

- (1) The levels of constituents in appendix V of chapter 33-24-02, that are present in normal residues; and
- (2) Data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

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~~33-24-05-545. [Reserved]~~

~~33-24-05-546. [Reserved]~~

~~33-24-05-547. [Reserved]~~

~~33-24-05-548. [Reserved]~~

~~33-24-05-549. [Reserved]~~

33-24-05-550. Applicability of corrective action management unit (CAMU) regulations.

1. Except as provided in subsection 2, corrective action management units are subject to the requirements of section 33-24-05-552.
2. Corrective action management units that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the department on or before November 20, 2000, are subject to the requirements in section 33-24-05-551 for grandfathered corrective action management units; corrective action management unit waste, activities, and design will not be subject to the standards in section 33-24-05-552, so long as the waste, activities, and design

remain within the general scope of the corrective action management unit as approved.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-551. Grandfathered corrective action management units (CAMUs).

1. To implement remedies under section 33-24-05-58 or Resource Conservation and Recovery Act section 3008(h), or to implement remedies at a permitted facility that is not subject to section 33-24-05-58, the department may designate an area at the facility as a corrective action management unit under the requirements of this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A corrective action management unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the corrective action management unit originated. One or more corrective action management units may be designated at a facility.
 - a. Placement of remediation wastes into or within a corrective action management unit does not constitute land disposal of hazardous wastes.
 - b. Consolidation or placement of remediation wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.
2. The department may designate a regulated unit as a corrective action management unit in accordance with the following:
 - a. The department may designate a regulated unit (as defined in subdivision b of subsection 1 of section 33-24-05-47) as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:
 - (1) The regulated unit is closed or closing, meaning it has begun the closure process under section 33-24-05-62; and
 - (2) Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.
 - b. The sections 33-24-05-47 through 33-24-05-88 requirements and the unit-specific requirements of sections 33-24-05-01 through

33-24-05-190 and sections 33-24-05-300 through 33-24-05-559 that applied to that regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.

3. The department shall designate a corrective action management unit in accordance with the following:
 - a. The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;
 - b. Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;
 - c. The corrective action management unit may include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;
 - d. Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management unit, shall be managed and contained so as to minimize future releases, to the extent practicable;
 - e. The corrective action management unit shall expedite the timing of remedial activity implementation, when appropriate and practicable;
 - f. The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and
 - g. The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.
4. The owner or operator shall provide sufficient information to enable the department to designate a corrective action management unit in accordance with the criteria in section 33-24-05-552.

5. The department shall specify, in the permit or order, requirements for corrective action management units to include the following:
 - a. The areal configuration of the corrective action management unit.
 - b. Requirements for remediation waste management to include the specification of applicable design, operation, and closure requirements.
 - c. Requirements for ground water monitoring that are sufficient to:
 - (1) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit; and
 - (2) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective action management unit in which wastes will remain in place after closure of the corrective action management unit.
 - d. Closure and postclosure requirements.
 - (1) Closure of corrective action management units shall:
 - (a) Minimize the need for further maintenance; and
 - (b) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.
 - (2) Requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the department for a given corrective action management unit:
 - (a) Requirements for excavation, removal, treatment, or containment of wastes;
 - (b) For areas in which wastes will remain after closure of the corrective action management unit, requirements for capping of such areas; and

- (c) Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the corrective action management unit.
 - (3) In establishing specific closure requirements for corrective action management units under this subsection, the department shall consider the following factors:
 - (a) Corrective action management unit characteristics;
 - (b) Volume of wastes which remain in place after closure;
 - (c) Potential for releases from the corrective action management unit;
 - (d) Physical and chemical characteristics of the waste;
 - (e) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and
 - (f) Potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.
 - (4) Postclosure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.
6. The department shall document the rationale for designating corrective action management units and shall make such documentation available to the public.
 7. Incorporation of a corrective action management unit into an existing permit must be approved by the department according to the procedures for department-initiated permit modifications under section 33-24-06-12, or according to the permit modification procedures of section 33-24-06-14.
 8. The designation of a corrective action management unit does not change the department's existing authority to address cleanup levels,

media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-552. Corrective action management unit (CAMU).

1. To implement remedies under section 33-24-05-58 or Resource Conservation and Recovery Act section 3008(h), or to implement remedies at a permitted facility that is not subject to section 33-24-05-58, the department may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing corrective action management unit-eligible wastes for implementing corrective action or cleanup at the facility. A corrective action management unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the corrective action management unit originated. One or more corrective action management units may be designated at a facility.
 - a. Corrective action management unit-eligible waste means:
 - (1) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not corrective action management unit-eligible wastes.
 - (2) Wastes that would otherwise meet the description in paragraph 1 of subdivision a are not "corrective action management unit-eligible wastes" where:
 - (a) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other nonland-based units found aboveground, unless the wastes are first placed in the tanks, containers, or nonland-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or
 - (b) The department exercises the discretion in subdivision b to prohibit the wastes from management in a corrective action management unit.

- (3) Notwithstanding paragraph 1 of subdivision a, where appropriate, as-generated nonhazardous waste may be placed in a corrective action management unit where such waste is being used to facilitate treatment or the performance of the corrective action management unit.
- b. The department may prohibit, where appropriate, the placement of waste in a corrective action management unit where the department has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of sections 33-24-05-250 through 33-24-05-299, or applicable unit design requirements of sections 33-24-05-550 through 33-24-05-599, or applicable unit design requirements under subsection 5 of section 33-24-06-16, or that noncompliance with other applicable requirements of chapter 33-24-05 likely contributed to the release of the waste.
- c. Prohibition against placing liquids in corrective action management units.
 - (1) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any corrective action management unit is prohibited except where placement of such wastes facilitates the remedy selected for the waste.
 - (2) The requirements in subsection 4 of section 33-24-05-183 for placement of containers holding free liquids in landfills apply to placement in a corrective action management unit except where placement facilitates the remedy selected for the waste.
 - (3) The placement of any liquid which is not a hazardous waste in a corrective action management unit is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to subsection 6 of section 33-24-05-183.
 - (4) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with subsection 3 of section 33-24-05-183. Sorbents used to treat free liquids in corrective action management units must meet the requirements of subsection 5 of section 33-24-05-183.
- d. Placement of corrective action management unit-eligible wastes into or within a corrective action management unit does not constitute land disposal of hazardous wastes.

- e. Consolidation or placement of corrective action management unit-eligible wastes into or within a corrective action management unit does not constitute creation of a unit subject to minimum technology requirements.
2. Requirements for regulated units.
- a. The department may designate a regulated unit (as defined in subdivision b of subsection 1 of section 33-24-05-47) as a corrective action management unit, or may incorporate a regulated unit into a corrective action management unit, if:
 - (1) The regulated unit is closed or closing, meaning it has begun the closure process under section 33-24-05-62 or applicable requirements of subsection 5 of section 33-24-06-16; and
 - (2) Inclusion of the regulated unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.
 - b. The requirements of sections 33-24-05-47 through 33-24-05-88 and the unit-specific requirements of chapter 33-24-05 or applicable requirements of subsection 5 of section 33-24-06-16 that applied to the regulated unit will continue to apply to that portion of the corrective action management unit after incorporation into the corrective action management unit.
3. The department shall designate a corrective action management unit that will be used for storage or treatment, or both, only in accordance with subsection 6. The department shall designate all other corrective action management units in accordance with the following:
- a. The corrective action management unit shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;
 - b. Waste management activities associated with the corrective action management unit shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;
 - c. The corrective action management unit shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing corrective action management unit-eligible waste is more protective than management of such wastes at contaminated areas of the facility;
 - d. Areas within the corrective action management unit, where wastes remain in place after closure of the corrective action management

- unit, shall be managed and contained so as to minimize future releases, to the extent practicable;
- e. The corrective action management unit shall expedite the timing of remedial activity implementation, when appropriate and practicable;
 - f. The corrective action management unit shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the corrective action management unit; and
 - g. The corrective action management unit shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the corrective action management unit.
4. The owner or operator shall provide sufficient information to enable the department to designate a corrective action management unit in accordance with the criteria in this section. This must include, unless not reasonably available, information on:
 - a. The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal or release, or both);
 - b. Whether the waste was listed or identified as hazardous at the time of disposal or release, or both; and
 - c. Whether the disposal or release, or both, of the waste occurred before or after the land disposal requirements of section 33-24-05-250 through 33-24-05-299 were in effect for the waste listing or characteristic.
 5. The department shall specify, in the permit or order, requirements for corrective action management units to include the following:
 - a. The areal configuration of the corrective action management unit.
 - b. Except as provided in subsection 7, requirements for corrective action management unit-eligible waste management to include the specification of applicable design, operation, treatment, and closure requirements.

- c. Minimum design requirements. Corrective action management units, except as provided in subsection 6, into which wastes are placed must be designed in accordance with the following:
- (1) Unless the department approves alternate requirements under paragraph 2, corrective action management units that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a thirty-centimeter depth of leachate over the liner. For purposes of this paragraph, composite liner means a system consisting of two components; the upper component must consist of a minimum thirty mil flexible membrane liner, and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. Flexible membrane liner components consisting of high density polyethylene must be at least sixty mil thick. The flexible membrane liner component must be installed in direct and uniform contact with the compacted soil component; and
 - (2) Alternate requirements. The department may approve alternate requirements if:
 - (a) The department finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph 1 of subdivision c; or
 - (b) The corrective action management unit is to be established in an area with existing significant levels of contamination, and the department finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.
- d. Minimum treatment requirements. Unless the wastes will be placed in a corrective action management unit for storage or treatment, or both, only in accordance with subsection 6, corrective action management unit-eligible wastes that, absent this subdivision, would be subject to the treatment requirements of sections 33-24-05-250 through 33-24-05-299, and that the department determines contain principal hazardous constituents must be treated to the standards specified in paragraph 3.

- (1) Principal hazardous constituents are those constituents that the department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.
 - (a) In general, the department will designate as principal hazardous constituents:
 - [1] Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3} ; and
 - [2] Noncarcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.
 - (b) The department will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the department may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.
 - (c) The department may also designate other constituents as principal hazardous constituents that the department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.
- (2) In determining which constituents are "principal hazardous constituents", the department must consider all constituents which, absent this paragraph, would be subject to the treatment requirements in sections 33-24-05-250 through 33-24-05-299.
- (3) Waste that the department determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph 4 or 5.
- (4) Treatment standards for wastes placed in corrective action management units.
 - (a) For nonmetals, treatment must achieve ninety percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (e)(4)(iv)(C) of this section.

- (b) For metals, treatment must achieve ninety percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the toxicity characteristic leaching procedure) or ninety percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by subparagraph c.
 - (c) When treatment of any principal hazardous constituent to a ninety percent reduction standard would result in a concentration less than ten times the universal treatment standard for that constituent, treatment to achieve constituent concentrations less than ten times the universal treatment standard is not required. Universal treatment standards are identified in section 33-24-05-288 table UTS.
 - (d) For waste exhibiting the hazardous characteristic of ignitability, corrosivity, or reactivity, the waste must also be treated to eliminate these characteristics.
 - (e) For debris, the debris must be treated in accordance with section 33-24-05-285, or by methods or to levels established under subparagraphs a through d, whichever the department determines is appropriate.
 - (f) Alternatives to toxicity characteristic leaching procedure. For metal-bearing wastes for which metals removal treatment is not used, the department may specify a leaching test other than the toxicity characteristic leaching procedure (SW-846 method 1311) to measure treatment effectiveness, provided the department determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.
- (5) Adjusted standards. The department may adjust the treatment level or method in paragraph 4 to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:
- (a) The technical impracticability of treatment to the levels or by the methods in paragraph 4;
 - (b) The levels or methods in paragraph 4 would result in concentrations of principal hazardous constituents

that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

- (c) The views of the affected local community on the treatment levels or methods in paragraph 4 as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;
- (d) The short-term risks presented by the onsite treatment method necessary to achieve the levels or treatment methods in paragraph 4;
- (e) The long-term protection offered by the engineering design of the corrective action management unit and related engineering controls:
 - [1] Where the treatment standards in paragraph 4 are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility;
 - [2] Where cost-effective treatment has been used and the corrective action management unit meets the article 33-24 liner and leachate collection requirements for new land disposal units at subsection 3 or 4 of section 33-24-05-177;
 - [3] Where, after review of appropriate treatment technologies, the department determines that cost-effective treatment is not reasonably available, and the corrective action management unit meets the article 33-24 liner and leachate collection requirements for new land disposal units at subsection 3 or 4 of section 33-24-05-177;
 - [4] Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or
 - [5] Where, after review of appropriate treatment technologies, the department determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the corrective action management unit meets or exceeds the liner standards for new, replacement, or laterally expanded corrective

action management units in paragraphs 1 and 2 of subdivision c, or the corrective action management unit provides substantially equivalent or greater protection;

- (f) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the corrective action management unit; and
 - (g) For the purpose of determining whether wastes placed in corrective action management units have met site-specific treatment standards, the department may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.
- e. Except as provided in subsection 6, requirements for ground water monitoring and corrective action that are sufficient to:
- (1) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the corrective action management unit;
 - (2) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the corrective action management unit in which wastes will remain in place after closure of the corrective action management unit; and
 - (3) Require notification to the department and corrective action as necessary to protect human health and the environment for releases to ground water from the corrective action management unit.
- f. Except as provided in subsection 6, closure and postclosure requirements:
- (1) Closure of corrective action management units shall:
 - (a) Minimize the need for further maintenance; and
 - (b) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for

areas where wastes remain in place, postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

- (2) Requirements for closure of corrective action management units shall include the following, as appropriate and as deemed necessary by the department for a given corrective action management unit:
 - (a) Requirements for excavation, removal, treatment, or containment of wastes; and
 - (b) Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the corrective action management unit.
- (3) In establishing specific closure requirements for corrective action management units under this subsection, the department shall consider the following factors:
 - (a) Corrective action management unit characteristics;
 - (b) Volume of wastes which remain in place after closure;
 - (c) Potential for releases from the corrective action management unit;
 - (d) Physical and chemical characteristics of the waste;
 - (e) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and
 - (f) Potential for exposure of humans and environmental receptors if releases were to occur from the corrective action management unit.
- (4) Cap requirements:
 - (a) At final closure of the corrective action management unit, for areas in which wastes will remain after closure of the corrective action management unit, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the corrective action management unit with a final cover designed and constructed to meet the

following performance criteria, except as provided in subparagraph b:

- [1] Provide long-term minimization of migration of liquids through the closed unit;
- [2] Function with minimum maintenance;
- [3] Promote drainage and minimize erosion or abrasion of the cover;
- [4] Accommodate settling and subsidence so that the cover's integrity is maintained; and
- [5] Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) The department may determine that modifications to subparagraph a are needed to facilitate treatment or the performance of the corrective action management unit (for example, to promote biodegradation).

(5) Postclosure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

6. Corrective action management units used for storage or treatment, or both, only are corrective action management units in which wastes will not remain after closure. Such corrective action management units must be designated in accordance with all of the requirements of this section, except as follows:

- a. Corrective action management units that are used for storage or treatment, or both, only and that operate in accordance with the time limits established in the staging pile regulations at paragraph 3 of subdivision a of subsection 4, subsection 8 and subsection 9 of section 33-24-05-554 are subject to the requirements for staging piles at paragraphs 1 and 2 of subdivision a of subsection 4, subdivision b of subsection 4, subsections 5, 6, 10, and 11 of section 33-24-05-554 in lieu of the performance standards and requirements for corrective action management units contained in subsection 3 and subdivisions c through f of subsection 5.
- b. Corrective action management units that are used for storage or treatment, or both, only and that do not operate in accordance

with the time limits established in the staging pile regulations at paragraph 3 of subdivision a of subsection 4, subsections 8 and 9 of section 33-24-05-554:

- (1) Must operate in accordance with a time limit, established by the department, that is no longer than necessary to achieve a timely remedy selected for the waste; and
 - (2) Are subject to the requirements for staging piles at paragraphs 1 and 2 of subdivision a of subsection 4, subdivision b of subsection 4, and subsections 5, 6, 10, and 11 of section 33-24-05-554 in lieu of the performance standards and requirements for corrective action management units contained in subsection 3 and subdivisions d through f of subsection 5.
7. Corrective action management units into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph 1 of subdivision c of subsection 5, caps at paragraph 4 of subdivision f of subsection 5, ground water monitoring requirements at subdivision e of subsection 5 or, for treatment or storage, or both, only corrective action management units, the design standards at subsection 6.
8. The department shall provide public notice and a reasonable opportunity for public comment before designating a corrective action management unit. Such notice shall include the rationale for any proposed adjustments under paragraph 5 of subdivision d of subsection 5 to the treatment standards in paragraph 4 of subdivision d of subsection 5.
9. Notwithstanding any other provision of this section, the department may impose additional requirements as necessary to protect human health and the environment.
10. Incorporation of a corrective action management unit into an existing permit must be approved by the department according to the procedures for department-initiated permit modifications under section 33-24-06-12, or according to the permit modification procedures of section 33-24-06-14.
11. The designation of a corrective action management unit does not change the department's existing authority to address cleanup levels,

media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-553. Temporary units (TU).

1. For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under section 33-24-05-58 or Resource Conservation and Recovery Act section 3008(h), or at a permitted facility that is not subject to section 33-24-05-58, the department may designate a unit at the facility, as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the temporary unit originated. For temporary units, the department may replace the design, operating, or closure standard applicable to these units under sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-800 through 33-24-05-819, or the applicable requirements of subsection 5 of section 33-24-06-16, with alternative requirements which protect human health and the environment.
2. Any temporary unit to which alternative requirements are applied in accordance with subsection 1 must be:
 - a. Located within the facility boundary; and
 - b. Used only for treatment or storage of remediation wastes.
3. In establishing standards to be applied to a temporary unit, the department shall consider the following factors:
 - a. Length of time such unit will be in operation;
 - b. Type of unit;
 - c. Volumes of wastes to be managed;
 - d. Physical and chemical characteristics of the wastes to be managed in the unit;
 - e. Potential for releases from the unit;
 - f. Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

9. Potential for exposure of humans and environmental receptors if releases were to occur from the unit.
4. The department shall specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than a period of one year. The department shall also specify the design, operating, and closure requirements for the unit.
5. The department may extend the operational period of a temporary unit once for no longer than a period of one year beyond that originally specified in the permit or order, if the department determines that:
 - a. Continued operation of the unit will not pose a threat to human health and the environment; and
 - b. Continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.
6. Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit must be:
 - a. Approved in accordance with the procedures for department-initiated permit modifications under section 33-24-06-12; or
 - b. Requested by the owner or operator as a class II modification according to the procedures under section 33-24-06-14.
7. The department shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-554. Staging piles.

1. A staging pile is an accumulation of solid, nonflowing remediation waste (as defined in section 33-24-01-04) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the department according to the requirements in this section.
 - a. For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are

intended to prepare the wastes for subsequent management or treatment.

~~b. [Reserved]~~

2. A staging pile may be used to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if the owner or operator follows the standards and design criteria the department has designated for that staging pile. The department must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with the applicable requirements of subsection 5 of section 33-24-06-16). The department must establish conditions in the permit, closure plan, or order that comply with subsections 4 through 11.
3. An owner or operator that is seeking a staging pile designation must provide the following information:
 - a. Sufficient and accurate information to enable the department to impose standards and design criteria for the staging pile according to subsections 4 through 11;
 - b. Certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the department determines, based on information that the owner or operator provided, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and
 - c. Any additional information the department determines is necessary to protect human health and the environment.
4. Performance criteria for a staging pile. The department must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.
 - a. The standards and design criteria as established by the department in the permit closure plan or order must comply with the following:
 - (1) The staging pile must facilitate a reliable, effective, and protective remedy;
 - (2) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, and runoff and run-on controls, as appropriate); and

- (3) The staging pile may not operate for a period of more than two years, except when the department grants an operating term extension under subsection 9. The owner or operator must measure the two-year limit, or other operating term specified by the department in the permit, closure plan, or order, from the first time remediation waste is placed into a staging pile. The owner or operator must maintain a record of the date when remediation waste is first placed into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.
 - b. In setting the standards and design criteria, the department must consider the following factors:
 - (1) Length of time the staging pile will be in operation;
 - (2) Volumes of wastes the owner or operator intends to store in the staging pile;
 - (3) Physical and chemical characteristics of the wastes to be stored in the unit;
 - (4) Potential for releases from the unit;
 - (5) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and
 - (6) Potential for human and environmental exposure to potential releases from the unit.
5. Ignitable or reactive remediation waste are prohibited from being placed in a staging pile. The owner or operator must not place ignitable or reactive remediation waste in a staging pile unless:
 - a. The owner or operator has treated, rendered, or mixed the remediation waste before being placed in the staging pile so that:
 - (1) The remediation waste no longer meets the definition of ignitable or reactive under section 33-24-02-11 or 33-24-02-13; and
 - (2) The owner or operator has complied with subsection 2 of section 33-24-05-08; or
 - b. The owner or operator manages the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

6. Management of incompatible remediation wastes in a staging pile. The owner or operator must comply with the following requirements for incompatible wastes (as defined in section 33-24-01-04) in staging piles:
 - a. The owner or operator may not place incompatible remediation wastes in the same staging pile unless the owner or operator has complied with subsection 2 of section 33-24-05-08;
 - b. If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks, or land disposal units (for example, surface impoundments), the owner or operator must separate the incompatible materials, or protect them from one another by using a dike, berm, wall, or other device; and
 - c. The owner or operator must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with subsection 2 of section 33-24-05-08.
7. Land disposal restrictions and minimum technological requirements are not triggered by placing hazardous remediation wastes into a staging pile.
8. Staging pile operation time limits. The department may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. The owner or operator may use a staging pile no longer than the length of time designated by the department in the permit, closure plan, or order except as provided in subsection 9.
9. Extension of operation time limits.
 - a. The department may grant one operating term extension of up to one hundred eighty days beyond the operating term limit contained in the permit, closure plan, or order (see subsection 12 for modification procedures). To justify to the department the need for an extension, the owner or operator must provide sufficient and accurate information to enable the department to determine that continued operation of the staging pile:
 - (1) Will not pose a threat to human health and the environment; and
 - (2) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.
 - b. The department may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan,

or order, as necessary, to ensure protection of human health and the environment.

10. Closure requirements for a staging pile located in a previously contaminated area.
 - a. Within one hundred eighty days after the operating term of the staging pile expires, the owner or operator must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all:
 - (1) Remediation waste;
 - (2) Contaminated containment system components; and
 - (3) Structures and equipment contaminated with waste and leachate.
 - b. The owner or operator must also decontaminate contaminated subsoils in a manner and according to a schedule that the department determines will protect human health and the environment.
 - c. The department must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.
11. Closure requirements for a staging pile located in an uncontaminated area.
 - a. Within one hundred eighty days after the operating term of the staging pile expires, the owner or operator must close a staging pile located in an uncontaminated area of the site according to subsection 1 of section 33-24-05-135 and section 33-24-05-60.
 - b. The department must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.
12. Modifications to an existing permit, closure plan, or order to allow use of a staging pile.
 - a. A permit, other than a RAP, may be modified to incorporate a staging pile or staging pile operating term extension, by either:
 - (1) The department may initiate the modification in accordance with section 33-24-06-12; or
 - (2) The owner or operator may request a class 2 modification under section 33-24-06-14.

- b. A remedial action plan may be modified to incorporate a staging pile or staging pile operating term extension when the owner or operator submits a request pursuant to subsections 1 and 2 of section 33-24-06-33.
 - c. The owner or operator must follow the applicable requirements under subsection 3 of section 33-24-05-61 to modify a closure plan to incorporate a staging pile or staging pile operating term extension.
 - d. To modify an order to incorporate a staging pile or staging pile operating term extension, the owner or operator must follow the terms of the order and the requirements of subdivision f of subsection 4 of section 33-24-06-16.
13. Information submitted to the department regarding the rationale for designating a staging pile or staging pile operating term extension will be placed in the facility file and this documentation made available to the public.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-555. Disposal of corrective action management unit-eligible wastes in permitted hazardous waste landfills.

- 1. The department with regulatory oversight at the location where the cleanup is taking place may approve placement of corrective action management unit-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of sections 33-24-05-250 through 33-24-05-299, if the conditions in subdivisions a through c are met:
 - a. The waste meets the definition of corrective action management unit-eligible waste in subdivisions a and b of subsection 1 of section 33-24-05-552.
 - b. The department with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constituents in such waste, in accordance with paragraphs 1 and 2 of subdivision d of subsection 5 of section 33-24-05-552, and requires that such principal hazardous constituents are treated to any of the following standards specified for corrective action management unit-eligible wastes:
 - (1) The treatment standards under paragraph 4 of subdivision d of subsection 5 of section 33-24-05-552; or

- (2) Treatment standards adjusted in accordance with subitems a, c, and d of item 1 of subparagraph e of paragraph 5 of subdivision d of subsection 5 of section 33-24-05-552; or
 - (3) Treatment standards adjusted in accordance with item 2 of subparagraph e of paragraph 5 of subdivision d of subsection 5 of section 33-24-05-552, where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste. For minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.
- c. The landfill receiving the corrective action management unit-eligible waste must have a hazardous waste permit, meet the requirements for new landfills in sections 33-24-05-176 through 33-24-05-190, and be authorized to accept corrective action management unit-eligible wastes. For the purposes of this requirement, "permit" does not include interim status.
2. The person seeking approval shall provide sufficient information to enable the department with regulatory oversight at the location where the cleanup is taking place to approve placement of corrective action management unit-eligible waste in accordance with subsection 1. Information required by subdivisions a through c of subsection 4 of section 33-24-05-552 for corrective action management unit applications must be provided, unless not reasonably available.
3. The department with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving corrective action management unit-eligible waste for placement in an offsite permitted hazardous waste landfill, consistent with the requirements for corrective action management unit approval at subsection 8 of section 33-24-05-552. The approval must be specific to a single remediation.
4. Applicable hazardous waste management requirements in sections 33-24-05-550 through 33-24-05-599, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for corrective action management unit-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding subsection 1 of section 33-24-06-10, a landfill may not receive hazardous corrective action management unit-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

5. For each remediation, corrective action management unit-eligible waste may not be placed in an offsite landfill authorized to receive corrective action management unit-eligible waste in accordance with subsection 4 until the following additional conditions have been met:
 - a. The landfill owner or operator notifies the department and other regulatory agency responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with paragraph 4 of subdivision a of subsection 3 of section 33-24-07-06, of the owner's or operator's intent to receive corrective action management unit-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.
 - b. Persons on the facility mailing list may provide comments, including objections to the receipt of the corrective action management unit-eligible waste, to the department within fifteen calendar days of notification.
 - c. The department may object to the placement of the corrective action management unit-eligible waste in the landfill within thirty calendar days of notification; the department may extend the review period an additional thirty calendar days because of public concerns or insufficient information.
 - d. Corrective action management unit-eligible wastes may not be placed in the landfill until the department has notified the facility owner or operator that the department does not object to its placement.
 - e. If the department objects to the placement or does not notify the facility owner or operator that the department has chosen not to object, the facility may not receive the waste, notwithstanding subsection 1 of section 33-24-06-10, until the objection has been resolved, or the owner or operator obtains a permit modification in accordance with the procedures of section 33-24-06-14 specifically authorizing receipt of the waste.
 - f. As part of the permit issuance or permit modification process of subsection 4, the department may modify, reduce, or eliminate the notification requirements of this subdivision as they apply to specific categories of corrective action management unit-eligible waste, based on minimal risk.
6. Generators of corrective action management unit-eligible wastes sent offsite to a hazardous waste landfill under this section must comply with the requirements of subdivision d of subsection 1 of section 33-24-05-256; offsite facilities treating corrective action management

unit-eligible wastes to comply with this section must comply with the requirements of subdivision d of subsection 2 of section 33-24-05-256, except that the certification must be with respect to the treatment requirements of subdivision b of subsection 1.

7. For the purposes of this section only, the "design of the corrective action management unit" in subparagraph e of paragraph 5 of subdivision d of subsection 5 of section 33-24-05-552 means design of the permitted hazardous waste landfill.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

- ~~33-24-05-556. [Reserved]~~
- ~~33-24-05-557. [Reserved]~~
- ~~33-24-05-558. [Reserved]~~
- ~~33-24-05-559. [Reserved]~~
- ~~33-24-05-560. [Reserved]~~
- ~~33-24-05-561. [Reserved]~~
- ~~33-24-05-562. [Reserved]~~
- ~~33-24-05-563. [Reserved]~~
- ~~33-24-05-564. [Reserved]~~
- ~~33-24-05-565. [Reserved]~~
- ~~33-24-05-566. [Reserved]~~
- ~~33-24-05-567. [Reserved]~~
- ~~33-24-05-568. [Reserved]~~
- ~~33-24-05-569. [Reserved]~~
- ~~33-24-05-570. [Reserved]~~
- ~~33-24-05-571. [Reserved]~~
- ~~33-24-05-572. [Reserved]~~
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33-24-05-600. Definitions for the management of used oil. Terms that are defined in sections 33-24-01-04, 33-24-02-01, and chapter 33-24-08 have the same meanings when used in sections 33-24-05-600 through 33-24-05-689.

1. "Aboveground tank" means a tank used to store or process used oil that is not an underground storage tank as defined in chapter 33-24-08.
2. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
3. "Do-it-yourselfer used oil collection center" means any site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers.
4. "Existing tank" means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to the effective date of the authorized used oil program for the state in which the tank is located. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin installation of the tank and if either:
 - a. A continuous onsite installation program has begun; or
 - b. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for installation of the tank to be completed within a reasonable time.
5. "Household do-it-yourselfer used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles.
6. "Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.
7. "New tank" means a tank that will be used to store or process used oil and for which installation has commenced after the effective date of the authorized used oil program for the state in which the tank is located.
8. "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes, for example, facilities classified as standard industrial code 2911.

9. "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining.
10. "Re-refining distillation bottoms" means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.
11. "Tank" means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of nonearthen materials, (for example, wood, concrete, steel, plastic) which provides structural support.
12. "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
13. "Used oil aggregation point" means any site or facility that accepts, aggregates, or stores, or any combination, used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than fifty-five gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.
14. "Used oil burner" means a facility where used oil not meeting the specification requirements in section 33-24-05-611 is burned for energy recovery in devices identified in subsection 1 of section 33-24-05-661.
15. "Used oil collection center" means any site or facility that is registered, licensed and permitted, and recognized by a state, county, or municipal government to manage used oil and accepts, aggregates, and stores used oil collected from used oil generators regulated under sections 33-24-05-620 through 33-24-05-629 who bring used oil to the collection center in shipments of no more than fifty-five gallons [208.20 liters] under the provisions of section 33-24-05-624. Used oil collection centers may also accept used oil from household do-it-yourselfers.
16. "Used oil fuel marketer" means any person who conducts either of the following activities:
 - a. Directs a shipment of off-specification used oil from their facility to a used oil burner; or

- b. First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611.
17. "Used oil generator" means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
18. "Used oil processor" means a facility that processes used oil and includes used oil re-refiners.
19. "Used oil transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four hours and not longer than thirty-five days during the normal course of transportation or prior to an activity performed pursuant to subdivision b of subsection 2 of section 33-24-05-620. Transfer facilities that store used oil for more than thirty-five days are subject to regulation under sections 33-24-05-650 through 33-24-05-659.
20. "Used oil transporter" means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (for example, settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-601. [Reserved]~~

~~33-24-05-602. [Reserved]~~

~~33-24-05-603. [Reserved]~~

~~33-24-05-604. [Reserved]~~

~~33-24-05-605. [Reserved]~~

~~33-24-05-606. [Reserved]~~

~~33-24-05-607. [Reserved]~~

~~33-24-05-608. [Reserved]~~

~~33-24-05-609. [Reserved]~~

33-24-05-610. Applicability of used oil standards. This section identifies those materials that are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689. This section also identifies some materials that are not subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689, and indicates whether these materials may be subject to regulation as hazardous waste under article 33-24.

1. **Used oil.** The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 33-24-05-611, the regulations of sections 33-24-05-600 through 33-24-05-689 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.
2. **Mixtures of used oil and hazardous waste.**
 - a. Listed hazardous waste.
 - (1) Mixtures of used oil and hazardous waste that is listed in sections 33-24-02-15 through 33-24-02-19 are subject to regulation as hazardous waste under chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through 33-24-05-559, rather than as used oil under sections 33-24-05-600 through 33-24-05-689.
 - (2) Rebuttable presumption for used oil. Used oil containing greater than or equal to one thousand parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).
 - (a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated

paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.

(b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.

b. Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in sections 33-24-02-10 through 33-24-02-14 and mixtures of used oil and hazardous waste that is listed in sections 33-24-02-15 through 33-24-02-19 solely because it exhibits one or more of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14 are subject to:

- (1) Except as provided in paragraph 3 of subdivision b of subsection 2, regulation as hazardous waste under chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through 33-24-05-559, rather than as used oil under sections 33-24-05-600 through 33-24-05-689, if the resultant mixture exhibits any characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14; or
- (2) Except as specified in paragraph 3 of subdivision b of subsection 2 of section 33-24-05-610, regulation as used oil under sections 33-24-05-600 through 33-24-05-689, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under sections 33-24-02-10 through 33-24-02-14.
- (3) Regulation as used oil under sections 33-24-05-600 through 33-24-05-689, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, for example, ignitable-only mineral spirits, provided that the resultant mixture does not exhibit the characteristic of ignitability under section 33-24-02-11.

- c. Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under section 33-24-02-05 are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
- 3. **Materials containing or otherwise contaminated with used oil.**
 - a. Except as provided in subdivision b of subsection 3, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:
 - (1) Are not used oil and thus not subject to sections 33-24-05-600 through 33-24-05-689, and
 - (2) If applicable are subject to the hazardous waste regulations of chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through 33-24-05-559.
 - b. Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
 - c. Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
- 4. **Mixtures of used oil with products.**
 - a. Except as provided in subdivision b, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
 - b. Mixtures of used oil and diesel fuel mixed onsite by the generator of the used oil for use in the generator's own vehicles are not subject to sections 33-24-05-600 through 33-24-05-689 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of sections 33-24-05-620 through 33-24-05-629.
- 5. **Materials derived from used oil.**

- a. Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (for example, re-refined lubricants) are:
 - (1) Not used oil and thus are not subject to sections 33-24-05-600 through 33-24-05-689; and
 - (2) Not solid wastes and are thus not subject to the hazardous waste regulations of chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through 33-24-05-559 as provided in paragraph a of subdivision b of subsection 3 of section 33-24-02-03.
 - b. Materials produced from used oil that are burned for energy recovery (for example, used oil fuels) are subject to regulation as used oil under sections 33-24-05-600 through 33-24-05-689.
 - c. Except as provided in subdivision d, materials derived from used oil that are disposed of or used in a manner constituting disposal are:
 - (1) Not used oil and thus are not subject to sections 33-24-05-600 through 33-24-05-689; and
 - (2) Are solid wastes and thus are subject to the hazardous waste regulations of chapters 33-24-01 through 33-24-04, chapters 33-24-06 and 33-24-07, and sections 33-24-05-01 through 33-24-05-190, 33-24-05-300 through 33-24-05-524, and 33-24-05-550 through 33-24-05-559 if the materials are listed or identified as hazardous wastes.
 - d. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to sections 33-24-05-600 through 33-24-05-689.
6. **Wastewater.** Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of sections 33-24-05-600 through 33-24-05-689. For purposes of this subsection, de minimis quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of

abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

7. **Used oil introduced into crude oil pipelines or a petroleum refining facility.**
 - a. Used oil mixed with crude oil or natural gas liquids (for example, in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689. The used oil is subject to the requirements of sections 33-24-05-600 through 33-24-05-689 prior to the mixing of used oil with crude oil or natural gas liquids.
 - b. Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion in the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of sections 33-24-05-600 through 33-24-05-689.
 - c. Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689 provided that the used oil constitutes less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion in the petroleum refining facility process, the used oil is subject to the requirements of sections 33-24-05-600 through 33-24-05-689.
 - d. Except as provided in subdivision e, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689 only if the used oil meets the specification of section 33-24-05-611. Prior to insertion in the petroleum refining facility process, the used oil is subject to the requirements of sections 33-24-05-600 through 33-24-05-689.
 - e. Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of sections 33-24-05-600 through 33-24-05-689. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (for example, by pouring collected used oil into the wastewater treatment system).

- f. Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of sections 33-24-05-600 through 33-24-05-689.
8. **Used oil on vessels.** Used oil produced on vessels from normal shipboard operations is not subject to sections 33-24-05-600 through 33-24-05-689 until it is transported ashore.
9. **Used oil containing polychlorinated biphenyls.** Used oil containing polychlorinated biphenyls (as defined at 40 CFR 761.3) at any concentration less than fifty parts per million is subject to the requirements of sections 33-24-05-600 through 33-24-05-689 unless, because of dilution, it is regulated under 40 CFR part 761 as a used oil containing polychlorinated biphenyls at fifty parts per million or greater. Polychlorinated biphenyl-containing used oil subject to the requirements of sections 33-24-05-600 through 33-24-05-689 may also be subject to the prohibitions and requirements found at 40 CFR part 761, including section 761.20(d) and (e). Used oil containing polychlorinated biphenyls at concentrations of fifty parts per million or greater is not subject to the requirements of sections 33-24-05-600 through 33-24-05-689, but is subject to regulations under 40 CFR part 761. No person may avoid these provisions by diluting used oil containing polychlorinated biphenyls, unless otherwise specifically provided for in sections 33-24-05-600 through 33-24-05-689 or 40 CFR part 761.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-611. Used oil specifications. Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under sections 33-24-05-600 through 33-24-05-689 unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with sections 33-24-05-672, 33-24-05-673, and subsection 2 of section 33-24-05-674, the used oil is no longer subject to sections 33-24-05-600 through 33-24-05-689.

Table 1. Used Oil Not Exceeding Any Specification Level Is Not Subject to Sections 33-24-05-600 Through 33-24-05-689 When Burned for Energy Recovery¹	
Constituent/Property	Allowable Level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.

Chromium	10 ppm maximum.
Lead	100 ppm maximum.
Flash Point	100 °F minimum.
Total Halogens	4,000 ppm maximum. ²

Note: Applicable standards for the burning of used oil containing polychlorinated biphenyls are imposed by 40 CFR 761.20(e).

FOOTNOTE: ¹The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see subsection 2 of section 33-24-05-610).

FOOTNOTE: ²Used oil containing greater than or equal to one thousand parts per million total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under subdivision a of subsection 2 of section 33-24-05-610. Such used oil is subject to sections 33-24-05-525 through 33-24-05-549 rather than sections 33-24-05-600 through 33-24-05-689 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

History: Effective January 1, 1994; amended effective July 1, 1997.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-612. Prohibitions.

1. **Surface impoundment prohibition.** Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under sections 33-24-05-01 through 33-24-05-190, sections 33-24-05-300 through 33-24-05-524, sections 33-24-05-550 through 33-24-05-559, or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Use as a dust suppressant.** The use of used oil as a dust suppressant is prohibited.
3. **Burning in particular units.** Off-specification used oil fuel may be burned for energy recovery in only the following devices:
 - a. Industrial furnaces identified in section 33-24-01-04;
 - b. Boilers, as defined in section 33-24-01-04, that are identified as follows:
 - (1) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

- (2) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
- (3) Used oil-fired space heaters provided that the burner meets the provisions of section 33-24-05-623.

- c. Hazardous waste incinerators subject to regulation under sections 33-24-05-144 through 33-24-05-159 and the applicable requirements of subsection 5 of section 33-24-06-16.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-613. [Reserved]~~

~~33-24-05-614. [Reserved]~~

~~33-24-05-615. [Reserved]~~

~~33-24-05-616. [Reserved]~~

~~33-24-05-617. [Reserved]~~

~~33-24-05-618. [Reserved]~~

~~33-24-05-619. [Reserved]~~

33-24-05-620. Applicability of standards for used oil generators.

1. **General.** Except as provided in subdivisions a through d, sections 33-24-05-620 through 33-24-05-629 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
 - a. Household do-it-yourselfer used oil generators. Household do-it-yourselfer used oil generators are not subject to regulation under sections 33-24-05-620 through 33-24-05-629.
 - b. Vessels. Vessels at sea or at port are not subject to sections 33-24-05-620 through 33-24-05-629. For purposes of sections 33-24-05-620 through 33-24-05-629, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the persons removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with sections 33-24-05-620 through 33-24-05-629 once the used oil is transported ashore.

The co-generators may decide among them which party will fulfill the requirements of sections 33-24-05-620 through 33-24-05-629.

- c. Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to sections 33-24-05-620 through 33-24-05-629 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of sections 33-24-05-620 through 33-24-05-629.
 - d. Farmers. Farmers who generate an average of twenty-five gallons [94.64 liters] per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of sections 33-24-05-600 through 33-24-05-689.
2. **Other applicable provisions.** Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of sections 33-24-05-600 through 33-24-05-689 as indicated in subdivisions a through e:
- a. Generators who transport used oil, except under the self-transport provisions of subsections 1 and 2 of section 33-24-05-624, must also comply with sections 33-24-05-640 through 33-24-05-649.
 - b. Generators who process used oil must also comply with sections 33-24-05-650 through 33-24-05-659.
 - (1) Except as provided in paragraph 2, generators who process or re-refine used oil must also comply with sections 33-24-05-650 through 33-24-05-659.
 - (2) Generators who perform the following activities are not processors provided that the used oil is generated onsite and is not being sent offsite to a burner of on-specification or off-specification used oil fuel.
 - (a) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;
 - (b) Separating used oil from wastewater generated onsite to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable federal or state regulations governing the management of discharge of wastewaters;
 - (c) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

- (d) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to subsection 3 of section 33-24-05-610; or
 - (e) Filtering, cleaning, or otherwise reconditioning used oil before burning it in a space heater pursuant to section 33-24-05-623.
- c. Generators who burn off-specification used oil for energy recovery, except under the onsite space heater provisions of section 33-24-05-623, must also comply with sections 33-24-05-660 through 33-24-05-669.
 - d. Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611 must also comply with sections 33-24-05-670 through 33-24-05-679.
 - e. Generators who dispose of used oil must also comply with sections 33-24-05-680 through 33-24-05-689.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-621. Hazardous waste mixing.

1. Mixtures of used oil and hazardous waste must be managed in accordance with subsection 2 of section 33-24-05-610.
2. The rebuttable presumption for used oil of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610 applies to used oil managed by generators. Under the rebuttable presumption for used oil of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, used oil containing greater than or equal to one thousand parts per million total halogens is presumed to be a hazardous waste and thus must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils or fluids and certain used oils removed from refrigeration units.

History: Effective January 1, 1994; amended effective July 1, 1997.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-622. Used oil storage. Used oil generators are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-620 through 33-24-05-629. Used oil generators are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-620 through 33-24-05-629.

1. **Storage units.** Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-01 through 33-24-05-190 and sections 33-24-05-300 through 33-24-05-524, sections 33-24-05-550 through 33-24-05-559 or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Condition of units.** Containers and aboveground tanks used to store used oil at generator facilities must be:
 - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
 - b. Not leaking (no visible leaks).
3. **Labels.**
 - a. Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".
 - b. Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".
4. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08, sections 33-24-08-50 through 33-24-08-59, a generator must perform the following cleanup steps:
 - a. Stop the release;
 - b. Contain the released used oil;
 - c. Clean up and manage properly the released used oil and other materials; and

- d. If necessary to prevent future releases, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-623. Onsite burning in space heaters. Generators may burn used oil in used oil-fired space heaters provided that:

1. The heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourselfer used oil generators;
2. The heater is designed to have a maximum capacity of not more than 0.5 million British thermal units per hour; and
3. The combustion gases from the heater are vented to the ambient air.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-624. Offsite shipments. Except as provided in subsections 1 through 3, generators must ensure that their used oil is transported only by transporters who have obtained identification numbers.

1. **Self-transportation of small amounts to approved collection centers.** Generators may transport, without an identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:
 - a. The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
 - b. The generator transports no more than fifty-five gallons [208.20 liters] of used oil at any time; and
 - c. The generator transports the used oil to a used oil collection center that is registered, licensed, permitted, or recognized by a state, county, and municipal government to manage used oil.
2. **Self-transportation of small amounts to aggregation points owned by the generator.** Generators may transport, without an identification number, used oil that is generated at the generator's site to an aggregation point provided that:

- a. The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
 - b. The generator transports no more than fifty-five gallons [208.20 liters] of used oil at any time; and
 - c. The generator transports the used oil to an aggregation point that is owned or operated by the same generator.
3. **Tolling arrangements.** Used oil generators may arrange for used oil to be transported by a transporter without an identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement") must indicate:
- a. The type of used oil and the frequency of shipments;
 - b. That the vehicle used to transport the used oil to the processing facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor; and
 - c. That reclaimed oil will be returned to the generator.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-625. [Reserved]~~

~~33-24-05-626. [Reserved]~~

~~33-24-05-627. [Reserved]~~

~~33-24-05-628. [Reserved]~~

~~33-24-05-629. [Reserved]~~

33-24-05-630. Do-it-yourselfer used oil collection centers.

1. **Applicability.** This section applies to owners or operators of all do-it-yourselfer used oil collection centers. A do-it-yourselfer used oil collection center is any site or facility that accepts, aggregates, and stores used oil collected only from household do-it-yourselfers.
2. **Do-it-yourselfer used oil collection center requirements.** Owners or operators of all do-it-yourselfer used oil collection centers must

comply with the generator standards in sections 33-24-05-620 through 33-24-05-629.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-631. Used oil collection centers.

1. **Applicability.** This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts, aggregates, and stores used oil collected from used oil generators regulated under sections 33-24-05-620 through 33-24-05-629 who bring used oil to the collection center in shipments of no more than fifty-five gallons [208.20 liters] under the provisions of subsection 1 of section 33-24-05-624. Used oil collection centers may also accept used oil from household do-it-yourselfers.
2. **Used oil collection center requirements.** Owners or operators of all used oil collection centers must:
 - a. Comply with the generator standards in sections 33-24-05-620 through 33-24-05-629; and
 - b. Be registered, licensed, permitted, and recognized by a state, county, and municipal government to manage used oil.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-632. Used oil aggregation points owned by the generator.

1. **Applicability.** This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than fifty-five gallons [208.20 liters] under the provisions of subsection 2 of section 33-24-05-624. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

2. **Used oil aggregation point requirements.** Owners or operators of all used oil aggregation points must comply with the generator standards in sections 33-24-05-620 through 33-24-05-629.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-633. [Reserved]~~

~~33-24-05-634. [Reserved]~~

~~33-24-05-635. [Reserved]~~

~~33-24-05-636. [Reserved]~~

~~33-24-05-637. [Reserved]~~

~~33-24-05-638. [Reserved]~~

~~33-24-05-639. [Reserved]~~

33-24-05-640. Applicability of standards for used oil transporters and transfer facilities.

1. **General.** Except as provided in subdivisions a through d, sections 33-24-05-640 through 33-24-05-649 apply to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.
 - a. Sections 33-24-05-640 through 33-24-05-649 do not apply to onsite transportation.
 - b. Sections 33-24-05-640 through 33-24-05-649 do not apply to generators who transport shipments of used oil totaling fifty-five gallons [208.20 liters] or less from the generator to a used oil collection center as specified in subsection 1 of section 33-24-05-624.
 - c. Sections 33-24-05-640 through 33-24-05-649 do not apply to generators who transport shipments of used oil totaling fifty-five gallons [208.20 liters] or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in subsection 2 of section 33-24-05-624.
 - d. Sections 33-24-05-640 through 33-24-05-649 do not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation

point, processor, or burner subject to the requirements of sections 33-24-05-600 through 33-24-05-689. Except as provided in subdivisions a through c, sections 33-24-05-640 through 33-24-05-649 do, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

2. **Imports and exports.** Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of sections 33-24-05-640 through 33-24-05-649 from the time the used oil enters and until the time it exits the United States.
3. **Trucks used to transport hazardous waste.** Unless trucks previously used to transport hazardous waste are emptied as described in section 33-24-02-07 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of subsection 2 of section 33-24-05-610, the hazardous waste and used oil mixture is determined not to be hazardous waste.
4. **Other applicable provisions.** Used oil transporters who conduct the following activities are also subject to other applicable provisions of sections 33-24-05-600 through 33-24-05-689 as indicated in subdivisions a through e:
 - a. Transporters who generate used oil must also comply with sections 33-24-05-620 through 33-24-05-629;
 - b. Transporters who process used oil, except as provided in section 33-24-05-641, must also comply with sections 33-24-05-650 through 33-24-05-659;
 - c. Transporters who burn off-specification used oil for energy recovery must also comply with sections 33-24-05-660 through 33-24-05-669;
 - d. Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611 must also comply with sections 33-24-05-670 through 33-24-05-679; and
 - e. Transporters who dispose of used oil must also comply with sections 33-24-05-680 through 33-24-05-689.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-641. Restrictions on transporters who are not also processors.

1. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in subsection 2, used oil transporters may not process used oil unless they also comply with the requirements for processors in sections 33-24-05-650 through 33-24-05-659.
2. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor requirements in sections 33-24-05-650 through 33-24-05-659.
3. Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor requirements of sections 33-24-05-650 through 33-24-05-659.

History: Effective January 1, 1994; amended effective July 1, 1997.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-642. Notification.

1. **Identification numbers.** Used oil transporters who have not previously complied with the notification requirements of Resource Conservation and Recovery Act section 3010 must comply with these requirements and obtain an identification number.
2. **Mechanics of notification.** A used oil transporter who has not received an identification number may obtain one by notifying the department of their used oil activity by submitting either:
 - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
 - b. A letter requesting an identification number.

The letter should include the following information:

- (1) Transporter company name;
- (2) Owner of the transporter company;

- (3) Mailing address for the transporter;
- (4) Name and telephone number for the transporter point of contact;
- (5) Type of transport activity (for example, transport only, transport and transfer facility, transfer facility only);
- (6) Location of all transfer facilities at which used oil is stored; and
- (7) Name and telephone number for a contact at each transfer facility.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-643. Used oil transportation.

1. **Deliveries.** A used oil transporter shall deliver all used oil received to:
 - a. Another used oil transporter, provided that the transporter has obtained an identification number;
 - b. A used oil processing facility who has obtained an identification number;
 - c. An off-specification used oil burner facility who has obtained an identification number; or
 - d. An on-specification used oil burner facility.
2. **Department of transportation requirements.** Used oil transporters shall comply with all applicable requirements under the United States department of transportation regulations in 49 CFR parts 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR parts 171 through 180.
3. **Used oil discharges.**
 - a. In the event of a discharge of used oil during transportation, the transporter must take appropriate immediate action to protect human health and the environment (for example, notify local authorities, dike the discharge area).

- b. If a discharge of used oil occurs during transportation and an official (state or local government or a federal agency) acting within the scope of official responsibilities determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have identification numbers.
- c. An air, rail, highway, or water transporter who has discharged used oil must:
 - (1) Give notice, if required by 49 CFR 171.15 to the national response center (800-424-8802 or 202-426-2675); and
 - (2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.
- d. A water transporter who has discharged used oil shall give notice as required by 33 CFR 153.203.
- e. A transporter shall clean up any used oil discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-644. Rebuttable presumption for used oil.

- 1. To ensure that used oil is not a hazardous waste under the rebuttable presumption of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below one thousand parts per million.
- 2. The transporter shall make this determination by:
 - a. Testing the used oil; or
 - b. Applying knowledge of the halogen content of the used oil in light of the materials or processes used.
- 3. If the used oil contains greater than or equal to one thousand parts per million total halogens, it is presumed to be a hazardous waste

because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).

- a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
 - b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oil contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.
4. Record retention. Records of analyses conducted or information used to comply with subsections 1, 2, and 3 must be maintained by the transporter for at least three years.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-645. Used oil storage at transfer facilities. Used oil transporters are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-640 through 33-24-05-649. Used oil transporters are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-640 through 33-24-05-649.

1. **Applicability.** This section applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than twenty-four hours during the normal course of transportation and not longer than thirty-five days. Transfer facilities that store used oil for more than thirty-five days are subject to regulation under sections 33-24-05-650 through 33-24-05-659.

2. **Storage units.** Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-89 through 33-24-05-102, sections 33-24-05-103 through 33-24-05-114, except subsection 3 of section 33-24-05-110 and section 33-24-05-113.
3. **Condition of units.** Containers and aboveground tanks used to store used oil at transfer facilities must be:
 - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
 - b. Not leaking (no visible leaks).
4. **Secondary containment for containers.** Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
5. **Secondary containment for existing aboveground tanks.** Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released

into the containment system from migrating out of the system to the soil, ground water, or surface water.

6. **Secondary containment for new aboveground tanks.** New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
7. **Labels.**
 - a. Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil".
 - b. Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil".
8. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08 and sections 33-24-05-650 through 33-24-05-659, the owner or operator of a transfer facility must perform the following cleanup steps:
 - a. Stop the release;
 - b. Contain the released used oil;
 - c. Clean up and manage properly the released used oil and other materials; and

- d. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-646. Tracking.

1. **Acceptance.** Used oil transporters must keep a record of each used oil shipment accepted for transport. Records for each shipment must include:
 - a. The name and address of the generator, transporter, or processor who provided the used oil for transport;
 - b. The identification number (if applicable) of the generator, transporter, or processor who provided the used oil for transport;
 - c. The quantity of used oil accepted;
 - d. The date of acceptance; and
 - e. The signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor who provided the used oil for transport.
 - f. Intermediate rail transporters are not required to sign the record of acceptance to comply with subdivision e.
2. **Deliveries.** Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor, or disposal facility. Records of each delivery must include:
 - a. The name and address of the receiving facility or transporter;
 - b. The identification number of the receiving facility or transporter;
 - c. The quantity of used oil delivered;
 - d. The date of delivery; and
 - e. The signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

- f. Intermediate rail transporters are not required to sign the record of acceptance to comply with subdivision e.
3. **Exports of used oil.** Used oil transporters must maintain the records described in subdivisions a through d of subsection 2 for each shipment of used oil exported to any foreign country.
4. **Record retention.** The records described in subsections 1, 2, and 3 must be maintained for at least three years.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-647. Management of residues. Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in subsection 5 of section 33-24-05-610.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~**33-24-05-648. [Reserved]**~~

~~**33-24-05-649. [Reserved]**~~

33-24-05-650. Applicability of standards for used oil processors.

1. The requirements of sections 33-24-05-650 through 33-24-05-659 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation, and re-refining. The requirements of sections 33-24-05-650 through 33-24-05-659 do not apply to:
 - a. Transporters who conduct incidental processing operations that occur during the normal course of transportation as provided in section 33-24-05-641; or
 - b. Burners who conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in subsection 2 of section 33-24-05-661.

2. Other applicable provisions. Used oil processors who conduct the following activities are also subject to the requirements of other applicable provisions of sections 33-24-05-600 through 33-24-05-689 as indicated in subdivisions a through e of subsection 2.
 - a. Processors who generate used oil must also comply with sections 33-24-05-620 through 33-24-05-629;
 - b. Processors who transport used oil must also comply with sections 33-24-05-640 through 33-24-05-649;
 - c. Except as provided in paragraphs 1 and 2 of subdivision c of subsection 2, processors who burn off-specification used oil for energy recovery must also comply with sections 33-24-05-660 through 33-24-05-669. Processors burning used oil for energy recovery under the following conditions are not subject to sections 33-24-05-660 through 33-24-05-669:
 - (1) The used oil is burned in an onsite space heater that meets the requirements of section 33-24-05-623; or
 - (2) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;
 - d. Processors who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611 must also comply with sections 33-24-05-670 through 33-24-05-679; and
 - e. Processors who dispose of used oil also must comply with the applicable sections 33-24-05-680 through 33-24-05-689.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-651. Notification.

1. **Identification numbers.** Used oil processors who have not previously complied with the notification requirements of Resource Conservation and Recovery Act section 3010 must comply with these requirements and obtain an identification number.
2. **Mechanics of notification.** A used oil processor who has not received an identification number may obtain one by notifying the department of their used oil activity by submitting either:

- a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
- b. A letter requesting an identification number.

The letter should include the following information:

- (1) Processor company name;
- (2) Owner of the processor company;
- (3) Mailing address for the processor;
- (4) Name and telephone number for the processor point of contact;
- (5) Type of used oil activity; and
- (6) Location of the processor facility.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-652. General facility standards.

1. **Preparedness and prevention.** Owners and operators of used oil processing facilities shall comply with the following requirements:
 - a. Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water which could threaten human health or the environment.
 - b. Required equipment. All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs 1 through 4:
 - (1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
 - (2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police

departments, fire departments, or state or local emergency response teams;

- (3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
- (4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

c. Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

d. Access to communications or alarm system.

- (1) When used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in subdivision b.
- (2) If there is only one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in subdivision b.

e. Required aisle space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

f. Arrangements with local authorities.

- (1) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

- (a) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;
 - (b) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;
 - (c) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and
 - (d) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
- (2) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

2. **Contingency plan and emergency procedures.** Owners and operators of used oil processor facilities must comply with the following requirements:

a. Purpose and implementation of contingency plan.

- (1) Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of used oil to air, soil, or surface water.
- (2) The provisions of the plan must be carried out immediately when there is a fire, explosion, or release of used oil which could threaten human health or the environment.

b. Content of contingency plan.

- (1) The contingency plan must describe the actions facility personnel must take to comply with subdivisions a and f in response to fires, explosions, or any unplanned sudden or

nonsudden release of used oil to air, soil, or surface water at the facility.

- (2) If the owner or operator has already prepared a spill prevention, control, and countermeasures (SPCC) plan in accordance with 40 CFR part 112 of chapter I, of 40 CFR part 1510 of chapter V, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of sections 33-24-05-600 through 33-24-05-689.
 - (3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to subdivision f of subsection 1.
 - (4) The plan must list names, addresses, and telephone numbers (office and home) of all persons qualified to act as emergency coordinator (see subdivision e), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
 - (5) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
 - (6) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).
- c. Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:
- (1) Maintained at the facility; and

- (2) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.
- d. Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, when:
- (1) Applicable regulations are revised;
 - (2) The plan fails in an emergency;
 - (3) The facility changes (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;
 - (4) The list of emergency coordinators changes; or
 - (5) The list of emergency equipment changes.
- e. Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (for example, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

Guidance: The emergency coordinator's responsibilities are more fully spelled out in subdivision f. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

- f. Emergency procedures.
- (1) When there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:
 - (a) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

- (b) Notify appropriate state or local agencies with designated response roles if their help is needed.
- (2) When there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. The emergency coordinator may do this by observation or review of facility records of manifests and, if necessary, by chemical analysts.
 - (3) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (for example, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoffs from water of chemical agents used to control fire and heat-induced explosions).
 - (4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report these findings as follows:
 - (a) If the emergency coordinator's assessment indicated that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and
 - (b) The emergency coordinator must immediately notify either the government official designated as the onscene coordinator for the geographical area (in the applicable regional contingency plan under part 1510 of 40 CFR), or the national response center (using their twenty-four-hour toll-free number 800-424-8802). The report must include:
 - [1] Name and telephone number of reporter;
 - [2] Name and address of facility;
 - [3] Time and type of incident (for example, release, fire);

- [4] Name and quantity of materials involved, to the extent known;
 - [5] The extent of injuries, if any; and
 - [6] The possible hazards to human health, or the environment, outside the facility.
- (5) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.
- (6) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
- (7) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.
- (8) The emergency coordinator must ensure that, in the affected areas of the facility:
- (a) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and
 - (b) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
 - (c) The owner or operator must notify the department, and appropriate state and local authorities that the facility is in compliance with subparagraphs a and b before operations are resumed in the affected areas of the facility.
- (9) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, the owner or operator must submit a written

report on the incident to the department. The report must include:

- (a) Name, address, and telephone number of the owner or operator;
- (b) Name, address, and telephone number of the facility;
- (c) Date, time, and type of incident (for example, fire, explosion);
- (d) Name and quantity of materials involved;
- (e) The extent of injuries, if any;
- (f) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (g) Estimated quantity and disposition of recovered material that resulted from the incident.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-653. Rebuttable presumption for used oil.

1. To ensure that used oil managed at a processing facility is not hazardous waste under the rebuttable presumption of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, the owner or operator of a used oil processing facility must determine whether the total halogen content of used oil managed at the facility is above or below one thousand parts per million.
2. The owner or operator must make this determination by:
 - a. Testing the used oil; or
 - b. Applying knowledge of the halogen content of the used oil in light of the materials or processes used.
3. If the used oil contains greater than or equal to one thousand parts per million total halogens, it is presumed to be hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical methods,

environmental protection agency publication SW-846, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).

- a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
- b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-654. Used oil management. Used oil processors are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-650 through 33-24-05-659. Used oil processors are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-650 through 33-24-05-659.

1. **Management units.** Used oil processors may not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-01 through 33-24-05-190, sections 33-24-05-300 through 33-24-05-550, or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Condition of units.** Containers and aboveground tanks used to store or process used oil at processing facilities must be:
 - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
 - b. Not leaking (no visible leaks).
3. **Secondary containment for containers.** Containers used to store or process used oil at processing facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:

- (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining walls; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
4. **Secondary containment for existing aboveground tanks.** Existing aboveground tanks used to store or process used oil at processing facilities must be equipped with a secondary containment system.
- a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
5. **Secondary containment for new aboveground tanks.** New aboveground tanks used to store or process used oil at processing facilities must be equipped with a secondary containment system.
- a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

6. **Labels.**

- a. Containers and aboveground tanks used to store or process used oil at processing facilities must be labeled or marked clearly with the words "Used Oil".
- b. Fill pipes used to transfer used oil into underground storage tanks at processing facilities must be labeled or marked clearly with the words "Used Oil".

7. **Response to releases.** Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08 and sections 33-24-05-650 through 33-24-05-659, an owner or operator must perform the following cleanup steps:

- a. Stop the release;
- b. Contain the released used oil;
- c. Clean up and manage properly the released used oil and other materials; and
- d. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

8. **Closure.**

- a. Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:

- (1) At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter.

- (2) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph 1, then the owner or operator must close the tank system and perform postclosure care in accordance with the closure and postclosure care requirements that apply to hazardous waste landfills (section 33-24-05-180).

- b. Containers. Owners and operators who store used oil in containers must comply with the following requirements:

- (1) At closure, containers holding used oils or residues of used oil must be removed from the site; and
- (2) The owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under chapter 33-24-02.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-655. Analysis plan. Owners or operators of used oil processing facilities must develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of section 33-24-05-653 and, if applicable, section 33-24-05-672. The owner or operator must keep the plan at the facility.

1. Rebuttable presumption for used oil in section 33-24-05-653. At a minimum, the plan must specify the following:
 - a. Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.
 - b. If sample analyses are used to make this determination:
 - (1) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:
 - (a) One of the sampling methods in appendix I of chapter 33-24-02; or
 - (b) A method shown to be equivalent under sections 33-24-01-06 and 33-24-01-07;
 - (2) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite; and
 - (3) The methods used to analyze used oil for the parameters specified in section 33-24-05-653; and
 - c. The type of information that will be used to determine the halogen content of the used oil.

2. On-specification used oil fuel in section 33-24-05-672. At a minimum, the plan must specify the following if section 33-24-05-672 is applicable:
 - a. Whether sample analyses or other information will be used to make this determination;
 - b. If sample analyses are used to make this determination:
 - (1) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:
 - (a) One of the sampling methods in appendix I of chapter 33-24-02; or
 - (b) A method shown to be equivalent under sections 33-24-01-06 and 33-24-01-07;
 - (2) Whether used oil will be sampled and analyzed prior to or after any processing;
 - (3) The frequency of sampling to be performed, and whether the analysis will be performed onsite or offsite; and
 - (4) The methods used to analyze used oil for the parameters specified in section 33-24-05-672; and
 - c. The type of information that will be used to make the on-specification used oil fuel determination.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-656. Tracking.

1. **Acceptance.** Used oil processors must keep a record of each used oil shipment accepted for processing. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:
 - a. The name and address of the transporter who delivered the used oil to the processor;
 - b. The name and address of the generator or processor from whom the used oil was sent for processing;
 - c. The identification number of the transporter who delivered the used oil to the processor;

- d. The identification number (if applicable) of the generator or processor from whom the used oil was sent for processing;
 - e. The quantity of used oil accepted; and
 - f. The date of acceptance.
2. **Delivery.** Used oil processor must keep a record of each shipment of used oil that is shipped to a used oil burner, processor, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:
- a. The name and address of the transporter who delivers the used oil to the burner, processor, or disposal facility;
 - b. The name and address of the burner, processor, or disposal facility that will receive the used oil;
 - c. The identification number of the transporter who delivers the used oil to the burner, processor, or disposal facility;
 - d. The identification number of the burner, processor, or disposal facility that will receive the used oil;
 - e. The quantity of used oil shipped; and
 - f. The date of shipment.
3. **Record retention.** The records described in subsections 1 and 2 must be maintained for at least three years.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-657. Operating record and reporting.

1. **Operating record.**
 - a. The owner or operator must keep a written operating record at the facility.
 - b. The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility;

- (1) Records and results of used oil analyses performed as described in the analysis plan required under section 33-24-05-655; and
 - (2) Summary reports and details of all incidents that require implementation of the contingency plan as specified in subsection 2 of section 33-24-05-652.
2. **Reporting.** A used oil processor must report to the department, in the form of a letter, on a biennial basis (by March first of each even-numbered year), the following information concerning used oil activities during the previous calendar year:
- a. The identification number, name, and address of the processor;
 - b. The calendar year covered by the report; and
 - c. The quantities of used oil accepted for processing and the manner in which the used oil is processed, including the specific processes employed.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-658. Offsite shipments of used oil. Used oil processors who initiate shipments of used oil offsite must ship the used oil using a used oil transporter who has obtained an identification number.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-659. Management of residues. Owners and operators who generate residues from the storage or processing of used oil must manage the residues as specified in subsection 5 of section 33-24-05-610.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-660. Applicability of standards for used oil burners who burn off-specification used oil for energy recovery.

1. **General.** The requirements of sections 33-24-05-660 through 33-24-05-669 apply to used oil burners except as specified in subdivisions a and b. A used oil burner is a facility where used oil not meeting the specification requirements in section 33-24-05-611 is burned for energy recovery in devices identified in subsection 1 of

section 33-24-05-661. Facilities burning used oil for energy recovery under the following conditions are not subject to sections 33-24-05-660 through 33-24-05-669:

- a. The used oil is burned by the generator in an onsite space heater under the provisions of section 33-24-05-623; or
 - b. The used oil is burned by a processor for purposes of processing used oil, which is considered burning incidentally to used oil processing.
2. **Other applicable provisions.** Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of sections 33-24-05-600 through 33-24-05-689 as indicated below.
- a. Burners who generate used oil must also comply with sections 33-24-05-620 through 33-24-05-629;
 - b. Burners who transport used oil must also comply with sections 33-24-05-640 through 33-24-05-649;
 - c. Except as provided in subsection 2 of section 33-24-05-661, burners who process or re-refine used oil must also comply with sections 33-24-05-650 through 33-24-05-659;
 - d. Burners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611 must also comply with sections 33-24-05-670 through 33-24-05-679; and
 - e. Burners who dispose of used oil must comply with sections 33-24-05-680 through 33-24-05-689.
3. **Specification fuel.** Sections 33-24-05-660 through 33-24-05-669 do not apply to persons burning used oil that meets the used oil fuel specifications of section 33-24-05-611, provided that the burner complies with the requirements of sections 33-24-05-670 through 33-24-05-679.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-661. Restrictions on burning.

1. Off-specification used oil fuel may be burned for energy recovery in only the following devices:

- a. Industrial furnaces identified in section 33-24-01-04;
- b. Boilers, as defined in section 33-24-01-04, which are identified as follows:
 - (1) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;
 - (2) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
 - (3) Used oil-fired space heaters provided that the burner meets the provisions of section 33-24-05-623; or
- c. Hazardous waste incinerators subject to regulation under sections 33-24-05-144 through 33-24-05-159.

2. **Used oil burners.**

- a. With the following exception, used oil burners may not process used oil unless they also comply with the requirements of sections 33-24-05-650 through 33-24-05-659.
- b. Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-662. Notification.

- 1. **Identification numbers.** Used oil burners who have not previously complied with the notification requirements of Resource Conservation and Recovery Act section 3010 must comply with these requirements and obtain an identification number.
- 2. **Mechanics of notification.** A used oil burner who has not received an identification number may obtain one by notifying the department of the used oil burner's used oil activity by submitting either:
 - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or

- b. A letter requesting an identification number. The letter should include the following information:
 - (1) Burner company name;
 - (2) Owner of the burner company;
 - (3) Mailing address for the burner;
 - (4) Name and telephone number for the burner point of contact;
 - (5) Type of used oil activity; and
 - (6) Location of the burner facility.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-663. Rebuttable presumption for used oil.

1. To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of paragraph 2 of subdivision a of subsection 2 of section 33-24-05-610, a used oil burner must determine whether the total halogen content of used oil managed at the facility is above or below one thousand parts per million.
2. The used oil burner must determine if the used oil contains above or below one thousand parts per million total halogens by:
 - a. Testing the used oil;
 - b. Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
 - c. If the used oil has been received from a processor subject to regulation under sections 33-24-05-650 through 33-24-05-659, using information provided by the processor.
3. If the used oil contains greater than or equal to one thousand parts per million total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33-24-02-15 through 33-24-02-19. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, environmental protection agency publication SW-846, to show that the

used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33-24-02).

- a. The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
 - b. The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.
4. Record retention. Records of analyses conducted or information used to comply with subsections 1, 2, and 3 must be maintained by the burner for at least three years.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-664. Used oil storage. Used oil burners are subject to all applicable spill prevention, control, and countermeasures [40 CFR part 112] in addition to the requirements of sections 33-24-05-660 through 33-24-05-669. Used oil burners are also subject to the underground storage tank (chapter 33-24-08) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of sections 33-24-05-660 through 33-24-05-669.

1. **Storage units.** Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under sections 33-24-05-01 through 33-24-05-190, sections 33-24-05-300 through 33-24-05-550, or the applicable requirements of subsection 5 of section 33-24-06-16.
2. **Condition of units.** Containers and aboveground tanks used to store oil at burner facilities must be:
 - a. In good condition (no severe rusting, apparent structural defects, or deterioration); and
 - b. Not leaking (no visible leaks).

3. **Secondary containment for containers.** Containers used to store used oil at burner facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall.
 - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
4. **Secondary containment for existing aboveground tanks.** Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or
 - (3) An equivalent secondary containment system.
 - b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.
5. **Secondary containment for new aboveground tanks.** New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.
 - a. The secondary containment system must consist of, at a minimum:
 - (1) Dikes, berms, or retaining walls; and
 - (2) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or
 - (3) An equivalent secondary containment system.

- b. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, ground water, or surface water.

6. Labels.

- a. Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil".
- b. Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil".

7. Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of chapter 33-24-08 and sections 33-24-05-650 through 33-24-05-659, a burner must perform the following cleanup steps:

- a. Stop the release;
- b. Contain the released used oil;
- c. Clean up and manage properly the released used oil and other materials; and
- d. If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-665. Tracking.

- 1. **Acceptance.** Used oil burners must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:
 - a. The name and address of the transporter who delivered the used oil to the burner;
 - b. The name and address of the generator or processor from whom the used oil was sent to the burner;

- c. The identification number of the transporter who delivered the used oil to the burner;
 - d. The identification number (if applicable) of the generator or processor from whom the used oil was sent to the burner;
 - e. The quantity of used oil accepted; and
 - f. The date of acceptance.
2. **Record retention.** The records described in subsection 1 must be maintained for at least three years.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-666. Notices.

1. **Certification.** Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor or the burner must provide to the generator, transporter, or processor or a one-time written and signed notice certifying that:
 - a. The burner has notified the department stating the location and general description of his used oil management activities; and
 - b. The burner will burn the used oil only in an industrial furnace or boiler identified in subsection 1 of section 33-24-05-661.
2. **Certification retention.** The certification described in subsection 1 of this section must be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-667. Management of residues. Burners who generate residues from the storage or burning of used oil must manage the residues as specified in subsection 5 of section 33-24-05-610.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~**33-24-05-668. [Reserved]**~~

~~33-24-05-669. [Reserved]~~

33-24-05-670. Applicability of standards for used oil fuel marketers.

1. Any person who conducts either of the following activities is subject to the requirements of sections 33-24-05-670 through 33-24-05-679:
 - a. Directs a shipment of off-specification used oil from their facility to a used oil burner; or
 - b. First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 33-24-05-611.
2. The following persons are not marketers subject to sections 33-24-05-670 through 33-24-05-679:
 - a. Used oil generators and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors who incidentally burn used oil are not marketers subject to sections 33-24-05-670 through 33-24-05-679;
 - b. Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of section 33-24-05-611.
3. Any person subject to the requirements of sections 33-24-05-670 through 33-24-05-679 must also comply with one of the following:
 - a. Sections 33-24-05-620 through 33-24-05-629 - standards for used oil generators;
 - b. Sections 33-24-05-640 through 33-24-05-649 - standards for used oil transporters and transfer facilities;
 - c. Sections 33-24-05-650 through 33-24-05-659 - standards for used oil processors; or
 - d. Sections 33-24-05-660 through 33-24-05-669 - standards for used oil burners who burn off-specification used oil for energy recovery.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-671. Prohibitions. A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

1. Has an identification number; and
2. Burns the used oil in an industrial furnace or boiler identified in subsection 1 of section 33-24-05-661.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-672. On-specification used oil fuel.

1. **Analysis of used oil fuel.** A generator, transporter, processor, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of section 33-24-05-611 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.
2. **Record retention.** A generator, transporter, processor, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under section 33-24-05-611, must keep copies of analyses of the used oil (or other information used to make the determination) for three years.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-673. Notification.

1. Identification numbers. A used oil fuel marketer subject to the requirements of sections 33-24-05-670 through 33-24-05-679 who has not previously complied with the notification requirements of Resource Conservation and Recovery Act section 3010 must comply with these requirements and obtain an identification number.
2. A marketer who has not received an identification number may obtain one by notifying the department of their used oil activity by submitting either:
 - a. A completed notification of regulated waste activity form (environmental protection agency form 8700-12, or equivalent state form); or
 - b. A letter requesting an identification number. The letter should include the following information:

- (1) Marketer company name;
- (2) Owner of the marketer;
- (3) Mailing address for the marketer;
- (4) Name and telephone number for the marketer point of contact; and
- (5) Type of used oil activity (for example, generator directing shipments of off-specification used oil to a burner).

History: Effective January 1, 1994; amended effective July 1, 1997; December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-674. Tracking.

1. **Off-specification used oil delivery.** Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:
 - a. The name and address of the transporter who delivers the used oil to the burner;
 - b. The name and address of the burner who will receive the used oil;
 - c. The identification number of the transporter who delivers the used oil to the burner;
 - d. The identification number of the burner;
 - e. The quantity of used oil shipped; and
 - f. The date of shipment.
2. **On-specification used oil delivery.** A generator, transporter, processor, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under section 33-24-05-611 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:
 - a. The name and address of the facility receiving the shipment;

- b. The quantity of used oil fuel delivered;
 - c. The date of shipment or delivery; and
 - d. A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specifications as required under subsection 1 of section 33-24-05-672.
3. **Record retention.** The records described in subsections 1 and 2 must be maintained for at least three years.

History: Effective January 1, 1994; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-675. Notices.

1. **Certification.** Before a used oil generator, transporter, or processor directs the first shipment of off-specification used oil fuel to a burner, the generator, transporter, or processor must obtain a one-time written and signed notice from the burner certifying that:
 - a. The burner has notified the department stating the location and general description of used oil management activities; and
 - b. The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in subsection 1 of section 33-24-05-661.
2. **Certification retention.** The certification described in subsection 1 must be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-676. [Reserved]~~

~~33-24-05-677. [Reserved]~~

~~33-24-05-678. [Reserved]~~

~~33-24-05-679. [Reserved]~~

33-24-05-680. Applicability of standards for disposal of used oil. The requirements of sections 33-24-05-680 through 33-24-05-689 apply to all used oils that cannot be recycled and are therefore being disposed.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-681. Disposal.

1. **Disposal of hazardous used oils.** Used oils that are identified as a hazardous waste and cannot be recycled in accordance with sections 33-24-05-600 through 33-24-05-689 must be managed in accordance with the hazardous waste management requirements of article 33-24.
2. **Disposal of nonhazardous used oils.** Used oils that are not hazardous wastes and cannot be recycled under sections 33-24-05-600 through 33-24-05-689 must be disposed in accordance with the requirements of article 33-20.

History: Effective January 1, 1994.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-682. [Reserved]~~

~~33-24-05-683. [Reserved]~~

~~33-24-05-684. [Reserved]~~

~~33-24-05-685. [Reserved]~~

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~~33-24-05-690. [Reserved]~~

~~33-24-05-691. [Reserved]~~

~~33-24-05-692. [Reserved]~~

~~33-24-05-693. [Reserved]~~

~~33-24-05-694. [Reserved]~~

~~33-24-05-695. [Reserved]~~

~~33-24-05-696. [Reserved]~~

~~33-24-05-697. [Reserved]~~

~~33-24-05-698. [Reserved]~~

~~33-24-05-699. [Reserved]~~

~~33-24-05-700. [Reserved]~~

33-24-05-701. Scope of universal waste rule.

1. Sections 33-24-05-701 through 33-24-05-799 establish requirements for managing the following:
 - a. Batteries as described in section 33-24-05-702;
 - b. Pesticides as described in section 33-24-05-703;
 - c. Mercury containing devices as described in section 33-24-05-704; and
 - d. Lamps as described in section 33-24-05-705.
2. Sections 33-24-05-701 through 33-24-05-799 provide an alternative set of management standards in lieu of regulation under chapters 33-24-01 through 33-24-04 and 33-24-06 and sections 33-24-05-01 through 33-24-05-689.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-702. Applicability - Batteries.

1. **Batteries covered under sections 33-24-05-701 through 33-24-05-799.**
 - a. The requirements of sections 33-24-05-701 through 33-24-05-799 apply to persons managing batteries as described in section 33-24-01-04, except as those listed in subsection 2.
 - b. Spent lead-acid batteries which are not managed under sections 33-24-05-235 through 33-24-05-249 are subject to management under sections 33-24-05-701 through 33-24-05-799.

2. **Batteries not covered under sections 33-24-05-701 through 33-24-05-799.** The requirements of sections 33-24-05-701 through 33-24-05-799 do not apply to persons managing the following batteries:
 - a. Spent lead-acid batteries that are managed under sections 33-24-05-235 through 33-24-05-249.
 - b. Batteries, as described in section 33-24-01-04, that are not yet wastes under chapter 33-24-02, including those that do not meet the criteria for waste generation in subsection 3.
 - c. Batteries, as described in section 33-24-01-04, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.
3. **Generation of waste batteries.**
 - a. A used battery becomes a waste on the date it is discarded (for example, when sent for reclamation).
 - b. An unused battery becomes a waste on the date the handler decides to discard it.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-703. Applicability - Pesticides.

1. **Pesticides covered under sections 33-24-05-701 through 33-24-05-799.** The requirements of sections 33-24-05-701 through 33-24-05-799 apply to persons managing pesticides, as described in section 33-24-01-04, meeting the following conditions, except those listed in subsection 2:
 - a. Recalled pesticides that are:
 - (1) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under federal Insecticide, Fungicide, and Rodenticide Act section 19(b), including, but not limited to, those owned by the registrant responsible for conducting the recall; or
 - (2) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with federal Insecticide, Fungicide, and Rodenticide Act, that are part of a voluntary recall by the registrant.

- b. Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.
2. **Pesticides not covered under sections 33-24-05-701 through 33-24-05-799.** The requirements of sections 33-24-05-701 through 33-24-05-799 do not apply to persons managing the following pesticides:
- a. Recalled pesticides described in subdivision a of subsection 1, and unused pesticide products described in subdivision b of subsection 1, that are managed by farmers in compliance with section 33-24-03-40.
 - b. Pesticides not meeting the conditions set forth in subsection 1. These pesticides must be managed in compliance with the hazardous waste regulations in chapters 33-24-01 through 33-24-04 and chapter 33-24-06 and sections 33-24-05-01 through 33-24-05-699;
 - c. Pesticides that are not wastes under chapter 33-24-02, including those that do not meet the criteria for waste generation in subsection 3 or those that are not wastes as described in subsection 4; and
 - d. Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in sections 33-24-02-15 through 33-24-02-19 or if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.
3. **When a pesticide becomes a waste.**
- a. A recalled pesticide described in subdivision a of subsection 1 becomes a waste on the first date on which both of the following conditions apply:
 - (1) The generator of the recalled pesticide agrees to participate in the recall; and
 - (2) The person conducting the recall decides to discard the pesticide (for example, burn the pesticide for energy recovery).
 - b. An unused pesticide product described in subdivision b of subsection 1 becomes a waste on the date the generator decides to discard it.
4. **Pesticides that are not wastes.** The following pesticides are not wastes:

- a. Recalled pesticides described in subdivision a of subsection 1 provided that the person conducting the recall:
 - (1) Has not made a decision to discard the pesticide (for example, burn for energy recovery). Until such a decision is made, the pesticide does not meet the definition of "solid waste" under section 33-24-02-02; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including sections 33-24-05-701 through 33-24-05-799. This pesticide remains subject to the requirements of federal Insecticide, Fungicide, and Rodenticide Act; or
 - (2) Has made a decision to use a management option that, under section 33-24-02-02, does not cause the pesticide to be a solid waste (for example, the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery) or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to hazardous waste requirements including sections 33-24-05-701 through 33-24-05-799. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of federal Insecticide, Fungicide, and Rodenticide Act.
- b. Unused pesticide products described in subdivision b of subsection 1, if the generator of the unused pesticide product has not decided to discard them (for example, burn for energy recovery). These pesticides remain subject to the requirements of federal Insecticide, Fungicide, and Rodenticide Act.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-704. Applicability - Mercury containing devices.

1. **Mercury containing devices covered under sections 33-24-05-701 through 33-24-05-799.** The requirements of sections 33-24-05-701 through 33-24-05-799 apply to persons managing mercury containing devices, as described in section 33-24-01-04, except those listed in subsection 2.
2. **Mercury containing devices not covered under sections 33-24-05-701 through 33-24-05-799.** The requirements of sections 33-24-05-701 through 33-24-05-799 do not apply to persons managing the following mercury containing devices:

- a. Mercury containing devices that are not yet wastes under chapter 33-24-02. Subsection 3 describes when mercury containing devices become wastes.
 - b. Mercury containing devices that are not hazardous waste. A mercury containing device is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.
3. **Generation of waste mercury containing devices.**
- a. A used mercury containing device becomes a waste on the date that it is discarded (for example, sent for reclamation).
 - b. An unused mercury containing device becomes a waste on the date the handler decides to discard it.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-705. Applicability - Lamps.

1. Lamps covered under sections 33-24-05-701 through 33-24-05-799. The requirements of sections 33-24-05-701 through 33-24-05-799 apply to persons managing lamps as described in section 33-24-01-04, except those listed in subsection 2.
2. Lamps not covered under sections 33-24-05-701 through 33-24-05-799. The requirements of sections 33-24-05-701 through 33-24-05-799 do not apply to persons managing the following lamps:
 - a. Lamps that are not yet wastes under chapter 33-24-02 as provided in subsection 3.
 - b. Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in sections 33-24-02-10 through 33-24-02-14.
3. Generation of waste lamps.
 - a. A used lamp becomes a waste on the date it is discarded.
 - b. An unused lamp becomes a waste on the date the handler decides to discard it.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-706. [Reserved]~~

~~History: Effective July 1, 1997; reserved December 1, 2003.~~

~~33-24-05-707. [Reserved]~~

33-24-05-708. Applicability - Household and conditionally exempt small quantity generator waste.

1. Persons managing the wastes listed below may, at their option, manage them under the requirements of sections 33-24-05-701 through 33-24-05-799:
 - a. Household wastes that are exempt under subdivision a of subsection 2 of section 33-24-02-04 and are also of the same type as the universal wastes defined in section 33-24-01-04; or
 - b. Conditionally exempt small quantity generator wastes that are exempt under section 33-24-02-05 and are also of the same type as the universal wastes defined in section 33-24-01-04.
2. Persons who commingle the wastes described in subdivisions a and b of subsection 1 together with universal waste regulated under sections 33-24-05-701 through 33-24-05-799 must manage the commingled waste under the requirements of sections 33-24-05-701 through 33-24-05-799.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-709. Definitions. Terms that are defined in sections 33-24-01-04 and 33-24-02-01 and chapter 33-24-05 have the same meanings when used in sections 33-24-05-701 through 33-24-05-799.

1. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act [7 United States Code 136-136y].
2. "Large quantity handler of universal waste" means a universal waste handler (as defined in section 33-24-01-04) who accumulates five thousand kilograms or more total of universal waste (batteries, pesticides, lamps, or mercury containing devices, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which five thousand kilograms or more total of universal waste is accumulated.
3. "Small quantity handler of universal waste" means a universal waste handler (as defined in section 33-24-01-04) who does not

accumulate five thousand kilograms or more total of universal waste (batteries, pesticides, lamps, or mercury containing devices, calculated collectively) at any time.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-710. Applicability - Small quantity handlers of universal waste. Sections 33-24-05-710 through 33-24-05-720 apply to small quantity handlers of universal waste.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-711. Prohibitions. A small quantity handler of universal waste is:

1. Prohibited from disposing of universal waste; and
2. Prohibited from diluting or treating universal waste, except by responding to releases as provided by section 33-24-05-717; or by managing specific wastes as provided in section 33-24-05-713.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-712. Notification. A small quantity handler of universal waste is not required to notify the department of universal waste handling activities.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-713. Waste management.

1. **Universal waste batteries.** A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
 - a. A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

b. A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

- (1) Sorting batteries by type;
- (2) Mixing battery types in one container;
- (3) Discharging batteries so as to remove the electric charge;
- (4) Regenerating used batteries;
- (5) Disassembling batteries or battery packs into individual batteries or cells;
- (6) Removing batteries from consumer products; or
- (7) Removing electrolyte from batteries.

c. A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed in subdivision b, must determine whether the electrolyte or other solid waste, or both, exhibit one or more of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.

- (1) If the electrolyte or other solid waste, or both, exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-699. The handler is considered the generator of the hazardous electrolyte or other hazardous waste, or both, and is subject to the requirements of chapter 33-24-03.
- (2) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in compliance with applicable federal, state, or local solid waste regulations.

2. **Universal waste pesticides.** A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

- a. A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
 - b. A container that does not meet the requirements of subdivision a, provided that the unacceptable container is overpacked in a container that does meet the requirements of subdivision a;
 - c. A tank that meets the requirements of sections 33-24-05-103 through 33-24-05-114, except subsection 3 of section 33-24-06-110 and sections 33-24-05-113 and 33-24-05-114; or
 - d. A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
3. **Universal waste mercury containing devices.** A small quantity handler of universal waste must manage universal waste mercury containing devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- a. A small quantity handler of universal waste must contain any universal waste mercury containing device that shows evidence of leakage, spillage, or damage that could cause leakage under reasonable foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the mercury containing device, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
 - b. A handler of universal waste may remove mercury-containing ampules or other reservoirs from universal waste mercury containing devices provided the handler:
 - (1) Removes the ampules or other reservoirs in a manner designed to prevent breakage of the ampules or other reservoirs;
 - (2) Removes the ampules or other reservoirs only over or in a containment device (for example, a tray or pan sufficient to collect and contain any mercury released from an ampule or other reservoir in case of breakage);
 - (3) Ensures that a mercury cleanup system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules or other reservoirs, from

the containment device to a container that meets the requirements of section 33-24-03-12;

- (4) Immediately transfers any mercury resulting from spills or leaks from broken ampules or other reservoirs from the containment device to a container that meets the requirements of section 33-24-03-12;
 - (5) Ensures that the area in which ampules or other reservoirs are removed is well-ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury;
 - (6) Ensures that employees removing ampules or other reservoirs are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
 - (7) Stores removed ampules or other reservoirs in closed, nonleaking containers that are in good condition; and
 - (8) Packs removed ampules or other reservoirs in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.
- c. A small quantity handler of universal waste who removes mercury containing ampules or other reservoirs from mercury containing devices must:
- (1) Determine whether the following exhibit a characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14:
 - (a) Mercury or cleanup residues resulting from spills or leaks; or
 - (b) Other solid waste generated as a result of the removal of mercury containing ampules or other reservoirs (for example, remaining mercury containing device units); or
 - (c) Both.
 - (2) If the mercury, residues, or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-699. The handler is considered the generator of the mercury, residues, or

other solid waste and is subject to the requirements of chapter 33-24-03.

- (3) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.
4. Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
 - a. A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
 - b. A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-714. Labeling and marking. A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (for example, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)", or "Waste Battery(ies)", "Used Battery(ies)".
2. A container, (or multiple container package unit), tank, or transport vehicle or vessel in which recalled universal waste pesticides as described in subdivision a of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:

- a. The label that was on or accompanied the product as sold or distributed; and
 - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
3. A container, tank, or transport vehicle or vessel in which unused pesticide products as described in subdivision b of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
 - a. The following:
 - (1) The label that was on the product when purchased, if still legible;
 - (2) If using the labels described in paragraph 1 is not feasible, the appropriate label as required under department of transportation regulation 49 CFR part 172; or
 - (3) If using the labels described in paragraphs 1 and 2 is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by the state; and
 - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
4. Universal waste mercury containing devices (for example, each mercury containing device) or a container in which mercury containing devices are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Mercury Containing Device(s)", or "Waste Mercury Containing Device(s)", or "Used Mercury Containing Device(s)".
5. Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-715. Accumulation time limits.

1. A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection 2 are met.

2. A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
3. A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
 - a. Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
 - b. Marking or labeling each individual item of universal waste (for example, each battery or mercury containing device) with the date it became a waste or was received;
 - c. Maintaining an inventory system onsite that identifies the date each universal waste became a waste or was received;
 - d. Maintaining an inventory system onsite that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
 - e. Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
 - f. Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-716. Employee training. A small quantity handler of universal waste shall inform all employees who handle or have responsibility for managing universal waste. The information must describe proper waste handling and

emergency procedures appropriate for the type or types of universal waste handled at the facility.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-717. Response to releases.

1. A small quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.
2. A small quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-699. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with chapter 33-24-03.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-718. Offsite shipments.

1. A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.
2. If a small quantity handler of universal waste self-transportes universal waste offsite, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of sections 33-24-05-750 through 33-24-05-759 while transporting the universal waste.
3. If a universal waste being offered for offsite transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a small quantity handler of universal waste must package, label, mark, and placard the shipment and prepare the proper shipping papers in accordance with applicable department of transportation regulations under 49 CFR parts 172 through 180.
4. Prior to sending a shipment of universal waste to another universal waste handler, the originating small quantity handler shall ensure that the receiving handler agrees to receive the shipment.
5. If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the

shipment is rejected by the receiving handler or destination facility, the originating handler shall either:

- a. Receive the universal waste back when notified that the shipment has been rejected; or
 - b. Agree with the receiving handler on a destination facility to which the shipment will be sent.
6. A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that the handler has received from another handler. If a handler rejects a shipment or a portion of a shipment, the receiving handler shall contact the originating handler to notify the originating handler of the rejection and to discuss reshipment of the load. The receiving handler must:
- a. Send the shipment back to the originating handler; or
 - b. If agreed to by both the originating and receiving handler, send the shipment to a destination facility.
7. If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler shall immediately notify the department of the illegal shipment, and provide the name, address, and telephone number of the originating shipper. The department will provide instructions for managing the hazardous waste.
8. If a small quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local waste regulations.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-719. Tracking universal waste shipments. A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-720. Exports. A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those foreign OECD

countries specified in 40 CFR 262.58(a)(1) (in which case the handler is subject to the requirements of 40 CFR subpart H) shall:

1. Comply with the requirements applicable to a primary exporter in section 33-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33-24-03-23, and section 33-24-03-24;
2. Export such universal waste only upon consent of the receiving country and in conformance with environmental protection agency acknowledgment of consent as defined in sections 33-24-03-17 through 33-24-03-29; and
3. Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-721. [Reserved]~~

~~33-24-05-722. [Reserved]~~

~~33-24-05-723. [Reserved]~~

~~33-24-05-724. [Reserved]~~

~~33-24-05-725. [Reserved]~~

~~33-24-05-726. [Reserved]~~

~~33-24-05-727. [Reserved]~~

~~33-24-05-728. [Reserved]~~

~~33-24-05-729. [Reserved]~~

33-24-05-730. Applicability - Large quantity handlers of universal waste. Sections 33-24-05-730 through 33-24-05-740 apply to large quantity handlers of universal waste.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-731. Prohibitions. A large quantity handler of universal waste is:

1. Prohibited from disposing of universal waste; and

2. Prohibited from diluting or treating universal waste, except by responding to releases as provided by section 33-24-05-737, or by managing specific wastes as provided in section 33-24-05-733.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-732. Notification.

1. A large quantity handler of universal waste must:
 - a. Except as provided in subdivisions b and c, send written notification of universal waste management activities to the department, and receive an identification number before meeting or exceeding the five thousand kilogram storage limit.
 - b. A large quantity handler of universal waste who has already notified the department of the person's hazardous waste management activities and received an identification number is not required to renotify.
 - c. A large quantity handler of universal waste who manages recalled universal waste pesticides as described in subdivision a of subsection 1 of section 33-24-05-703 and who has sent notification to the environmental protection agency as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides.
2. This notification must include:
 - a. The universal waste handler's name and mailing address;
 - b. The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;
 - c. The address or physical location of the universal waste management activities;
 - d. A list of all types of universal waste managed by the handler (for example, batteries, pesticides, mercury containing devices, lamps); and
 - e. A statement indicating that the handler is accumulating more than five thousand kilograms of universal waste at one time and the types of universal waste (for example, batteries, pesticides,

mercury containing devices, lamps) the handler is accumulating above this quantity.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-733. Waste management.

1. **Universal waste batteries.** A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
 - a. A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
 - b. A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):
 - (1) Sorting batteries by type;
 - (2) Mixing battery types in one container;
 - (3) Discharging batteries so as to remove the electric charge;
 - (4) Regenerating used batteries;
 - (5) Disassembling batteries or battery packs into individual batteries or cells;
 - (6) Removing batteries from consumer products; or
 - (7) Removing electrolyte from batteries.
 - c. A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (for example, battery pack materials, discarded consumer products) as a result of the activities listed in subdivision b, must determine whether the electrolyte or other solid waste, or both, exhibit one or more

of the characteristics of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14.

- (1) If the electrolyte or other solid waste, or both, exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-700. The handler is considered the generator of the hazardous electrolyte or other hazardous waste and is subject to the requirements of chapter 33-24-03.
- (2) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in compliance with applicable federal, state, or local solid waste regulations.

2. **Universal waste pesticides.** A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

- a. A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
- b. A container that does not meet the requirements of subdivision a, provided that the unacceptable container is overpacked in a container that does meet the requirements of subdivision a;
- c. A tank that meets the applicable requirements of subsection 5 of section 33-24-06-16 and sections 33-24-05-103 through 33-24-05-114, except subsection 3 of section 33-24-06-110 and sections 33-24-05-113 and 33-24-05-114; or
- d. A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

3. **Universal waste mercury containing devices.** A large quantity handler of universal waste must manage universal waste mercury containing devices in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- a. A large quantity handler of universal waste must contain any universal waste mercury containing device that shows evidence of leakage, spillage, or damage that could cause leakage under

reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the mercury containing device, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

- b. A large quantity handler of universal waste may remove mercury containing ampules or other reservoirs from universal waste mercury containing devices provided the handler:
- (1) Removes the ampules or other reservoirs in a manner designed to prevent breakage of the ampules or other reservoirs;
 - (2) Removes the ampules or other reservoirs only over or in a containment device (for example, a tray or pan sufficient to collect and contain any mercury released from an ampule or other reservoir in case of breakage);
 - (3) Ensures that a mercury cleanup system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules or other reservoirs from the containment device to a container that meets the requirements of section 33-24-03-12;
 - (4) Immediately transfers any mercury resulting from spills or leaks from broken ampules or other reservoirs from the containment device to a container that meets the requirements of section 33-24-03-12;
 - (5) Ensures that the area in which ampules or other reservoirs are removed is well-ventilated and monitored to ensure compliance with applicable occupational safety and health administration exposure levels for mercury;
 - (6) Ensures that employees removing ampules or other reservoirs are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
 - (7) Stores removed ampules or other reservoirs in closed, nonleaking containers that are in good condition; and
 - (8) Packs removed ampules or other reservoirs in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.

- c. A large quantity handler of universal waste who removes mercury containing ampules or other reservoirs from mercury containing devices must:
 - (1) Determine whether the following exhibit a characteristic of hazardous waste identified in sections 33-24-02-10 through 33-24-02-14:
 - (a) Mercury or cleanup residues resulting from spills or leaks;
 - (b) Other solid waste generated as a result of the removal of mercury containing ampules or other reservoirs (for example, remaining mercury containing device units); or
 - (c) Both.
 - (2) If the mercury, residues, or other solid waste, or any combination thereof, exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-699. The handler is considered the generator of the mercury, residues, or other solid waste, or any combination thereof, and is subject to the requirements of chapter 33-24-03.
 - (3) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.
- 4. **Lamps.** A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
 - a. A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
 - b. A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must

be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-734. Labeling and marking. A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

1. Universal waste batteries (for example, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)".
2. A container (or multiple container package unit), tank, or transport vehicle or vessel in which recalled universal waste pesticides as described in subdivision a of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
 - a. The label that was on or accompanied the product as sold or distributed; and
 - b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
3. A container, tank, or transport vehicle or vessel in which unused pesticide products as described in subdivision b of subsection 1 of section 33-24-05-703 are contained must be labeled or marked clearly with:
 - a. The following:
 - (1) The label that was on the product when purchased, if still legible;
 - (2) If using the labels described in paragraph 1 is not feasible, the appropriate label as required under department of transportation regulation 49 CFR part 172; or
 - (3) If using the labels described in paragraphs 1 and 2 is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by the state; and

- b. The words "Universal Waste - Pesticide(s)" or "Waste - Pesticide(s)".
4. Universal waste mercury containing devices (for example, each mercury containing device) or a container in which mercury containing devices are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste - Mercury Containing Device(s)", or "Waste Mercury Containing Device(s)", or "Used Mercury Containing Device(s)".
5. Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-735. Accumulation time limits.

1. A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of subsection 2 are met.
2. A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
3. A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
 - a. Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
 - b. Marking or labeling each individual item of universal waste (for example, each battery or mercury containing device) with the date it became a waste or was received;
 - c. Maintaining an inventory system onsite that identifies the date each universal waste became a waste or was received;

- d. Maintaining an inventory system onsite that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
- e. Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
- f. Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-736. Employee training. A large quantity handler of universal waste shall ensure all employees who handle or have responsibility for managing universal waste are thoroughly familiar with proper waste handling and emergency procedures appropriate for the type or types of universal waste handled at the facility, and relative to their responsibilities during normal facility operations and emergencies.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-737. Response to releases.

- 1. A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.
- 2. A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-699. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with chapter 33-24-03.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-738. Offsite shipments.

1. A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.
2. If a large quantity handler of universal waste self-transportes universal waste offsite, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of sections 33-24-05-750 through 33-24-05-759 while transporting the universal waste.
3. If a universal waste being offered for offsite transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a large quantity handler of universal waste must package, label, mark, and placard the shipment and prepare the proper shipping papers in accordance with applicable department of transportation regulations under 49 CFR parts 172 through 180.
4. Prior to sending a shipment of universal waste to another universal waste handler, the originating handler shall ensure that the receiving handler agrees to receive the shipment.
5. If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler shall either:
 - a. Receive the universal waste back when notified that the shipment has been rejected; or
 - b. Agree with the receiving handler on a destination facility to which the shipment will be sent.
6. A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that the handler has received from another handler. If a handler rejects a shipment or a portion of a shipment, the receiving handler shall contact the originating handler to notify the originating handler of the rejection and to discuss reshipment of the load. The receiving handler must:
 - a. Send the shipment back to the originating handler; or
 - b. If agreed to by both the originating and receiving handler, send the shipment to a destination facility.
7. If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler

shall immediately notify the department of the illegal shipment, and provide the name, address, and telephone number of the originating shipper. The department will provide instructions for managing the hazardous waste.

8. If a large quantity handler of universal waste receives a shipment of nonhazardous, nonuniversal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-739. Tracking universal waste shipments.

1. **Receipt of shipments.** A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:
 - a. The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
 - b. The quantity of each type of universal waste received (for example, batteries, pesticides, mercury containing devices, lamps); and
 - c. The date of receipt of the shipment of universal waste.
2. **Shipments offsite.** A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste sent must include the following information:
 - a. The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
 - b. The quantity of each type of universal waste sent (for example, batteries, pesticides, mercury containing devices, lamps); and
 - c. The date the shipment of universal waste left the facility.
3. **Record retention.**

- a. A large quantity handler of universal waste shall retain the records described in subsection 1 for at least three years from the date of receipt of the shipment of universal waste.
- b. A large quantity handler of universal waste shall retain the records described in subsection 2 for at least three years from the date a shipment of universal waste left the facility.
- c. The retention period for all records is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the department.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-740. Exports. A large quantity handler of universal waste who sends universal waste to a foreign destination other than those OECD countries specified in 40 CFR 262.58(a)(1)(in which case the handler is subject to the requirements of 40 CFR, subpart H) shall:

- 1. Comply with the requirements applicable to a primary exporter in section 33-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33-24-03-23, and section 33-24-03-24;
- 2. Export such universal waste only upon consent of the receiving country and in conformance with environmental protection agency acknowledgment of consent as defined in sections 33-24-03-17 through 33-24-03-29; and
- 3. Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~**33-24-05-741. [Reserved]**~~

~~**History:** Effective July 1, 1997; reserved December 1, 2003.~~

~~**33-24-05-742. [Reserved]**~~

~~**History:** Effective July 1, 1997; reserved December 1, 2003.~~

~~**33-24-05-743. [Reserved]**~~

~~**History:** Effective July 1, 1997; reserved December 1, 2003.~~

~~33-24-05-744. [Reserved]~~

~~History: Effective July 1, 1997; reserved December 1, 2003.~~

~~33-24-05-745. [Reserved]~~

~~History: Effective July 1, 1997; reserved December 1, 2003.~~

~~33-24-05-746. [Reserved]~~

~~History: Effective July 1, 1997; reserved December 1, 2003.~~

~~33-24-05-747. [Reserved]~~

~~33-24-05-748. [Reserved]~~

~~33-24-05-749. [Reserved]~~

33-24-05-750. Applicability - Universal waste transporters. Sections 33-24-05-750 through 33-24-05-759 apply to all transporters of universal waste.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-751. Prohibitions. A universal waste transporter is:

1. Prohibited from disposing of universal waste; and
2. Prohibited from diluting or treating universal waste, except by responding to releases as provided by section 33-24-05-754.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-752. Waste management.

1. A universal waste transporter shall comply with all applicable United States department of transportation regulations in 49 CFR parts 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the department of transportation regulations, a material is considered a hazardous waste if it is subject to the hazardous waste manifest requirements specified in chapter 33-24-03. Because universal waste does not require a hazardous waste manifest, it is not considered a hazardous waste under the department of transportation regulations.

2. Some universal waste materials are regulated by the department of transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under chapter 33-24-03, they may not be described by the department of transportation proper shipping name "hazardous waste (l) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste".
3. All universal waste transporters shall comply with the solid waste transportation permitting requirements contained in section 33-20-02.1-01.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-753. Storage time limits.

1. A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.
2. If a universal waste transporter stores universal waste for more than ten days, the universal waste transporter becomes a universal waste handler and must comply with the requirements of sections 33-24-05-710 through 33-24-05-749, as applicable, while storing the universal waste.
3. A universal waste transporter must keep records for each shipment of universal waste transported. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste sent must include the following information:
 - a. The name and address of the universal waste generator or handler originating the shipment and the subsequent handler, destination facility, or foreign destination to whom the universal waste was sent;
 - b. The quantity of each type of universal waste sent (for example, batteries, pesticides, mercury containing devices); and
 - c. The date the universal waste transporter accepted the shipment of universal waste for transportation.
4. Record retention. A universal waste transporter shall retain the records described in subsection 3 for at least three years from the date

of delivery of the shipment of universal waste to another handler, destination facility, or foreign destination.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-754. Response to releases.

1. A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.
2. A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, is subject to all applicable requirements of chapters 33-24-01 through 33-24-04, chapter 33-24-06, and sections 33-24-05-01 through 33-24-05-699. If the waste is determined to be hazardous waste, the transporter is subject to chapter 33-24-03.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-755. Offsite shipments.

1. A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.
2. If the universal waste being shipped offsite meets the department of transportation's definition of hazardous materials in 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable department of transportation regulations under 49 CFR part 172.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-756. Exports. A universal waste transporter transporting a shipment of universal waste to a foreign destination other than those OECD countries specified in 40 CFR 262.58(a)(1)(in which case the handler is subject to the requirements of 40 CFR, subpart H) may not accept a shipment if the transporter knows the shipment does not conform to the environmental protection agency acknowledgment of consent. In addition, the transporter must ensure that:

1. A copy of the environmental protection agency acknowledgment of consent accompanies the shipment; and

2. The shipment is delivered to the facility designated by the person initiating the shipment.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-757. [Reserved]~~

~~33-24-05-758. [Reserved]~~

~~33-24-05-759. [Reserved]~~

33-24-05-760. Applicability - Destination facilities.

1. The owner or operator of a destination facility (as defined in section 33-24-01-04) is subject to all applicable requirements of sections 33-24-05-01 through 33-24-05-699 and chapters 33-24-06 and 33-24-07, and the notification requirement under section 3010 of the Resource Conservation and Recovery Act.
2. The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with subdivision b of subsection 3 of section 33-24-02-06.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-761. Offsite shipments.

1. The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility, or foreign destination.
2. The owner or operator of a destination facility may reject a shipment containing universal waste or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, the destination facility must contact the shipper to notify the shipper of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility shall:
 - a. Send the shipment back to the original shipper; or
 - b. If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

3. If the owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility shall immediately notify the department of the illegal shipment, and provide the name, address, and telephone number of the originating shipper. The department will provide instructions for managing the hazardous waste.
4. If the owner or operator of a destination facility receives a shipment of nonhazardous, nonuniversal waste, the owner or operator of the destination facility may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

History: Effective July 1, 1997; amended effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

33-24-05-762. Tracking universal waste shipments.

1. The owner or operator of a destination facility shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste sent must include the following information:
 - a. The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;
 - b. The quantity of each type of universal waste received (for example, batteries, pesticides, mercury containing devices); and
 - c. The date of receipt of the shipment of universal waste.
2. The owner or operator of a destination facility must retain the records described in subsection 1 for at least three years from the date of receipt of a shipment of universal waste.

History: Effective December 1, 2003.

General Authority: NDCC 23-20.3-03

Law Implemented: NDCC 23-20.3-03, 23-20.3-04

~~33-24-05-763. [Reserved]~~

~~33-24-05-764. [Reserved]~~

~~33-24-05-765. [Reserved]~~

~~33-24-05-766. [Reserved]~~

~~33-24-05-767. [Reserved]~~