

CHAPTER 89-07-02
WEATHER MODIFICATION OPERATIONS

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89-07-02-01. General provisions.

This chapter applies to any weather modification operations conducted in North Dakota. This chapter must be applied in conjunction with North Dakota Century Code chapter 61-04.1.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-02, 61-04.1-08(3)

89-07-02-02. Definitions.

The following definitions apply to this chapter and North Dakota Century Code chapter 61-04.1:

1. "Applicant" means any person who applies for a professional weather modification license or permit.

2. "Director" means the executive director of the atmospheric resource board.
3. "License" means a weather modification license.
4. "Licensee" means a person to whom a license has been issued.
5. "Operations area" means a geographic area where weather modification operations are conducted.
6. "Permit" means a weather modification permit.
7. "Permittee" means a person to whom a permit has been issued.
8. "Target area" means an area where the effects of weather modification are desired.
9. "Weather modification apparatus" means any device used to dispense any chemical material used to modify any weather condition.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-03

89-07-02-03. Administration.

Except as otherwise provided, the powers and duties of the board must be exercised by the director or the director's designee.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-04. Exempt activities.

Any person intending to conduct any exempt activities under North Dakota Century Code section 61-04.1-12 must furnish notice of such intention to the board at least thirty days before the time such activities are to begin. Notice must consist of the following information and such other information as the board deems necessary:

1. The name and address of the person giving notice.
2. The name and address of the person who will conduct the activity.
3. A description of the procedures to be used in the operation or the research and development.
4. A description of the object of the activity.
5. The legal description and a map showing the operations area and target area, if any.
6. The approximate starting date of the activity and its anticipated duration.

7. A description of the equipment to be used in conducting the activity.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-12

Law Implemented: NDCC 61-04.1-12

89-07-02-05. Approval of exempt activities.

No weather modification activity intended to be conducted under North Dakota Century Code section 61-04.1-12 may begin without approval of the board if such activity is to be conducted outside with weather modification apparatus. The board may only approve those activities that provide for the protection of the health, safety, and welfare of those people who may be affected by such activities and that otherwise comply with North Dakota Century Code section 61-04.1-12.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-12, 61-04.1-16

89-07-02-06. Field presence required.

Every person intending to conduct operations in this state must designate to the board, on forms furnished by the board, at least one natural person who must at all times be physically present during all operations for which a permit is required and who will be the contractor's immediate point of contact in the field. The designated individual will be fully apprised of the status of the contractor's project equipment and personnel at all times and will coordinate the contractor's field activities.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-11, 61-04.1-14

89-07-02-07. Criteria for issuance of license.

The competence of any applicant to engage in weather modification operations must be demonstrated to the board under North Dakota Century Code section 61-04.1-14. Applicants must show that any natural person designated by the applicant who will be in the full-time employment solely of the applicant during the project period and who will oversee the applicant's actions during the project has:

1. A minimum of one year of field experience in the management and control of weather modification operations or research; and
2. One of the following requirements:
 - a. Four additional years' experience in weather modification operations or research;

- b. A degree in mathematics, engineering, or the physical sciences, plus two years' additional experience in weather modification operations or research;
- c. A degree in meteorology; or
- d. A degree in mathematics, engineering, or the physical sciences that includes at least twenty-five semester hours of coursework in meteorology.

In determining competency, the board may also consider any other items set forth in a license application under section 89-07-02-08.

At least one such natural person designated by the applicant and licensed by the board must be available for immediate consultation by the board, at a location made known to the board by the contractor, at all times while the project is ongoing.

History: Effective November 1, 1988; amended effective February 1, 1999; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-08. Application procedure.

An applicant for a license must apply to the board on forms furnished by the board. The forms may require relevant information about the knowledge and experience of the applicant and the natural person designated under section 89-07-02-06 and must include:

1. Educational background, at the college and graduate level, of both the natural person designated by the applicant and the other employees of the applicant. This includes the dates of attendance and graduation; the major and minor subjects studied, including the number of semester hours of meteorological coursework; the degrees received; and the titles of any thesis or dissertation.
2. Experience in weather modification or related activities of both the natural person designated by the applicant and the other employees of the applicant. Attention should be given to experience with reference to meteorological conditions typical of North Dakota. The applicant should list the dates of each position held by the natural person designated under section 89-07-02-06, the title of position (indicate whether it was of subprofessional or professional level), the name and address of the employer, a description of the work done (indicate both the magnitude and complexity of the work and the duties and degree of responsibility for the work), and the name and address of the supervisor.
3. Scientific or engineering society affiliations of the natural person designated by the applicant and the grade of membership in and certification by each society.

4. Publications, patents, and reports of the natural person designated by the applicant.
5. Three references who will attest to the natural person's character, knowledge, and experience.
6. A list of all jurisdictions where the applicant has previously filed an application for a professional weather modification license. The result of the applications should be indicated.
7. Indication whether a professional weather modification license issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew such a license by any jurisdiction. Such circumstances must be explained in detail.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-09. Procedure for issuance.

The board must evaluate the applications, including responses from any references given by the applicant. On the basis of all such information the board, within thirty days of receipt of an application, must determine whether the natural person designated by the license applicant under section 89-07-02-06 meets the education and experience criteria established by section 89-07-02-07 and whether the natural person and the applicant possess the knowledge and experience necessary to engage in weather modification operations. The board must issue a license to the applicant who satisfies the requirements of this chapter and North Dakota Century Code section 61-04.1-14. If an applicant for a license or the natural person designated by the applicant does not satisfy the requirements, the board must deny the license.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-10. Renewal of license.

Forty-five days before expiration of licenses, the board must provide license application forms to all licensees and request each licensee to complete the form and file the original with the board. The board must evaluate the available data about the licensee and the natural person, designated by the license applicant under section 89-07-02-06, and must issue a renewal license within thirty days of receipt of the application to each applicant who pays the license fee established by subsection 1 of North Dakota Century Code section 61-04.1-14 and who has the qualifications necessary for issuance of an original license. The board must deny a renewal license within thirty days of receipt of the application of each applicant who does not

pay the renewal fee, who does not possess the qualifications necessary for issuance of an original license, or who does not designate a natural person, under section 89-07-02-06, who satisfies the requirements of section 89-07-02-07.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3), 61-04.1-14

Law Implemented: NDCC 61-04.1-14

89-07-02-11. Responsibility of controller.

The natural person designated by the license applicant under section 89-07-02-06 is deemed by the board to be in control of and primarily responsible for operations conducted under the terms of any permit. However, nothing in this section may be construed to prevent appropriate enforcement of any regulation, limitation, permit condition, or order against either the permittee or licensee, whether or not such licensee is a natural person.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-18, 61-04.1-37

89-07-02-12. Suspension, revocation, refusal to renew a license.

In addition to the reasons cited in North Dakota Century Code section 61-04.1-15, the board may suspend, revoke, or refuse to renew a license for violation of any permit.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14, 61-04.1-15

89-07-02-13. Restoration of license.

At any time after the suspension or revocation of a license or after refusal to renew a license, the board may restore the license to the licensee or renew it upon a finding that the licensee has met the requirements for issuance of an original license.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-14

89-07-02-14. Application for permit.

Application for a weather modification permit must be made on forms furnished by the board. Every applicant must submit a properly executed application to the board. The application may contain such information as the board deems necessary, and must include the following information:

1. Name and address of the applicant.

2. Whether a weather modification operational permit issued to the applicant in any jurisdiction has ever been suspended or revoked or whether there has been refusal to renew a permit by any jurisdiction. Such circumstances must be explained in detail.
3. If the applicant is a corporation, whether it is licensed to do business in North Dakota.
4. Whether a license has been issued under North Dakota Century Code section 61-04.1-14, and if so, the names, addresses, and professional license numbers of the controllers.
5. Whether professional weather modification licenses issued to the license applicant in any jurisdiction have ever been suspended or revoked or whether there has been refusal to renew a license by any jurisdiction. Such circumstances must be explained in detail.
6. Whether proof of financial responsibility has been furnished under section 89-07-02-22 and North Dakota Century Code section 61-04.1-19.
7. If the operation will be conducted under a contract, the value of the contract.
8. If the operation will not be conducted under a contract, an estimate of the costs of the operation and information as to how the estimate was made.
9. Whether the applicant has paid the application fee.
10. Whether the applicant has North Dakota workforce safety and insurance coverage.
11. A copy of any promotional and advertising material used in connection with negotiations for the contract, if any.
12. Whether the applicant has furnished a performance bond, as required by subsection 3 of section 89-07-02-26.
13. Whether the applicant has furnished the bid bond, ~~as required by North Dakota Century Code section 61-04.1-35.~~
14. Whether the applicant has registered with the North Dakota aeronautics commission all aircraft to be used in the operation for which the permit is sought.
15. A complete and detailed operational plan for the operation that includes:

- a. The nature and object of the operation.
 - b. The legal description and a map showing the operations area and the target area.
 - c. The approximate starting date of the operation and its anticipated duration.
 - d. The kind of seeding agents intended for use and the anticipated rate of their use.
 - e. A list of equipment that will be used and the methods of seeding for which they will be used.
 - f. An emergency shutdown procedure that states conditions under which operations will be suspended because of possible danger to the public health, safety, and welfare or to the environment.
 - g. The means by which the operation plans will be implemented and carried out such as:
 - (1) The location of the main operational office and any other offices used in connection with the operation;
 - (2) The location of such ground equipment as seeding generators, radar, and evaluation instrumentation;
 - (3) The number and kinds of aircraft that will be used;
 - (4) The extent to which weather data will be made available to the licensees; and
 - (5) Other ~~other~~ personnel carrying out the project.
 - h. How conduct of the operation will interact with or affect other weather modification operations.
16. Such additional information that will assist the board in deciding whether to issue the permit.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014; _____.

General Authority: NDCC ~~28-32-02~~, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-15. Procedure for issuance.

1. **Notice.** The board must give notice of its consideration of an application under North Dakota Century Code section 61-04.1-17. Notice must be given once a week for two consecutive weeks. The notice must:
 - a. Describe the primary target area.
 - b. Describe the operations area.
 - c. Specify the period of operation, including starting and ending dates.
 - d. Describe the general method of operation.
 - e. Describe the intended effect of the operation.
 - f. State the name of the proposed permittee.
2. **Hearings.** The board must allow twenty days for public comment, under North Dakota Century Code section 61-04.1-17, from the date of the last publication of the notice. Any hearing held upon objection received by the board or any hearing held upon the board's own motion must be held upon at least ten days' notice in the county newspaper where notice of consideration of the application was published. At the hearing, the board must make a brief record of testimony received, and must consider all such testimony in its decision on the permit application.
3. **Director's recommendation.** At the close of the public comment period provided for in North Dakota Century Code section 61-04.1-17, the director of the board must review all applications for permits that have been received and must recommend approval or disapproval of such applications and the reasons therefor.
4. **Final action by board.** The board must take final action on all applications for permits for which notice of consideration was published, under North Dakota Century Code section 61-04.1-17, within forty-five days of the close of the public comment period. Approval of applications considered must be by majority vote. In acting on any such applications, the board must consider any recommendations made by the director of the board and all testimony received at any hearing under North Dakota Century Code section 61-04.1-17. The board may issue a permit only if it determines that the requirements of subsection 2 of North Dakota Century Code section 61-04.1-16 have been met.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-17

89-07-02-16. Permit form.

Each permit must set forth the permit number, effective period of the permit, name of the permittee, name of the licensee and the license number, location of the operation, and such other information, terms, or conditions as the board deems appropriate.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-17. Permit conditions.

The board may attach conditions to any permit as it deems appropriate, including any conditions concerning method and time of operation, target and operation areas, safety precautions, and recordkeeping. Permittee must submit an operations plan that includes the types of seeding agents to be used, the methods and equipment to be employed in seeding operations, and the emergency shutdown procedures, including the conditions under which operations will be suspended. Violation of any permit may result in permit revocation, suspension, or other appropriate enforcement action by the board.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16(2)

89-07-02-18. Permit expiration.

All permits that have expired under North Dakota Century Code section 61-04.1-16 are nonrenewable.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16

89-07-02-19. Suspension - Revocation - Modification.

In addition to the reasons cited in North Dakota Century Code section 61-04.1-18, the board may suspend, revoke, or modify any permit or any provision or condition of a permit if it appears to the board that the permittee has violated the North Dakota Century Code or the terms or conditions of any permit held by the permittee.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-20. Automatic suspension of permit.

Any permit issued under this chapter is automatically suspended if the person's weather modification license expires or is suspended, revoked, or not renewed by the board. In the case of a permit issued to a corporation, partnership, or other business association, if the natural person designated as being in control of the operation in such business association's application for a weather modification license becomes incapacitated, leaves the business association's employment, or is in any way unable to continue in control of the operation, automatic suspension of the permit will result. A permit of a business association suspended under such circumstances may be reinstated by the nomination of replacement personnel under section 89-07-02-08.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-21. Restoration of permit.

At any time after the suspension, revocation, or modification of a permit, the board may restore it to the permittee or delete any modification thereof upon a finding that the requirements for issuance of an original permit have been met by the permittee or that the conditions requiring modification no longer exist.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-18

89-07-02-22. Proof of financial responsibility.

Proof of financial responsibility is made by showing to the satisfaction of the board that the permittee has the ability to respond to liability that might reasonably result from the operation for which the permit is sought. Such proof of financial responsibility may be shown by any of the following:

1. Presentation to the board or proof of purchase of a prepaid noncancelable insurance policy or a corporate surety bond, issued by a company against whom service of legal process may be made in North Dakota, against liabilities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
2. Depositing with the board cash or negotiable securities in an amount five times the value of an operation conducted under contract or in an amount five times the estimated costs of an operation not conducted under contract.
3. Any other manner approved by the board.

History: Effective November 1, 1988; amended effective July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-16, 61-04.1-19

89-07-02-23. Records.

1. **Daily log.** Each permittee must retain a daily log of weather modification activities for each unit of weather modification apparatus used during an operation that includes:
 - a. Date of the weather modification activity.
 - b. Each aircraft flight track and location of each radar unit during each modification mission. Maps may be used.
 - c. Local time when modification activity began and ended. For intermittent operations, the beginning and ending time of the total sequence are acceptable.
 - d. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
 - e. Description of type of modification agents used.
 - f. Rate of dispersal of agent during the period of actual operation of weather modification apparatus, by hour or other appropriate time period.
 - g. Total amount of modification agent used. If more than one agent was used, report total for each type separately.
 - h. Local time when any radar monitoring operations were turned on and turned off.
 - i. Type of clouds modified, that is, whether they were stratiform, isolated cumuliform, organized cumuliform, or other types of clouds.
 - j. Remarks indicating operational problems, including equipment failure, weather conditions not conducive to successful performance of the operation, or personnel problems.
2. **Monthly totals.** Monthly totals must be kept on the basis of the daily logs, listing the total:
 - a. Days during month in which operation conducted.

- b. Time of operation.
 - c. Amount of each kind of agent used.
 - d. Average rate of dispersal of each kind of agent used.
 - e. Days of each type of operation.
 - f. Duration of operation of each unit of weather modification apparatus, in hours and minutes.
3. **Addresses of participants.** Each permittee must keep a roster of the names and North Dakota addresses of all employees participating in the state on an operation.
4. **Inspection.** Duly authorized agents of the board have the authority to enter and inspect any equipment and to inspect or copy any records required by this section.
5. **Exempted weather modification activities.** All people conducting weather modification activities exempted by the board under North Dakota Century Code section 61-04.1-12 must record and maintain all of the records required of any permittee by this section.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-24. Reports.

1. **Final.** Within sixty days after final completion of any operation, each permittee must file with the board a final report on the operation that must include:
- a. Copies of the daily logs prepared under subsection 1 of section 89-07-02-23, copies of the monthly totals for the entire operational period from the monthly summary records prepared under subsection 2 of section 89-07-02-23, and a narrative summary of permittee activities during the operational period.
 - b. A copy of the federal final activity report form filed with the national oceanic and atmospheric administration under the rules adopted under Public Law 92-205 [85 Stat. 735].

- c. A narrative account of the manner in which the operation did not conform to the operational plan filed under subsections 1 through 16 of section 89-07-02-14.
2. **Exempted weather modification activities.** The board may require people operating weather modification activities exempted under sections 89-07-02-04 and 89-07-02-05, but who have been required to keep records under subsection 5 of section 89-07-02-23, to file any part of such records with the board.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 61-04.1-08(3)

89-07-02-25. Bid procedure.

Repealed effective July 1, 2014.

89-07-02-26. Award of contracts.

1. **Deviation from technical requirements.** Any or all bids may be rejected by the board on the basis of technical inadequacy or other failure to comply with the specifications included in the request for bids.
2. **Contractor's bond.** Before the board awards any contract, it must require the contractor to furnish a surety bond for the faithful performance of the contract in an amount up to twenty-five percent of the contract price, conditioned that the contractor and the contractor's agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with North Dakota Century Code chapter 61-04.1, this chapter, and the contract between the board and the contractor. If the contract involves the erection, repair, or alteration of any public improvement, the surety bond must be in the full amount of the contract price.

History: Effective November 1, 1988; amended effective July 1, 2006; July 1, 2014.

General Authority: NDCC 28-32-02, 61-04.1-08(3)

Law Implemented: NDCC 44-08-01, 61-04.1-33, 61-04.1-34, 61-04.1-35

**ARTICLE 89-08
DAMS, DIKES, AND OTHER DEVICES**

Chapter	
89-08-01	Definitions
89-08-02	Construction Permits
89-08-03	Inspections
89-08-04	Operation and Maintenance

**CHAPTER 89-08-01
DEFINITIONS**

Section	
89-08-01-01	Definitions
89-08-01-02	Definition of Unsafe Dam, Dike, or Other Device [Repealed]

89-08-01-01. Definitions.

1. "Agricultural dike" means a dike capable of protecting land used for agriculture or similar purposes.

2. "Appurtenant works" means all works incident or attached to a dam, dike, or other device, including:
 - a. A spillway, either in the dam or separate from it;
 - b. The reservoir and its rim;
 - c. A low-level outlet; and
 - d. A water conduit, such as a tunnel, pipeline, or penstock, either through the dam, dike, or other device or their abutments.

3. "Capable of protecting" means flood risk reduction to land, structures, or public infrastructure as the result of a dike.

24. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.

35. "Dam" means any barrier, including any appurtenant works, constructed across a watercourse or an area that drains naturally to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.

46. "Department" is defined in North Dakota Century Code section 61-03-01.2.

57. "Dike" means any artificial ~~barrier~~ structures, including an embankment, floodwall, levee, or any appurtenant works, constructed along a waterway or an

area that drains naturally with the primary intent to divert the flow of surface water to protect for real or personal property protection or to otherwise provide storm or flood-risk reduction resulting from flooding due to seasonally high water or precipitation.

- ~~68.~~ "Director" is defined in North Dakota Century Code section 61-03-01.2.
- ~~79.~~ "Diversion" means any open channel, culvert, or ditch constructed to reroute a watercourse as defined by North Dakota Century Code section 61-01-06.
- ~~810.~~ "Embankment" means a structure created by an artificial deposit of material upon the natural surface of the land that is designed to act as a water control device, support roads or railways, or for other similar purposes.
- ~~911.~~ "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.
- ~~12.~~ "Farmstead" means an individual rural or farm property including a single dwelling or associated buildings, and up to ten acres of land.
- ~~13.~~ "Farmstead ring dike" means a dike capable of protecting only a farmstead.
- ~~1014.~~ "Height" means the maximum vertical distance from the stream channel bottom or lowest elevation of a naturally draining area to the top of dam.
- ~~1115.~~ "High-hazard dam" means a dam with high-hazard potential where failure or misoperation will probably cause loss of human life.
- ~~1216.~~ "Holding pond, lagoon, or dugout" means any artificial, hydraulically disconnected structure, including any appurtenant works, constructed to store water.
- ~~1317.~~ "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.
- ~~1418.~~ "Low-hazard dam" means a dam with low-hazard potential where failure or misoperation results in no probable loss of human life and low economic losses.
- ~~1519.~~ "Medium-hazard dam" means a dam with medium-hazard potential where failure or misoperation results in no probable loss of human life but can cause economic loss, disruption of lifeline facilities, or can impact other concerns.

- ~~1620~~. "Other device" means a water control structure, other than a dam or dike, including diversions and holding ponds, lagoons, or dugouts.
- ~~1721~~. "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device. For the purpose of a construction permit application, "owner" means the person who owns the property or interest in property where the dam, dike, or other device will be built.
- ~~1822~~. "Significant-hazard dam" means the same as "medium-hazard dam" and may be used ~~interchangably~~interchangeably.
- ~~1923~~. "Top of dam" means the top of the settled embankment or the elevation of the uppermost surface of a nonembankment dam, excluding accessory features, such as railings.
- ~~2024~~. "Unsafe dam, dike, or other device" means any such structure that threatens harm to life or property or is improperly maintained.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023;

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-01-02. Definition of unsafe dam, dike, or other device.

Repealed effective January 1, 2015.

**CHAPTER 89-08-02
CONSTRUCTION PERMITS**

Section

- 89-08-02-01 ~~Determining the Capacity of Dams, Dikes, or Other Devices~~ if a Permit is Required
- 89-08-02-01.1 Exceptions to the Need For a Permit
- 89-08-02-02 Contents of Application
- 89-08-02-03 Permit Does Not Absolve Liability for Damages
- 89-08-02-03.1 Time to Complete Construction of Structure
- 89-08-02-03.2 Extending Time to Complete Construction of Structure
- 89-08-02-04 Emergency Construction Permits
- 89-08-02-05 Extension of Emergency Construction Permits
- 89-08-02-06 Removal of Emergency Structures
- 89-08-02-07 As Built Plans

89-08-02-01. Determining ~~the capacity of dams, dikes, or other devices~~ if a permit is required.

The impounding capacity of a dam is calculated based upon the elevation at the top of dam. Storage below the existing adjacent ground surface is generally excluded from the capacity of a holding pond, lagoon, or dugout.

~~The diverting capacity of area protected by a dike is calculated based upon the area protected as measured from the effective top of dike. ~~If the absence of the dike could result in more than fifty acre feet of water inundating the protected area, a permit is required.~~~~

The diverting capacity of a diversion is calculated based upon the runoff from the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year, twenty-four hour, precipitation event.

No construction can begin until a construction permit is obtained.

History: Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015; January 1, 2023; _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-01.1. Exceptions to the need for a permit.

The provisions of North Dakota Century Code section 61-16.1-38 do not apply to the following works with the sole intent to provide an opening to permit water flow:

1. Highway, street, or road stream-crossings;
2. Private driveway culverts;
3. Approach-crossing culverts or bridges; and

4. Railroad-crossing culverts or bridges.

History: Effective _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02. Contents of application.

A completed construction permit application must include: plans and specifications as stipulated by the department; evidence establishing a property right for the property that will be affected by the construction of the dam, dike, or other device; and any additional information required by the department.

History: Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004; January 1, 2015; January 1, 2023; _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03. Permit does not absolve liability for damages.

The receipt of a permit, including a permit for emergency construction, does not relieve an applicant from liability resulting from any activity conducted under the permit.

History: Effective June 1, 1998; amended effective January 1, 2015.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.1. Time to complete construction of structure.

Construction may not begin until a construction permit is obtained. Construction must be completed and the department must be notified of completion in writing within the period specified by the department on the permit, beginning from the date of final permit approval. The completion period does not begin until any appeal is complete.

History: Effective January 1, 2015, amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.2. Extending time to complete construction of structure.

If the completion period expires before construction is complete, the permit recipient may make a written request to the department for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the permit expiration date and must specifically state why construction has not been completed.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-04. Emergency construction permits.

A completed application for an emergency construction permit must be submitted to the department along with any additional information required by the department. If the director determines an emergency exists, the director may issue an emergency construction permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet of water. An emergency construction permit will expire in ~~six~~twelve twelve months unless extended by the director under section 89-08-02-05.

History: Effective April 1, 2004; amended effective January 1, 2015; January 1, 2023;_____.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-05. Extension of emergency construction permits.

The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency construction permit. If it is determined that an emergency still exists, the director may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under section 89-08-02-04 for a new emergency construction permit.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-06. Removal of emergency structures.

Once the emergency has ended or upon permit expiration, whichever occurs first, all structures constructed under section 89-08-02-04 must be removed in their entirety and the disturbed area restored to preproject conditions. The applicant must notify the department in writing when the emergency structure has been completely removed.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-16.1-38

89-08-02-07. As built plans.

As a condition on all construction permits, the owner of the dam, dike, or other device will provide the department with "as built" plans within six months after the dam, dike, or other device has been constructed to provide details of the modifications that occurred during construction.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-16.1-38

**CHAPTER 89-08-04
OPERATION AND MAINTENANCE**

Section

- 89-08-04-01 ~~Operating Plan~~Operation and Maintenance Manual
- 89-08-04-02 Maintenance Plan ~~[Repealed]~~
- 89-08-04-03 Emergency Action Plan

89-08-04-01. ~~Operating plan.~~Operation and maintenance manual.

~~By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre feet must submit an operating plan for that year to the department. The department will review the operating plan, and if deficiencies or discrepancies exist, the department must notify the owner of the dam of the deficiencies or discrepancies. The owner of the dam must correct the deficiencies or discrepancies and return the corrected operating plan to the department within fourteen days of receiving notice of the deficiencies or discrepancies. The operating plan must be approved by the director before the operation of the dam. If the operator receives no response from the department within thirty days, the operating plan is approved.~~ A medium or high hazard dam owner must submit an operation and maintenance manual for the dam and the appurtenant works to the department. The manual must be maintained and updated on a regular basis, and copies of all updates must be submitted to the department. Dam owners must maintain their structures in an adequate manner.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023; _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-21

89-08-04-02. Maintenance plan.

~~Dam owners must maintain their structures in an adequate manner. The director may require the owner of a dam with a capacity of more than one thousand acre feet to submit a maintenance plan for the dam and appurtenant works.~~

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-21

Repealed effective _____.

89-08-04-03. Emergency action plan.

~~The owner of a~~ A medium or high-hazard or medium-hazard dam owner must submit an emergency action plan for the dam to the department. The plan must be approved by the director. The plan must be maintained and updated on a regular basis, and copies of all updates must be submitted to the department.

History: Effective January 1, 2015; amended effective January 1, 2023; _____.

General Authority: NDCC 61-03-13
Law Implemented: NDCC 61-03-21

**ARTICLE 89-10
SOVEREIGN LANDS**

Chapter
89-10-01 Sovereign Lands

**CHAPTER 89-10-01
SOVEREIGN LANDS**

Section
89-10-01-01 Authority
89-10-01-02 Prohibition on Permanent Relinquishment
89-10-01-03 Definitions
89-10-01-04 Authorization
89-10-01-05 Application for Permit, Easement, Lease, or Management Agreement
89-10-01-06 Application Review
89-10-01-06.1 Record - Official Notice
89-10-01-07 Public Meeting
89-10-01-08 General Permit Standards
89-10-01-09 Specific Project Requirements [Repealed]
89-10-01-10 Projects Not Requiring a Permit
89-10-01-10.1 Boat Docks and Water Intakes
89-10-01-10.2 Boat Dock Registration
89-10-01-11 Structures
89-10-01-12 Public Recreational Use
89-10-01-13 Vehicular Access
89-10-01-14 Cancellation by the Director
89-10-01-15 Termination by Applicant
89-10-01-16 Assignments
89-10-01-17 Inspections
89-10-01-18 Reclamation
89-10-01-19 Maintenance and Repair
89-10-01-20 Areas of Special Interest
89-10-01-21 Organized Group Activities
89-10-01-22 Pets
89-10-01-23 Camping
89-10-01-24 Hunting, Fishing, and Trapping
89-10-01-25 Unattended Watercraft
89-10-01-26 Removal of Public Property
89-10-01-27 Cultural or Historical Resources
89-10-01-28 Disposal of Waste
89-10-01-29 Glass Containers
89-10-01-30 Abandoned Property
89-10-01-31 Firearms

- 89-10-01-32 Tree Stands
- 89-10-01-33 Baiting
- 89-10-01-34 Dredging or Filling

89-10-01-01. Authority.

These rules are adopted and promulgated by the department under North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of sovereign lands. These rules do not apply to the state of North Dakota's interests in oil, gas, and related hydrocarbons on sovereign lands.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-02. Prohibition on permanent relinquishment.

Sovereign lands may not be permanently relinquished, but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

History: Effective November 1, 1989; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-03. Definitions.

The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the department after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
4. "Director" is defined in North Dakota Century Code section 61-03-01.2.
5. "Domestic use" means the use of water as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.
6. "Grantee" means the person, including that person's assigns, successors, and agents who has authorization.
7. "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.

8. "Navigable waters" is defined in North Dakota Century Code section 61-33-01.
9. "Ordinary high water mark" is defined in North Dakota Century Code section 61-33-01.
10. "Project" means any activity that occurs either partially or wholly on sovereign lands.
11. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
12. "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.
13. "Structure" means something that is formed from parts, including equipment, boat docks, boat ramps, and water intakes.
14. "Watercraft" means any device capable of being used as a means of transportation on waters.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-04. Authorization.

Each project requires an authorization from the department before construction or operation, except as otherwise provided by these rules. Any department authorization may be modified at the department's discretion.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-05. Application for permit, easement, lease, or management agreement.

Applications for authorization must be on forms prescribed by the department.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-06. Application review.

Upon receipt of a completed application, the department must initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The department of environmental quality;
 - c. The state historical society;
 - d. The state department of trust lands;
 - e. The state parks and recreation department;
 - f. The United States fish and wildlife service;
 - g. The park district and planning commission of any city or county where the proposed project will be located;
 - h. Any water resource district where the proposed project will be located;
and
 - i. Other agencies, private entities, or landowner associations as appropriate or required by law.
2. Each entity must submit all comments in writing to the department. The department is not bound by any comment submitted. The department must receive comments within thirty days of the date requests for comments were mailed.
3. Upon completion of the review and any public meeting held under section 89-10-01-07, the department may grant, deny, or condition the application.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-06.1. Record - Official notice.

Unless specifically excluded by the director or the hearing officer, the record in each sovereign land permit application proceeding or adjudicative proceeding under North Dakota Century Code chapter 28-32 includes the following:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and department streamflow records.
3. National oceanic and atmospheric administration climatological data.
4. Topographic maps.
5. Department sovereign land permit files.
6. Information in department and state water commission files, records, and other published reports.
7. North Dakota sovereign land management plan.
8. Ordinary high water mark delineation guidelines.
9. Aerial photos.

History: Effective July 1, 2014; amended effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-07. Public meeting.

An information-gathering public meeting may be held by the department before final action on a project. The procedure for notice and meeting must be as follows:

1. The department must publish a notice of meeting in the official newspaper for each county where the project is located. The notice must be published once each week for two consecutive weeks.
2. The meeting date must be at least twenty days after the date of last publication.
3. The meeting must be conducted by the department and the meeting may be held in Bismarck.
4. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-08. General permit standards.

The department may ~~approve, modify, or grant~~, deny, or condition any permit application. In deciding what action to take on a permit application, the department must consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;
4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality;
10. Cultural and historical resources; and
11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008; July 1, 2014; January 1, 2023;_____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-09. Specific project requirements.

Repealed effective July 1, 2014.

89-10-01-10. Projects not requiring a permit.

The following projects do not require a permit:

1. Boat docks, if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner for personal use;

- b. The dock is used only for embarkation, debarkation, moorage of watercraft, water intakes, or recreation;
 - c. Only clean, nonpolluting materials are used;
 - d. The total length of the dock over the surface of the water does not exceed twenty-five feet [7.6 meters] on a river or fifty feet [15.24 meters] on a lake, and there is no unreasonable interference with navigation or access to an adjacent riparian owner's property;
 - e. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five feet [7.6 meters] in length and is removed from below the ordinary high watermark each fall; and
 - f. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.
2. Water intakes if all of the following conditions are satisfied:
 - a. They are constructed, operated, and maintained by the riparian owner for domestic use; and
 - b. The intake is removed from below the ordinary high watermark each fall.
 3. Watercraft that are temporarily moored.
 4. Snagging and clearing, when performed by a federal or state entity or political subdivision.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; April 1, 2010; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-10.1. Boat docks and water intakes.

Boat docks and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the department. Any person who violates this section must pay a two hundred fifty dollar fee per day. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2009; amended effective April 1, 2010; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-33-02, 61-33-05, 61-33-10

89-10-01-10.2. Boat dock registration.

Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) must be registered with the department before placement of any such dock. The department must provide registration forms. Any person who violates this section must pay a two hundred fifty dollar fee per occurrence. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-11. Structures.

1. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is prohibited, the department:
 - a. Shall issue an order to the structure owner identifying the action required to modify or remove the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
 - b. If the ordered action is not taken by the date specified in the order, the department may modify or remove the structure at the structure owner's expense.
 - c. May commence a civil proceeding to enforce its order, or, if the department modifies or removes the structure, the department may assess the costs of such action against any property of the structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the department chooses to recover costs by assessing the costs against property of the structure's owner and the property is insufficient to pay for the costs incurred, the department may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
2. A person who receives an order from the department under this section may send a written request to the department for a hearing. The department must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the director determines the issues, facts, and

points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the department must set a hearing date without undue delay.

3. Any person aggrieved by the action of the director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 2 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-03-22, 61-33-02, 61-33-05, 61-33-10

89-10-01-12. Public recreational use.

The public may use sovereign lands for recreational purposes except as otherwise provided by these rules or by signage posted by the department.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-13. Vehicular access.

The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the department;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;
3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that has been submitted to the department, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;
4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;
5. To launch or load watercraft in the most direct manner possible;

6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;
7. To access private land that has no other reasonable access point, provided that access across sovereign lands is in the most direct manner possible;
8. By disabled people who possess a mobility-impaired parking permit under North Dakota Century Code section 39-01-15 or shoot from a stationary motor vehicle permit under subsection 10 of North Dakota Century Code section 20.1-02-05;
9. When operation is necessary as part of a permitted activity or project;
10. By the riparian owner on sovereign lands that are adjacent to the riparian owner's property when moving or tending to livestock; installing or maintaining a livestock fence; installing, maintaining, or moving an authorized agricultural irrigation structure; or when engaged in other ordinary agricultural practices, provided the listed activities do not negatively affect public use or values; or
11. When being used by government personnel in the performance of their duties.

Any person who violates this section must pay a one hundred dollar fee per occurrence.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-14. Cancellation by the director.

The director may cancel any authorization granted under these rules. Cancellation does not release the grantee from any liability. If an applicant is named in an active enforcement action ordered by the department, the department may hold any application submitted by the applicant in abeyance until the order has been satisfied.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-15. Termination by applicant.

The grantee may terminate any authorization by notifying the department in writing, paying all fees or other money owed to the state, and reclaiming the site under section 89-10-01-18.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-16. Assignments.

Any authorization granted under these regulations may only be assigned with the written consent of the department.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-17. Inspections.

The department may inspect all projects on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-18. Reclamation.

After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location within one hundred twenty days. If the permit is for mining, reclamation must be within sixty days after the lease expires or the mining is complete. Upon written request, the department may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required time frame, the department may enter and restore the project location. The grantee is liable for all reclamation costs.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-19. Maintenance and repair.

Maintenance or repair of authorized projects does not require additional authorization provided the work is in conformance with the original authorization, standards, and specifications provided in this article and the work does not alter the use or size of the project.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-20. Areas of special interest.

The department may enter agreements for management of areas of high public value. Examples include parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-21. Organized group activities.

Organized group activities that are publicly advertised or are attended by more than twenty-five people are prohibited on sovereign lands without a permit. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-22. Pets.

Pets are not allowed to run unattended on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-23. Camping.

Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-24. Hunting, fishing, and trapping.

All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules, regulations, or laws or as posted at public entry points. Posting sovereign lands with signage by anyone other than the department is prohibited without a sovereign lands permit. Any person who violates this section must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-25. Unattended watercraft.

Watercraft may not be left unattended on or moored to sovereign lands for more than twenty-four hours except:

1. When moored to authorized docks; or
2. When moored to private property above the ordinary high watermark with a restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark.

Any person who violates this section is guilty of a noncriminal offense and must pay a fifty dollar fee per day.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-26. Removal of public property.

Public property, including trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, firewood, posts, or poles, may not be removed from sovereign lands without a permit. Firewood may be removed under certain stated conditions from designated firewood cutting plots. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the department. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-27. Cultural or historical resources.

Artifacts or any other cultural or historical resources found on sovereign lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the department.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-28. Disposal of waste.

The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. Holding tanks of campers or watercraft may not be dumped on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-29. Glass containers.

Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-30. Abandoned property.

Abandonment of vehicles or other personal property is prohibited on sovereign lands.

History: Effective April 1, 2009.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-31. Firearms.

Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner or as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05

89-10-01-32. Tree stands.

Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands, portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth and must be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are

subject to removal and confiscation by the department. Any person who violates this section must pay a one hundred dollar fee per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-33. Baiting.

Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities conducted by the department. Bait may be used to lure and take furbearers when engaged in lawful trapping activities. Any person who violates this section must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

89-10-01-34. Dredging or filling.

1. Unless permitted by the department, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the department:
 - a. Shall issue an order to the violator identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
 - b. If the ordered action is not taken by the date specified in the order, the department may take any action to restore the sovereign lands at the violator's expense.
 - c. May commence a civil proceeding to enforce its order if the department takes action to restore sovereign lands, the department may assess the costs of such action against the riparian owner's property where the dredging or filling occurred or may commence a civil proceeding to recover the costs incurred in such action. If the department chooses to recover costs by assessing the costs against the riparian owner's property where the dredging or filling occurred and the property is insufficient to pay for the costs incurred, or if the riparian owner was not the party responsible for the dredging or filling, the department may commence a civil proceeding to recover any costs not recovered through the

assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

2. A person who receives an order from the department under this section may send a written request to the department for a hearing. The department must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the director determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the department must set a hearing date without undue delay.
3. Any person aggrieved by the action of the director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 2 is a prerequisite to any appeal to the district court.

History: Effective April 1, 2010; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-33-02, 61-33-05, 61-33-10

ARTICLE 89-14
PUBLIC HIGHWAY STREAM CROSSINGS

89-14-01 Stream Crossing Design

CHAPTER 89-14-01
STREAM CROSSING DESIGN

Section

89-14-01-01 Standards
89-14-01-02 Definitions
89-14-01-03 Design Flood Frequency
89-14-01-04 Floodplain Consideration - Upstream Development
89-14-01-05 Allowable Headwater
89-14-01-06 Deviations

89-14-01-01. Standards.

Except as provided in section 89-14-01-06, all highways constructed or reconstructed by the department of transportation, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual, firm, corporation, or limited liability company must be designed to meet the standards contained in this chapter. The department of transportation, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company that fails to comply with these standards is not entitled to the immunity provided in North Dakota Century Code sections 24-03-06, 24-03-08, or 24-06-26.1.

History: Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-02. Definitions.

1. "Constructed" means to construct a new highway on a new location or corridor.
2. "Highway, street, or road" is defined in North Dakota Century Code section 24-01-01.1.
3. "Reconstructed" means to regrade, add a lane adjacent to the existing alignment, or do full depth road surface replacement on an existing highway location. For purposes of this chapter, reconstructed also includes replacing or installing a stream crossing.
4. "Stream crossing" means an opening to permit the flow of water under, adjacent to, or because of a highway.

History: Effective May 1, 2001; January 1, 2015.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-03. Design flood frequency.

The following table provides the minimum design standard recurrence interval of the event for which each type of stream crossing must be designed. Nothing contained in this chapter is intended to restrict an entity from providing greater capacity.

Type of Crossing	State Highway System						County	
	Urban System		Rural System				Rural System	
	Regional	Urban Roads	Principal Arterial		Minor Arterial	Major Collector	Major Collector	Off ⁴ System
Interstate			Other					
Bridges & Reinforced Concrete Boxes	25 year ²	25 year ²	50 year ²	50 year ²	50 year ²	25 year ²	25 year ^{2,3}	15 year ^{2,3}
Roadway Culverts	25 year ²	25 year ²	50 year ²	25 year ²	25 year ²	25 year ²	25 year ^{2,3}	15 year ^{2,3,5}
Storm Drains	10 year ¹	5 year ¹	10 year ²	10 year ²	10 year ²	10 year ²		
Underpass Storm Drains	25 year ¹	25 year ¹	50 year ²	25 year ²	25 year ²	25 year ²		

¹Discharges must be computed using the rational method or other recognized hydrologic methods.

²Discharges must be computed using United States geological survey report 2015-5096 or other recognized hydrologic methods.

³If an overflow section is provided, the pipes and the overflow section, in combination, must pass the appropriate design event within the headwater limitations provided in this chapter.

⁴Off system roads include all ~~township roads~~ non-major collector public roads open for public travel.

⁵For ~~township~~ public roads open for public travel under the jurisdiction of a board of township supervisors of a civil township, the recurrence interval is 10 years.

History: Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015; January 1, 2023;_____.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-04. Floodplain consideration - Upstream development.

All stream crossings must comply with applicable floodplain regulations and regulatory floodway requirements per North Dakota Century Code chapter 61-16.2. If a stream crossing is being replaced and buildings or structures are located upstream from the crossing, the stream

crossing must not be reconstructed in a manner that increases the likelihood of impacts to those upstream buildings or structures, even if the capacity of the crossing being replaced was greater than the capacity otherwise required by this chapter. Any stream crossing constructed as part of a newly constructed roadway must be constructed to pass the federal emergency management agency identified one-percent annual- chance flood event flow without the resulting increase in headwater impacting any existing buildings or structures. Structures, for the purposes of this section, include grain bins, silos, feedlots, and corrals. Structures do not include pasture fencing.

History: Effective May 1, 2001; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-05. Allowable headwater.

The allowable maximum headwater when passing the design discharge must be measured from the bottom of the channel. For arch pipes, the maximum allowable headwater must be based on the rise of the pipe, and the pipe size category must be the equivalent round pipe size. For multiple pipe installations, the pipe diameter used to calculate the allowable headwater must be the diameter of the largest pipe. Tailwater resulting from downstream conditions, either natural or manmade, must be accounted for in the determination of the crossing's capacity and the resulting headwater. Additional guidance is provided in the North Dakota department of transportation design manual. If a crossing results in less than one-half foot [15.24 centimeters] of headloss when passing the appropriate design discharge, this section does not apply.

Streambed Slope (feet/mile)	Pipe Size	Allowable Headwater
<5	24" - 54"	pipe diameter + 2 feet
	≥ 60"	1.5 pipe diameters
5 to 10	24" - 36"	pipe diameter + 2 feet
	42" - 54"	1.5 pipe diameters
	≥ 60"	2 pipe diameters
>10	≥ 24"	2 pipe diameters

History: Effective May 1, 2001; amended effective January 1, 2015.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-06. Deviations.

The board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company may deviate from the standards contained in this chapter if the deviation is approved in writing by the department of water resources and the department of transportation. A request to deviate from the standards must be made in writing and must set forth the reasons for the proposed deviation. The department of water resources and department of transportation may grant a deviation for good and sufficient cause after considering public safety, upstream and downstream impacts, and other relevant matters.

The department of transportation may deviate from these standards if the department determines it is appropriate to do so and the crossings are designed under scientific highway construction and engineering standards. The basis for the department's decision must be documented in writing.

Roads constructed as part of a surface coal mining operation for use solely as part of the mining operation are not subject to the requirements of this chapter. Roads constructed because of a surface coal mining operation for use by the public are bound by the requirements of this chapter, but deviations may be requested under this section.

History: Effective May 1, 2001; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC 24-02-01.1, 24-02-01.5, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

ARTICLE 89-15
WATERCOURSES

Chapter
89-15-01 Watercourse Determinations

CHAPTER 89-15-01
WATERCOURSE DETERMINATIONS

Section
89-15-01-01 Definitions
89-15-01-02 Identifying a Watercourse
89-15-01-03 Information to Use in Making a Watercourse Determination
89-15-01-04 Making a Watercourse Determination

89-15-01-01. Definitions.

Unless the context otherwise requires, the following definitions apply:

1. "District" means water resource district.
2. "Watercourse" is defined in North Dakota Century Code section 61-01-06. Other terms that are synonymous with watercourse are river, stream, creek, or channel. Watercourses may be natural or artificial.
3. "Natural watercourse," except as used in North Dakota Century Code section 61-32-03.1, means a watercourse that was formed and maintained by natural causes.
4. "Artificial watercourse" means a watercourse that was formed by artificial construction but maintained by natural causes, such as a natural watercourse that is straightened but still receives the same contributing runoff prior to its straightening.

History: Effective _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06

89-15-01-02. Identifying a watercourse.

For a watercourse to be constituted, the following criteria must be considered. No one criteria alone will constitute a watercourse, but rather a comprehensive review of the criteria provides the information necessary for a watercourse determination.

1. Sufficient natural and accustomed flow must be present or possible. This means the flow must be from a natural source, such as precipitation, snowmelt, or a

natural spring, and must regularly or frequently occur during normal hydrology years.

2. A distinct and defined channel must be maintained by natural and accustomed flows. It is not necessary that the channel be natural or created by natural causes, but the flow in the channel must be sufficient enough to maintain the channel without routine artificial maintenance, such as removal of silt, sediment, and vegetation.
3. A distinct and defined channel must have a definite bed and banks. It is not necessary that the banks be well-defined or sharply cut, but they must be easily discernable in times of little vegetative cover and have some capacity to carry flowing water.
4. A plainly defined channel must be present and easily discernable.
5. A channel of permanent character must be present and evident upon site inspection and review of aerial photography. The channel must have existed in that location for several years or have the high likelihood of existing there for several years in the case of a recently constructed artificial watercourse.
6. The land use of the site in question may play a role, such as whether the land is routinely used for agricultural purposes and if agricultural crops would be injured by any received waters.

History: Effective _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06

89-15-01-03. Information to use in making a watercourse determination.

1. Data or information to be utilized includes the following:
 - a. Relevant and readily available aerial photography.
 - b. Mapping products such as USGS quads, LiDAR data, GLO notes, existing surveys, etc.
2. Information collected or observed during a site visit, including notes, photos, and simple surveying exercises, if warranted.
3. Any other information that may assist in a determination, such as

a. _____ A hydrology analysis of the watershed that provides the watershed area contributing to the site, as well as flow quantity and flow frequency to expect at the site.

b. _____ Any court case history involving watercourse determinations

c. _____ Any further scientific justification necessary, such as analyzing channel forming velocities, soil types, sediment transport, geomorphology, etc.

History: Effective _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06

89-15-01-04. Making a watercourse determination.

Other than the department, only water resource districts may determine if a watercourse is constituted by definition if the district needs to identify a watercourse as part of its powers, authority, or responsibilities under North Dakota Century Code title 61. If a district requests a watercourse determination from the department according to 61-01-06, the department's decision is final and subject to appeal under North Dakota Century Code 61-03-22. Watercourse determinations need not be formally made if they are made in conjunction with a permitting or complaint or appeal decision under North Dakota Century Code title 61, unless requested by a district under section 61-01-06. Only the department must provide a formal determination if requested by a district under section 61-01-06.

History: Effective _____.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-01-06