. Comments related to Chapter 33.1-21-01-14. Inspection

12.1 Inspection Deficiencies (Bata, Tarno)

Property owners, building contractors, plumbing contractors, and installers are individually responsible for compliance with these regulations. Installers will make corrections to deficiencies noted during inspections.

12.1 Department Response: Thank you for your comments. NDAC 33.1-21-01 regulates the licensing, permitting, and installation of onsite wastewater treatment systems by licensed installers. During installation inspections, the permitting authority will identify any deficiencies for correction by the installer, in accordance with NDAC 33.1-21-01-14.

12.2 Inspection Timing (Windsor)

With inspections required within 24-hours, add language that inspections can be done physically or virtually.

12.2 Department Response: Thank you for your comment. NDCC 23-35-02(2)(c)(3) allows required inspections to be conducted in-person or virtually.

13. Comments related to Chapter 33.1-21-01-15. Variance

13.1 Comment: Local Authority (Tarno)

Reinstate the previous draft language allowing the permitting authority to impose additional conditions. This gives flexibility for site-specific issues.

13.1 Department Response: Thank you for your comment. NDAC 33.1-21-01-15 allows for flexibility when it comes to site-specific issues.

14. Additional Comments

14.1 Comment: Affordability (Erickson)

Allow flexibility for a phased approach to install an affordable system that can be expanded later.

14.1 Department Response: Thank you for your comment. Systems must be sized using estimated wastewater flows for all proposed occupancies at full capacity. Allowing systems to be initially undersized with the expectation of future expansion could result in insufficient treatment capacity and increased risk of system failure.

14.2 Comment: Alternative Methods (Bata, Tarno, Windsor)

Clarify the regulation and permitting of alternative wastewater collection and disposal methods, including holding tanks, chemical toilets, and privies.

14.2 Department Response: Thank you for your comment. NDCC 23.1-07.1 limits the department's rulemaking authority to onsite wastewater treatment systems. Regulation of alternative methods, where applicable, falls under other authorities, regulations (such as the North Dakota Plumbing Code) or guidance.

14.3 Comment: Century Code (Hovdenes)

NDCC 23-35-02 was to be eliminated with this new legislation. The onsite wastewater recycling technical committee was to be terminated. This line should be removed from the code. Concern that this could allow permitting authorities to be the sole individual determining the soils in a health unit.

14.3 Department Response: Thank you for your comment. The statutory citation in 33.1-21-01-09(1)(c) was reviewed for accuracy and reflection of current law. NDCC 23-35-02(2)(c)(3) recognizes the role of permitting authorities and their authorized representatives. Refer to response 2.2.

14.4 Comment: Complaints (Bata, Tarno)

Clarify the regulation of existing onsite wastewater systems, including previously approved systems, unpermitted systems, systems with surface discharges, and systems encountered during property transfers.

14.4 Department Response: Thank you for your comment. The department's authority is limited to establishing rules for the licensing, permitting, and inspection of onsite wastewater treatment systems. Evaluation of existing systems, surface discharges, nuisance conditions, and potential threats to public health or the environment may be addressed by the applicable public health unit under its environmental public health authorities. Surface discharges are prohibited. Refer to response 5.15.

14.5 Comment: Effective Date (Anderson, Bata, Heger, Tarno)

Recommend setting the rules to take effect January 1, 2027.

14.5 Department Response: Thank you for your comment. The schedule for implementation of these rules was based on factors such as the Legislative Council process. The department determined that an implementation date of October 1, 2026 allows for a more practical response. This date provides certainty in the requirements well before the start of the next installation season.

14.6 Comment: Emergency Repairs (Erickson)

Request emergency repair provisions that would allow contractors to immediately repair failed septic tanks, drainfields, or sewer piping and restore service quickly.

14.6 Department Response: Thank you for your comment. Options exist to temporarily collect wastewater during the process. Permitting and inspection requirements for repairs ensure they are properly designed and installed to reduce the likelihood of recurring system failures. Refer to response 4.1.

14.7 Comment: Installer Compliance (Tarno, Bata, Beaudoin)

Define process for addressing installer noncompliance.

14.7 Department Response: Thank you for your comment. NDCC 23.1-07.1-07 lays out the enforcement process for noncompliance for violations of NDAC 33.1-21-01. The permitting authority may have their own enforcement management system for permit noncompliance.

14.8 Comment: New Technologies (Bata, Tarno, Windsor)

How will new technologies and alternative soil treatment methods not specifically addressed in the rules be approved for use in North Dakota?

14.8 Department Response: Thank you for your comment. The department recognizes that new technologies and treatment methods may emerge over time and will consider such technologies upon request for review. Systems using new technologies remain subject to applicable permitting authority in accordance with state law and rule.

14.9 Comment: Property Transfer (Anderson, Heger, Bata, Tarno)

When a property is transferred, tanks should be pumped, the system should be inspected, and brought into compliance, if necessary.

14.9 Department Response: Thank you for your comments. NDCC 23.1-07.1-04(3) gives the department authority to require inspections of an installation. The permitting authority or authorized representative may inspect existing systems as requested. While pumping and inspecting systems during property transfers is best practice, the department's authority only extends to the licensing, permitting, and inspection of systems. Refer to responses 14.4 and 5.15.

14.10 Comment: Protection (Anderson, Heger)

Require protection of primary and replacement septic system areas during and after construction to prevent compaction and other damage from construction activities.

14.10 Department Response: Thank you for your comment. The proposed rules contain requirements intended to prevent soil compaction and disturbance and require establishment of vegetative cover following installation. The department has determined that these provisions adequately address protection of onsite wastewater treatment system areas.

14.11 Comment: Scope of Impact (NDOWRA)

Maintain reasonable and practical requirements for licensed installers.

14.11 Department Response: Thank you for your comment. The department considered the potential impacts of the proposed rules during their development, incorporated stakeholder input and public comments, and sought to establish requirements that protect public health and the environment while remaining practical and implementable.