

**CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY**

Section	
33-15-15-01	General Provisions [Repealed]
33-15-15-01.1	Purpose
33-15-15-01.2	Scope
33-15-15-02	Reclassification

33-15-15-01. General provisions. Repealed effective February 1, 2005.

33-15-15-01.1. Purpose. The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

History: Effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa), and (bb) as they exist on January 1, 2012, are incorporated by reference into this chapter. This includes revisions to the rules that were published as a final rule in the Federal Register by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

- (b)(17) - Definition of federally enforceable.
- (b)(37)(i) - Definition of repowering.
- (b)(43) - Definition of prevention of significant deterioration.
- (b)(48)(ii)(c) - Definition of baseline actual emissions.
- (b)(50)(i) - Definition of regulated NSR pollutant.
- (1)(2) - Air quality models.
- (p)(2) - Consultation with the federal land manager.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

- 40 CFR
52.21(b)(2)(iii)(a) The following is deleted:
Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc).
- 40 CFR
52.21(b)(3)(iii)(a) The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the United States environmental protection agency".
- 40 CFR
52.21(b)(14) The following is added:

(v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
- 40 CFR
52.21(b)(15) The following is added:

(iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).
- 40 CFR
52.21(b)(22) The following is added:

Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
- 40 CFR
52.21(b)(29) The following is added:

This term does not include effects on integral vistas.
- 40 CFR
52.21(b)(30) The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".
- 40 CFR
52.21(b)(43) The paragraph is deleted in its entirety and replaced with the following:

Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the United States environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.

40 CFR
52.21(b)(48)(ii) The following words are deleted: "by the administrator for a permit required under this section or".

40 CFR
52.21(b)(49) The following words are deleted "administrator in subchapter C of this chapter" and replaced with the following:

Administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I subchapter C.

40 CFR
52.21(b)(49)(i) "§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR 86.1818-12(a).

40 CFR
52.21(b)(49)(ii)(a) "Table A-1 to subpart A of part 98 of this chapter" is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.

40 CFR
52.21(b)(50)(i)(c) This paragraph is deleted in its entirety and replaced with the following:

Nitrogen oxides are a precursor to PM_{2.5} in all attainment and unclassifiable areas.

40 CFR
52.21(b)(50)(i)(d) This paragraph is deleted in its entirety and replaced with the following:

Volatile organic compounds are not a precursor to PM_{2.5} in any attainment or unclassifiable areas.

40 CFR
52.21(b)(51) The paragraph is deleted in its entirety and replaced with the following:

Reviewing authority means the department.

40 CFR
52.21(b)(53) This paragraph is deleted in its entirety and replaced with the following:

Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.

40 CFR 52.21(b)(54) This paragraph is deleted in its entirety and replaced with the following:

Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b)(58) This paragraph is deleted in its entirety.

40 CFR 52.21(d) The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed:

- (1) The concentration permitted under the national primary and secondary ambient air quality standards.
- (2) The concentration permitted by the ambient air quality standards in chapter 33-15-02.

40 CFR 52.21(e) The following is added:

- (5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

40 CFR 52.21(h) The paragraph is deleted and replaced with the following:

The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.

40 CFR 52.21(i) The following subparagraphs are added:

- (11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.
- (12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1) This subparagraph is deleted and replaced with the following:

- (1) Any national ambient air quality standard or any standard in chapter 33-15-02.

40 CFR
52.21(l)(1)

This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on January 1, 2012) as supplemented by department guidance. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

40 CFR
52.21(m)(3)

"Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.

40 CFR
52.21(p)(6)

"paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)".

40 CFR
52.21(p)(7)

"paragraph (q)(7)" is replaced with "paragraph (p)(7)".

40 CFR
52.21(p)(8)

"paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".

40 CFR 52.21(p)

The following is added:

- (9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.

40 CFR 52.21(q)

This paragraph is deleted and replaced with the following:

q. Public participation.

- (1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant

as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

- (2) With respect to a completed application, the department shall:
 - (a) Within one year after receipt, make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
 - (b) Make available, in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.
 - (c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least thirty days for public comment.
 - (d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.
 - (e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists

or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

- (f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than thirty days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department may extend the time to respond to comments based on a written request by the applicant. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.
- (g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
- (h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

40 CFR 52.21(r)(2)

The following is added:

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(v)(1)

This subparagraph is deleted and replaced with the following:

- (1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR
52.21(v)(2)(iv)(a)

This subitem is deleted and replaced with the following:

- (a) Cause or contribute to a violation of an applicable national ambient air quality standard or any ambient air quality standard in chapter 33-15-02; or

40 CFR
52.21(w)(1)

This subparagraph is deleted and replaced with the following:

- (1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

40 CFR
52.21(aa)(15)

This paragraph is deleted in its entirety

History: Effective February 1, 2005; amended effective April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-02. Reclassification.

1. **Reclassification of areas.** All areas (except as otherwise provided under 40 CFR 52.21(e)) must be designated either class I, class II, or class III. Any designation other than class II is subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by 40 CFR 52.21(e)) is subject to approval by the administrator of the United States environmental protection agency.

a. **Reclassification by petition.**

(1) **Filing of petition.** After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.

(2) **Contents of petition.** The petition to reclassify any area to either class I, class II, or class III must contain a legal