CHAPTER 33.1-20-02.1
PERMIT PROVISIONS AND PROCEDURES

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33.1-20-02.1-01. Solid waste management permit required.

Every person who treats or transports solid waste or operates a solid waste management unit or facility is required to have a valid permit issued by the department, unless the activity is an emergency, exemption, or exception as provided in this section.

1. If the department determines an emergency exists, it may issue an order citing the existence of such emergency and require that certain actions be taken as necessary to meet the emergency in accordance with the provisions of North Dakota Century Code section 23.1-08-19.

2. A solid waste management permit is not required for the following activities or facilities:

   a. Backyard composting of leaves, grass clippings, or wood chips;

   b. A collection point for parking lot or street sweepings;

   c. Collection sites for wastes collected and received in sealed plastic bags from such activities as periodic cleanup campaigns for cities, rights of way, or roadside parks;

   d. Onsite incinerators used by hospitals, clinics, laboratories, or other similar facilities solely for incineration of commercial waste or infectious waste generated onsite;

   e. Rock and dirt fills that receive any combination of rock, dirt, or sand;

   f. Surface impoundments for storage, handling, and disposal of oil and gas exploration and production wastes on a lease or area permitted through the North Dakota industrial commission under North Dakota Century Code section 38-08-04;

   g. The disposal into the mine spoils of the following wastes generated in the mining operation:

      (1) Rock, boulders, and dirt; and

      (2) Trees and brush.

   h. The disposal of the following mining operation wastes into areas designated in a surface coal mining permit issued by the North Dakota public service commission for such disposal:

      (1) Inert waste from inspected farmsteads;

      (2) Wood materials including pallets, lumber, lathe, cablespools, and fenceposts;

(3) Brick, concrete block, and cured concrete; and

(4) Plastic material and pipe.

i. A pilot project approved by the department under section 33.1-20-02.1-10.

3. A permit for the transportation of solid waste is not required by persons who:

a. Transport solely their own waste to a solid waste management unit or facility; or

b. Transport waste entirely within a facility regulated under this article or entirely on their property.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-02. Permits by rule.

The owner or operator of the following facilities is deemed to have obtained a permit for a solid waste management facility without making application for it as long as the owner or operator remains in compliance with section 33.1-20-04.1-01 and the rules and requirements provided in the respective subsections of this section:

1. A facility for inert waste operated for municipalities which together have one thousand or fewer people provided:

a. The owner or operator of a new facility or lateral expansion of a landfill notifies the department, on forms available from the department, ninety days prior to any construction;

b. The facility is in compliance with sections33.1-20-02.1-05, 33.1-20-04.1-02, and 33.1-20-04.1-09 and with chapter 33.1-20-05.1.

2. A drop box facility in compliance with subsection 2 of section 33.1-20-04.1-06.

3. A waste pile for composting only grass and leaves that is operated for ten thousand or fewer people in compliance with section 33.1-20-04.1-07 provided the owner or operator notifies the department, on forms available from the department, ninety days prior to construction.

4. A pile of scrap tires accumulated by a tire dealer, a municipality, or a county which contains either one thousand three hundred or fewer car tires, twenty-five tons [22.7 metric tons] or less of shredded tires or a pile of tires, which is equivalent in volume to one twin-axle semitrailer load or less, provided that no public nuisance is created and the following requirements are addressed:

a. Access to the facility is monitored or controlled;

b. The location is accessible by fire control and emergency equipment; and

c. The owner or operator has appropriate provisions and financial arrangements for the recycling or disposal of tires.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-03. General permits for beneficial use, processing, or treatment of solid waste.

1. Authorization for a general permit:

   a. The department may issue general permits on a regional or statewide basis for a category of beneficial use, processing, or treatment of solid waste, including recyclable materials, if the following are met:

      (1) The wastes included in the category are generated by the same or substantially similar operations and have the same or substantially similar physical characteristics and chemical composition. If wastes are not the same or substantially similar and are blended for use, the blend shall be consistently reproduced with the same physical characteristics and chemical composition.

      (2) The wastes included in the category are proposed for the same or substantially similar beneficial use, processing, or treatment operations.

      (3) The activities in the category can be adequately regulated utilizing standardized conditions without harming or presenting a threat of harm to human health, safety, or the environment. At a minimum, the use of the waste as an ingredient in an industrial process or as a substitute for a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing; and

      (4) The activities in the category are in accordance with the requirements and purposes of this article, and do not pose a threat of harm to human health, safety, or the environment.

   b. A person does not require an individual solid waste permit under this article if the following are met:

      (1) The beneficial use, processing, or treatment activities are conducted in accordance with the terms and conditions of the applicable general permit; and

      (2) The person conducting the beneficial use, processing, or treatment activities has registered with the department for coverage under the general permit, if registration is required by the general permit.

   c. Notwithstanding subdivision b, the department may require a person authorized by a general permit to apply for, and obtain, an individual permit when the person is not in compliance with the conditions of the general permit or is conducting an activity that, in the department's determination, may present a threat of harm to human health, safety, or the environment.

   d. The department may issue a new general permit upon its own motion or upon an application from a person.

   e. The department may impose a fee for a new general permit application or for registration or application for coverage under an existing general permit, based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance with the permit or registration certificate.

   f. The department may modify, suspend, revoke, or reissue general permits or coverage under a general permit as it deems necessary to prevent harm or threat of harm to human health, safety, or the environment.

g. A person that beneficially uses, processes, or treats solid waste under a general permit shall comply with the terms and conditions of the general permit and requirements of this article to the same extent as if the activity were covered by an individual permit.

h. A person operating under a general permit has the burden of proving that the waste and activity are consistent with the general permit.

i. Persons applying for coverage or operating under a general permit are subject to all local zoning requirements.

j. General permits may not be issued to a CCR facility to treat or dispose of CCR.

2. Application for a new general permit. An application from a person for the issuance of a new general permit shall be submitted on a form provided by the department and must contain the following:

a. A description of the type of solid waste to be covered by the general permit, including physical and chemical characteristics of the waste. The chemical description shall contain an analysis of a sufficient number of samples of solid waste in the same waste type to accurately represent the range of physical and chemical characteristics of the waste type;

b. A description of the proposed type of beneficial use, processing, or treatment activity to be covered by the general permit;

c. A detailed narrative and schematic diagram of the production or manufacturing process from which the waste to be covered by the general permit is generated;

d. For beneficial use general permits, proposed concentration limits for contaminants in the beneficially used waste, and a rationale for those limits. At a minimum, the use of the waste as an ingredient in an industrial process or as a substitute for a raw material or a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing;

e. For general permits that involve beneficial use of solid waste, a detailed demonstration of the suitability of the waste for the proposed beneficial use, which must include:

(1) A demonstration that the physical characteristics and chemical composition of the solid waste contributes to the proposed beneficial use and does not interfere with the proposed beneficial use;

(2) If the waste is to be used as a substitute for a commercial product, a demonstration that the waste can perform the desired functions of the commercial product, and that the waste meets or exceeds all applicable national, state, local, or industry standards or specifications for the material for which the waste is being substituted;

(3) If the waste is to be used as a raw material for a product with commercial value, a demonstration that the waste will contribute significant properties or materials to the end product, and that the waste meets or exceeds all applicable national, state, local, or industry standards or specifications for the material for which the waste is being substituted;

(4) If the waste is to be used in general roadway application or highway construction, a demonstration that approval will be granted by the department of transportation, if applicable, for the use of the waste for the intended application;

(5) If the waste is to be used as a construction material, soil substitute, soil additive, or antiskid material, or is to be otherwise placed directly onto the land, an evaluation of the potential for adverse public health and environmental impacts from the proposed use of the solid waste. The evaluation shall identify the constituents of the waste which may present the potential for adverse public health and environmental impacts, and the potential pathways of human exposure to those constituents, including exposure through ground water, surface water, air, and the food chain; and

(6) If the waste is to be used as a construction material, a description of the construction activities and detailed timelines for the prompt completion of the construction activities.

f. If solid wastes are blended for use, a demonstration that each waste results in a beneficial contribution to the use of the mixed waste and that the consistency of the blend will be maintained. The applicant shall specify the quantities and proportions of all materials included in the blended waste, and the mixture shall meet appropriate standards for use;

g. Payment of the fee specified in chapter 33.1-20-15 for a new general permit; and

h. Any other relevant information requested by the department.

3. Public notice and review period.

a. The department shall publish notice of receipt of an application for a new general permit on its official website when the department determines the application is substantially complete.

b. The department shall follow the same review and public notice procedures for new general permit applications as for individual permit applications in section 33.1-20-03.1-03.

c. The department shall publish all finalized and approved new general permits on its official website and list all persons who have registered for coverage under that general permit.

4. Contents of general permits. Each new general permit issued by the department must include, at a minimum:

a. A clear and specific description of the category of waste and the category of beneficial use, processing, or treatment of solid waste eligible for coverage under the general permit;

b. A brief description of the reasons for the department's determination that the category of beneficial use, processing or treatment is eligible for coverage under the general permit;

c. Registration or determination of applicability requirements and the fee, if any, imposed on registrants or applicants for coverage under the general permit;

d. A set of terms and conditions governing the beneficial use, processing or treatment of solid waste covered by the general permit that the department determines are necessary to ensure compliance with this article, including provisions for the protection of ground water. At a minimum, the conditions must include:

(1) Limits on the physical and chemical properties of waste that may be beneficially used, processed, or treated and a requirement that persons who conduct activities authorized by the general permit shall notify the department immediately on forms

provided by the department, of a change in the physical or chemical properties of the solid waste, including leachability;

(2) The department's right of access to the site or facility where permitted activities are conducted for inspections as provided in North Dakota Century Code section 23.1-08-18;

(3) An effective date and a fixed permit term that may not exceed ten years from the effective date;

(4) A requirement that a person operating under the permit shall notify the department within the time stated in the permit and, if no time is stated no later than thirty days, in writing, of any changes in the following:

(a) The company's name, address, owners, operators, and responsible officials.

(b) Land ownership where the general permit is implemented.

(c) The physical and chemical characteristics of the solid waste.

(d) The generators of the solid waste and the manufacturing process that generates the solid waste.

(e) The status of any permit issued to the permittee or any agent of the permittee engaged in activities under the permit by the department.

(5) A requirement that the activities conducted under the authorization of a general permit must be conducted in accordance with the permittee's application, except to the extent that a general permit may state otherwise;

e. The general permit may include a requirement that persons that conduct activities authorized by the general permit shall submit to the department periodic reports, analyses of waste and other information to ensure the quality of the waste to be beneficially used or processed does not change; and

f. The general permit may include a requirement for financial assurance to remove materials remaining after closure or for emergency response site cleanup, based on the volume, physical, or chemical characteristics, or treatment methods of the materials covered under the general permit.

5. Coverage under a general permit.

a. A person is authorized to operate under a general permit if one of the following occurs:

(1) No registration required for coverage. The applicable general permit does not require persons to register with the department prior to operating under the general permit, and the person is operating in accordance with all terms of the general permit;

(2) Registration required for coverage. The applicable general permit requires persons to register with the department prior to operating under the general permit. The department will notify the person that has registered that they may begin to operate in accordance with the terms of the general permit; or

(3) Application required for coverage. The applicable general permit requires persons to apply for and obtain authorization to operate, including site approval, from the department prior to operating under the general permit, and the department has made this authorization.

b. Except as provided in subdivision c, as a condition of each general permit, the department may require persons seeking coverage under the general permit to register or apply with the department within a specified time period. New operations not in existence before the issuance of a general permit shall register prior to conducting the activity authorized by the general permit.

c. For general permits where the solid waste is to be used as a construction material, antiskid material, or otherwise placed directly onto the land, as a condition of the general permit, the department may require persons who intend to operate under the general permit to apply for and obtain authorization from the department prior to conducting the activity authorized by the general permit. The department may impose the requirement for prior authorization on other general permits for beneficial use, processing, or treatment activities if the department determines the condition is necessary to prevent harm or a threat of harm to the health and safety of people or the environment.

d. If required by the general permit, the registration or application must include:

(1) The name and address of the person conducting the activity covered by the general permit;

(2) A description of each waste that will be beneficially used or processed in accordance with the general permit;

(3) The location where the general permit will be implemented;

(4) A description of the proposed method of processing or beneficial use of the waste;

(5) An analysis that is in accordance with the general permit, if the general permit requires a registrant or applicant to chemically analyze each waste to be processed or beneficially used;

(6) The name or number of the general permit being utilized for the activity;

(7) A demonstration that the activities the person intends to conduct are authorized by the general permit;

(8) A disclosure statement as required by North Dakota Century Code section 23.1-08-17;

(9) A signed statement by the person conducting the activity authorized by the general permit, on a form prepared by the department, which states that the person agrees to accept the conditions imposed by the general permit for beneficial use, processing, or treatment of solid waste under the general permit;

(10) A registration or application fee if required by the general permit; and

(11) Any other relevant information requested by the department.

e. The department may amend, suspend, or revoke coverage under a general permit if a person authorized to conduct solid waste activities under a general permit is not in compliance with all of the permit conditions or other requirements of this article.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09, 23.1-08-10; S.L. 2017, ch. 199, § 1

33.1-20-02.1-04. Permit compliance.

All solid waste management facilities and activities must be performed, constructed, operated, and closed in a manner consistent with the permit application and subject to any modifications specified through permit conditions.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-05. Record of notice.

1. Within sixty days of the issuance of a permit for any landfill, surface impoundment, or land treatment unit if not already completed, the owner or operator shall record a notarized affidavit with the county recorder. The affidavit must specify that this facility, as noted in the legal description, is permitted to accept solid waste for disposal. This affidavit must specify that another affidavit must be recorded upon the facility's final closure.

2. Within sixty days of completion of final closure of any landfill, surface impoundment, or land treatment facility and prior to sale or lease of the property on which the facility is located, the owner shall comply with North Dakota Century Code section 23.1-08-21. The record or plat shall, in perpetuity, notify any person conducting a title search that the land has been used as a solid waste disposal facility. The record or plat must indicate the types and quantities of solid waste placed in the site and details on the site's construction, operation, or closure (including precautions against any building, earth moving, or tillage on the closed site) which are necessary to ensure the long-term maintenance and integrity of the closed facility.

3. The department must be provided a certified copy of any affidavit or plat within sixty days of recording.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-06. Property rights.

An applicant for a permit for a solid waste management unit or facility shall acquire or possess a right to the use of the property for which a permit is sought, including the access route thereto. After closure, the applicant shall maintain the right of access to the site throughout the postclosure period.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-07. Permit modification, suspension, or revocation.

1. A permit may be modified, suspended, revoked, or denied by the department for reasons pertaining to: circumstances that do not meet the purpose and provisions of this article, the provisions of the permit, or the plans and specifications submitted as part of the application for permit; or, violations of any applicable laws or rules. The department shall provide written notice to the permittee.

2. If a change occurs during the life of a permit for transporting solid waste (such as the number or type of vehicles used to transport waste, the service area, the waste categories transported, or the solid waste management facilities used), the permittee shall notify the department in writing within thirty days.

3. If a change occurs during the life of a permit for a solid waste management unit or facility, as specified in subsection 4, the permittee shall apply for and receive a modification of the permit prior to enacting the change. Routine maintenance, repair, or replacement, or an increase in hours of operations may not be considered a construction or operation change. Changes, including frequency of monitoring and reporting, waste sampling or analysis method, schedules of compliance, and revised cost estimates for closure and postclosure may be effected through written notice to and approval by the department.

4. The following changes at a permitted solid waste management unit or facility require a major permit modification:

   a. A change to the facility boundaries or acreage;

   b. An increase in average daily solid waste specified in the permit or permit application, calculated by weight or volume for any twelve consecutive months;

   c. A change in the solid waste characteristics;

   d. An increase or decrease in finished height or finished slope of a landfill;

   e. Any increase in landfill trench or excavation depth;

   f. A change in facility site development which will result in impact to or encroachment into a one hundred-year floodplain, a ravine, a wetland, or a drainageway;

   g. A change in site drainage or management of runoff or run-on;

   h. A change in facility site development which will result in disposal of wastes closer to site boundaries than originally approved;

   i. The addition of solid waste management units, which, if sited independently, would require a permit; or

   j. Other changes that could have an adverse effect on the safety, health, or welfare of nearby residents, property owners, or the environment.

5. An application for modification of a solid waste management unit or facility must follow the procedures and provisions of section 33.1-20-03.1-02.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-08. Renewal of permit.

An application for renewal of any permit must be submitted at least sixty days prior to the expiration date. The application for renewal must follow the procedures and provisions of section 33.1-20-03.1-02. The conditions of an expired permit continue in force until the effective date of a new permit, if the permittee has submitted a timely and complete application for a new permit and the department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

History: Effective July 1, 2020.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-09. Transfer of permit.

1. An application for the transfer of a solid waste facility permit to a new owner must meet the requirements of this section. The original permittee shall be responsible for all conditions of the permit, including financial assurance, until the permit transfer is approved by the department. The permit expiration date will remain in effect.

    a. An application for a permit transfer must be submitted on forms available from the department.

    b. The application must include an application processing fee specified in chapter 33.1-20-15.

    c. An application for permit transfer must be submitted to the department at least thirty days before a change of ownership occurs.

    d. The applicant shall certify that they will maintain compliance with all conditions, operating plans, and facility specifications associated with the permit.

    e. The applicant shall submit a disclosure statement as required by North Dakota Century Code section 23.1-08-17.

    f. The application must demonstrate financial assurance that meets the requirements of chapter 33.1-20-14 prior to approval of the permit transfer by the department.

    g. The applicant shall provide documentation of compliance with local zoning requirements.

2. An application for the transfer of a solid waste transporter's permit to a new owner must meet the requirements of this section. The permit expiration date will remain in effect.

    a. An application for a permit transfer must be submitted on forms available from the department.

    b. The application must include an application processing fee specified in chapter 33.1-20-15. Decals for individual solid waste transport vehicles covered under the permit will remain valid until the permit expiration date.

3. The department shall notify the county where a solid waste facility is located of the transfer of any permit to a new owner and shall provide public notice of permit transfers on the department's website.

History: Effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2023, ch. 254, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09

33.1-20-02.1-10. Solid waste pilot projects.

The department may approve applications for solid waste pilot projects that meet the requirements of this section.

1. An applicant shall submit a request for a solid waste pilot project in writing to the department and receive written approval from the department before commencement of any pilot project activities. A pilot project must not exceed two years in length. Persons applying for approval of a pilot project are subject to all local zoning requirements. The department shall maintain a list of all approved solid waste pilot projects and their status on the department's website.

2. Request for pilot project. A pilot project request must include, at a minimum, the following information:

a. General data.

(1) Names, addresses, and telephone numbers of the owner and/or operator;

(2) Legal description, physical address, and mailing address of the proposed site;

(3) Signage to ensure adequate traffic control and a telephone number to contact in case of an emergency;

(4) A provision that the site must be attended or secured during business hours to control public access, prevent unauthorized vehicles, and illegal dumping of wastes; and

(5) A site map drawn to a common, recognized engineering scale illustrating all proposed roads, fencing, existing and proposed structures, adjacent properties, storm water control and containment features, and processing and storage areas.

b. Project overview.

(1) Objectives of the proposed pilot project;

(2) How the pilot project will integrate with an existing or proposed facility;

(3) The methodology and protocol to be used for beneficial use or treatment;

(4) What data will be gathered and what level of results will determine whether the pilot project is successful;

(5) Any analysis to be performed; and

(6) Pilot project time frame. A pilot project may not exceed two years in length from department approval.

c. Operations data.

(1) A description of all feedstock types;

(2) A description of any bulking materials;

(3) A description of any liquid wastes;

(4) A description of proposed use for finished materials and disposition of unfinished materials;

(5) Anticipated volume of all solid and liquid materials to be received and produced during the duration of the pilot project;

(6) A detailed description of the beneficial use or treatment operations;

(7) Access control;

(8) Odor management plan;

(9) Fire protection plan that is in accordance with the local fire codes and requirements;

(10) A description of storm water run-on, runoff, and containment features supported by calculations demonstrating that these features are able to control, at a minimum, a twenty-five-year twenty-four-hour rain event, if precipitation contacts any soluble waste materials;

(11) Recordkeeping for all operational activities;

(12) A description of the work area; and

(13) A contingency plan addressing actions required in the event unacceptable materials are discovered, contamination or discharge of waters from the site occurs, or nuisance conditions occur onsite or offsite.

d. Environmental issues. If the pilot project operations are not conducted indoors or in an area not sheltered from the weather, an evaluation of the potential for impacts to ground water and surface water must be provided.

e. Closure plan. A closure plan must be provided describing the actions necessary to adequately close the facility. Closure activities must be completed within thirty days after pilot project completion or termination.

3. Financial assurance. The department may include a requirement for financial assurance to remove materials remaining after closure or for emergency response site cleanup, based on the volume, physical or chemical characteristics, or treatment methods of the materials covered under the pilot project approval.

4. Interim report. For pilot projects that are approved for longer than one year, an interim report must be submitted to the department within thirty days after the first year of the pilot project approval. The interim report must include, at a minimum, the following information:

a. A summary of each objective and whether the objective has been achieved;

b. Identification of anticipated and unanticipated results;

c. Identification of any environmental impacts resulting from the pilot project;

d. Successes and failures; and

e. Data from test results of treated or processed material.

5. Project closeout report. A project closeout report must be submitted to the department within ninety days after pilot project completion or termination. The closeout report must include, at a minimum, the following information:

a. A summary of each objective and whether the objective was achieved;

b. Identification of anticipated and unanticipated results;

c. Identification of any environmental impacts resulting from the pilot project;

d. Successes and failures;

e. Data from test results of treated or processed material; and

f. A description of the closure of pilot project facility.

6. Conversion to permanent facility. To continue operation of a pilot project as a permanent approved solid waste management facility, the owner or operator shall apply for an individual permit or general permit within ninety days of pilot project completion in accordance with chapter 33.1-20-03.1.

History: Effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2023, ch. 254, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09