

West's North Dakota Century Code Annotated [Currentness](#)

Title 23. Health and Safety

→ [Chapter 23-25](#). Air Pollution Control

→ **§ 23-25-01. Definitions**

For purposes of this chapter, the following words and phrases are defined:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination thereof.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
3. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
6. "Asbestos contractor" means any partnership, firm, association, corporation, limited liability company, or sole proprietorship that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any person engaged in the abatement of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material, except for individuals engaged in abatement at their private residence.
8. "Emission" means a release of air contaminants into the ambient air.
9. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.

10. “Friable asbestos material” means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.

11. “Indirect air contaminant source” means any facility, building, structure, or installation, or any combination thereof, which can reasonably be expected to cause or induce emissions of air contaminants.

12. “Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

13. “Person” means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative agency, or agency of the foregoing.

§ 23-25-01.1. Declaration of public policy and legislative intent

It is hereby declared to be the public policy of this state and the legislative intent of this chapter to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property, to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience of the people, and to facilitate the enjoyment of the natural attractions of this state.

§ 23-25-02. State air pollution control agency--Advisory council

1. The state department of health, hereinafter referred to as the department, is hereby designated as the agency to administer and coordinate a statewide program of air pollution control consistent with the provisions of this chapter.

2. There is hereby established an air pollution control advisory council, hereinafter referred to as the advisory council, of nine members to include the state health officer, the state geologist, the director of the department of transportation, and six other members to be appointed by the governor, one of whom must be a representative of county or municipal government, one a representative of the solid fuels industry, one a representative of the fluid and gas fuels industry, one a representative of the environmental sciences, and two appointed at large.

3. The term of office for the appointed members of the advisory council must be six years, but of those four first appointed, two shall serve for two years and two for four years, and the lengths of their terms must be

designated by the governor at the time of appointment.

4. The advisory council shall select its own chairman from among its members. The state health officer, state geologist, and director of the department of transportation each may designate a principal deputy or assistant to act in the officer's place and stead. The chief sanitary engineer of the state department of health, or that officer's designated assistant, must be the principal administrative officer of the council.

5. The advisory council shall hold at least one regular meeting each year, and such additional meetings as the chairman deems necessary, at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on the written request of any three members. Five members constitute a quorum.

6. The advisory council shall hold a public hearing to consider and recommend the adoption, amendment, or repeal of rules, regulations, and standards as provided in this chapter. Notice of such public hearing or hearings must be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least thirty days prior to the first hearing. The hearing or hearings must be held in the state capitol in Bismarck and interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards. The advisory council shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

§ 23-25-03. Power and duties of the department

The department shall:

1. Encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this chapter.
2. Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.
3. Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement, and control.
4. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
5. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial procedures.

6. Provide rules and regulations relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit such information as may be necessary to permit the department to make such determination.
7. Establish ambient air quality standards for the state which may vary according to appropriate areas.
8. Formulate and promulgate emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.
9. Hold hearings relating to any aspect or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence.
10. Require the owner or operator of a regulated air contaminant source to establish and maintain such records; make such reports; install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures; and provide such other information as may be required.
11. Provide by rules and regulations a procedure for the handling of applications for the granting of a variance to any person who owns or is in control of any plant, establishment, process, or equipment. The granting of a variance is not a right of the applicant but must be in the discretion of the department.
12. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The department shall develop and implement such federal programs if the department determines there is a benefit to the state.
13. Provide by rules a program for implementing lead-based paint remediation training, certification, and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233. [\[FN1\]](#)

After consultation with the advisory council, the department is empowered to adopt, amend, and repeal rules and regulations implementing and consistent with this chapter.

[FN1] 40 C.F.R. § 745.220, 40 C.F.R. § 745.223, 40 C.F.R. § 745.225, 40 C.F.R. § 745.226, 40 C.F.R. § 745.227, and 40 C.F.R. § 745.233.

§ 23-25-03.1. Licensing of asbestos and lead-based paint contractors and certification of asbestos and lead-based paint workers

The department is charged with the responsibility of administering and enforcing a licensing program for asbestos contractors and lead-based paint contractors and a certification program for asbestos workers and lead-based paint workers and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos workers and lead-based paint workers.
2. To establish standards and procedures for the licensing of contractors, and the certification of asbestos workers engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and to establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act, as amended.
3. To establish standards and procedures for the licensing of contractors and the certification of lead-based paint workers engaging in the abatement of lead-based paint and to establish performance standards for lead-based paint abatement in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233. [FN1]
4. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates, and to suspend or revoke certificates for cause after notice and opportunity for hearing.
5. To establish an annual fee and renewal fees for licensing asbestos contractors and lead-based paint contractors and certifying asbestos and lead-based paint workers and to establish examination fees for asbestos and lead-based paint workers under [section 23-25-04.2](#). The annual, renewal, and examination fees for lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.
6. To establish indoor environmental nonoccupational air quality standards for asbestos.
7. To adopt and enforce rules as necessary for the implementation of this section.

For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or

the federal Clean Air Act [[Pub. L. 95-95](#); 91 Stat. 685; [42 U.S.C. 7401 et seq.](#)], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

[FN1] [40 C.F.R. § 745.220](#), [40 C.F.R. § 745.223](#), [40 C.F.R. § 745.225](#), [40 C.F.R. § 745.226](#), [40 C.F.R. § 745.227](#), and [40 C.F.R. § 745.233](#).

§ 23-25-03.2. Sulfur dioxide ambient air quality standards more strict than federal standards prohibited

The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [[42 U.S.C. 7401 et seq.](#)], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the Clean Air Act, or for which there are no corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the Clean Air Act. Any intervention levels or standards set forth in the rules, however, may not be more strict than federal levels or standards recommended or adopted under the federal program. In adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory corresponding federal rules or standards.

§ 23-25-03.3. Requirements for adoption of air quality rules more strict than federal standards

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the Clean Air Act [[42 U.S.C. 7401 et seq.](#)], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.

2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If at any time the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information that were not available from the department when it gave its notice of hearing, the depart-

ment shall give a new notice of hearing not less than ninety days prior to the hearing that clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.

3. In this section:

a. “Cost-benefit analysis” means both the analysis and the written document that contains:

(1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.

(2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department shall not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.

b. “Risk assessment” means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:

(1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.

(2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.

(3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.

(4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department in preparing the risk assessment shall:

- (a) Rely only upon environmental protection agency-approved air dispersion models.
- (b) Identify the assumptions, inferences, and models that materially affect the outcome.
- (c) Explain the basis for any choices.
- (d) Identify any policy decisions or assumptions.
- (e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.
- (f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.

(5) The range and distribution of exposures and risks derived from the risk assessment.

c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the air pollution control advisory council.

4. This section applies to any petition submitted to the department pursuant to [section 23-01-04.1](#) that identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [[42 U.S.C. 7401 et seq.](#)] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to [section 23-01-04.1](#). This section also applies to any petitions filed under [section 23-01-04.1](#) affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent [section 23-01-04.1](#) conflicts with this section, the provisions of this section govern. This section does not apply, however, to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to any new rules governing such matters.

[§ 23-25-04. Classification and reporting of air pollution sources](#)

1. After consultation with the advisory council the department, by rule or regulation, may classify air contaminant sources according to levels and types of emissions and other criteria which relate to air pollution and

may require reporting for any of such class or classes. Classifications made pursuant to this subsection may apply to the state as a whole or to any designated area of the state and must be made with special reference to effects on health, economic, and social factors and physical effects on property.

2. Any person operating or responsible for the operation of air contaminant sources of any class for which rules and regulations of the department require reporting shall make reports containing information as may be required by the department relevant to air pollution.

§ 23-25-04.1. Permits or registration

1. No person shall construct, install, modify, use, or operate an air contaminant source designated by regulation, capable of causing or contributing to air pollution, either directly or indirectly, without a permit from the department or in violation of any conditions imposed by such permit.

2. The department shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

3. The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

4. Possession of an approved permit or registration certificate does not relieve any person of the responsibility to comply with applicable emission limitations or with any other provision of law or regulations adopted pursuant thereto and does not relieve any person from the requirement that that person possess a valid contractor's license issued under chapter 43-07.

5. The department by rule or regulation may provide for registration and registration renewal of certain air contaminant sources in lieu of the permit required pursuant to this section.

6. The department may exempt by rule and regulation certain air contaminant sources from the permit or registration requirements set forth in this section when the department makes a finding that the exemption of such sources of air contaminants will not be contrary to [section 23-25-01.1](#).

§ 23-25-04.2. Fees--Deposit in operating fund

The department by rule or regulation may prescribe and provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, of taking action on the requested permit or registration certificate, and conducting an inspection program to determine compliance or noncompliance

with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

§ 23-25-05. Right of onsite inspection

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules and regulations enforced pursuant thereto. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.
2. The department may conduct tests and take samples of air contaminants, fuel, process material, and other materials which affect or may affect emission of air contaminants from any source, and shall have the power to have access to and copy any records required by department rules or regulations to be maintained, and to inspect monitoring equipment located on the premises. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants. If an authorized representative of the department, during the course of an inspection, obtains a sample of air contaminant, fuel, process material, or other material, that representative shall issue a receipt for the sample obtained to the owner or operator of, or person responsible for, the source tested.
3. For the purpose of ascertaining the state of compliance with this chapter and any applicable rules, any duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

§ 23-25-06. Confidentiality of records

1. Any record, report, or information obtained under this chapter must be available to the public, except that upon a showing satisfactory to the department that the record, report, or information, or particular part thereof, other than emission data, to which the department has access under this chapter, if made public, would divulge trade secrets, the department shall consider the record, report, or information or particular portion thereof confidential in the administration of this chapter.
2. Nothing herein may be construed to prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local air pollu-

tion control laws, or when relevant in any proceeding under this chapter.

§ 23-25-07. Repealed

§ 23-25-08. Administrative procedure and judicial review

Any proceeding under this chapter for:

1. The issuance or modification of rules and regulations including emergency orders relating to control of air pollution; or
2. Determining compliance with rules and regulations of the department,

must be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein provided. When an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this chapter, such order must be effective immediately, but on application to the department an interested person must be afforded a hearing before the state health council within ten days. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing. Except as provided for in this section, notice of any hearing held under this chapter must be issued at least thirty days prior to the date specified for the hearing.

§ 23-25-09. Repealed

§ 23-25-10. Enforcement--Penalties--Injunctions

1. Any person who willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment must be by a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by [section 12.1-02-02](#), is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

4. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.

5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

§ 23-25-11. Regulation of odors--Rules

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in [section 40-47-01.1](#), a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by [section 42-04-01](#) has been in operation for more than one year, as provided by [section 42-04-02](#), and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in [section 40-47-01.1](#), a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;

b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or

c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either [section 11-33-02.1](#) or [58-03-11.1](#), or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. For purposes of this section, a public park is a park established by the federal government, the state, or a

political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

7. a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under [section 11-33-02](#), the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.

(1) If there are fewer than three hundred animal units, there is no minimum setback requirement.

(2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].

(3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].

(4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].

(5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].

b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the preexisting use that is closer.

c. For purposes of this section:

(1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

(2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;

(3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

(4) One cow-calf pair equals 1.0 animal unit;

- (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- (7) One horse equals 2.0 animal units;
- (8) One sheep or lamb equals 0.1 animal unit;
- (9) One turkey equals 0.0182 animal unit;
- (10) One chicken, other than a laying hen, equals 0.008 animal unit;
- (11) One laying hen equals 0.012 animal unit;
- (12) One duck equals 0.033 animal unit; and
- (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.

9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under [sections 11-33-02](#) and [58-03-11](#).

END OF DOCUMENT