



State of North Dakota

Office of the State Engineer

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February 19, 2014

John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505

Dear Mr. Walstad:

The Notice of Intent to Adopt, Amend or Repeal Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,

Todd Sando, P.E.
State Engineer

Enclosures

**NOTICE OF INTENT TO
ADOPT, AMEND, OR REPEAL ADMINISTRATIVE RULES**

TAKE NOTICE that the North Dakota State Engineer and North Dakota State Water Commission will hold a public hearing to address proposed amendments to North Dakota Administrative Code Articles 89-03 (Water Appropriations), 89-06 (Funding from the Resources Trust Fund), 89-07 (Atmospheric Resource Board), 89-10 (Sovereign Lands), and 89-11 (Drought Disaster Livestock Water Supply Project Assistance Program), at **9:00 A.M., Thursday, March 27, 2014**, in the basement conference room at the State Office Building, 900 East Boulevard Ave., Bismarck, ND. The proposed rules changes are expected to have an impact on the regulated community in excess of \$50,000.

The purpose and an explanation of the proposed rules changes are outlined on the attached chart.

The proposed rules may be reviewed at the North Dakota State Water Commission's office, 900 East Boulevard Ave., Bismarck, ND 58505 or on the Commission's website at www.swc.nd.gov. A copy of the proposed rules may be requested by writing the above address, calling 701-328-4941, or e-mailing rpedersen@nd.gov. Written or oral comments on the proposed rules sent to the above mailing or e-mail address, or telephone number and received by **April 7, 2014**, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the State Water Commission at the above address or phone number at least seven days before the public hearing.

Dated February 19, 2014.



Todd Sando, P.E.
State Engineer

Section	Housekeeping	Substantive	Comments
Article 89-03 – Water Appropriations			
Chapter 89-03-01 – Water Permits			
TOC	Updating titles to reflect changes		
89-03-01-01	Language clarifications		
89-03-01-01.1	Language clarifications		
89-03-01-01.2	Language clarifications		
89-03-01-01.3	Language clarifications		
89-03-01-01.4	Language clarifications		
89-03-01-01.5	Language clarifications	Excess water may not be sold for uses other than allowed by the permit.	Limiting ability of municipalities/rural water systems to sell excess water to oil industry unless such uses were already contemplated by the permit.
89-03-01-02	Language clarifications		
89-03-01-03	Language clarifications		
89-03-01-03.1	Language clarifications		
89-03-01-03.2	Language clarifications		
89-03-01-03.3	Language clarifications		
89-03-01-04	Language clarifications	Repeal majority of subsections 2 and 3.	Repetitive of N.D.C.C. § 61-04-05.
89-03-01-05	Language clarifications	Repeal subsections 1, 2, and 4.	Repetitive of N.D.C.C. § 61-04-05.
89-03-01-06.2		Repealed.	Once a hearing is requested, governed according to N.D.C.C. ch. 28-32 and N.D. Rules of Civil Procedure.
89-03-01-06.3	Language clarifications		Distinguishing between records maintained by the state engineer and the State Water Commission.
89-03-01-07	Language clarifications		
89-03-01-08	Language clarifications		
89-03-01-09	Language clarifications		
89-03-01-10	Language clarifications		
89-03-01-10.2		Requires temporary permit applicants to pay an application fee based on volume requested. Exception for emergency uses and irrigation transfers.	Implementing audit recommendation.
89-03-01-12	Language clarifications		
89-03-01-13	Language clarifications		
89-03-01-13.1		Assesses a \$250 fine for not properly submitting yearly water use form by March 31 deadline. Reduces fine to \$50 if submitted before June 1.	Implementing audit recommendation.
89-03-01-14	Language clarifications		
Chapter 89-03-02 – Modification of a Water Permit			
TOC	Updating titles to reflect changes		
89-03-02-01	Language clarifications		
89-03-02-02	Language clarifications		
89-03-02-03	Language clarifications		
89-03-02-05	Language clarifications		
89-03-02-06	Language clarifications		
89-03-02-08	Language clarifications		

Section	Housekeeping	Substantive	Comments
89-03-02-09	Language clarifications		
89-03-02-10	Language clarifications		
89-03-02-11	Language clarifications		
89-03-02-12	Language clarifications	An increase in acreage cannot be more than 10% of the originally approved acreage.	Implementing staff practice.
Chapter 89-03-03 – Definitions			
TOC	Updating titles to reflect changes		
89-03-03-01	Language clarifications Alphabetizing Moved definitions from other sections to this section.	Added definition for “measuring device.”	Implementing audit recommendation.
89-03-03-02	Moved to § 89-03-03-01.		
89-03-03-03		Repealed.	Never used in N.D.A.C. or N.D.C.C.
89-03-03-04	Moved to § 89-03-03-01.		
89-03-03-05	Moved to § 89-03-03-01.		
Article 89-06 – Funding From the Resources Trust Fund			
Title	Shortening Chapter Title		
Chapter 89-06-01 – Funding From the Resources Trust Fund (Proposed Title)			
TOC	Updating titles to reflect changes		
89-06-01-01	Language clarifications Alphabetizing Delete “resources trust fund” definition		“Resources trust fund” already defined by N.D.C.C. § 57-51-07.1
89-06-01-02	Language clarifications	Removed requirement that applications be submitted 30 days before meeting. Revised subsection 4 to reflect actual practice.	Added clarifying language (1)(f) in response to SB 2048, which stated, “RTF - rules must consider project revenues, local cost sharing, and ability to pay. May provide for repayment of a portion of funds, allocated from the RTF.” The requirements of SB 2048 were already being met. Policy will still require applications be submitted at least 30 days before meeting, but more flexibility necessary, especially for emergency situations.
89-06-01-03		Repealed.	Combined with N.D.A.C. § 89-06-01-02 (added studies.)
Article 89-07 – Atmospheric Resource Board			
Chapter 89-07-02 – Weather Modification Operations			
TOC	Updating titles to reflect changes		
89-07-02-01	Language clarifications		
89-07-02-02	Language clarifications Alphabetizing		

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89-07-02-03	Language clarifications		
89-07-02-04	Language clarifications		
89-07-02-05	Language clarifications		
89-07-02-06	Language clarifications		
89-07-02-07	Language clarifications		
89-07-02-08	Language clarifications		
89-07-02-09	Language clarifications		
89-07-02-10	Language clarifications		
89-07-02-11	Language clarifications		
89-07-02-12	Language clarifications		
89-07-02-13	Language clarifications		
89-07-02-14	Language clarifications		
89-07-02-15	Language clarifications		
89-07-02-16	Language clarifications		
89-07-02-17	Language clarifications	Removed Operations Manual for Hail Decrease and Precipitation Increase as permit condition. Added requirements that permittee must submit for permit.	Clarified the information required in an operations plan rather than naming a specific document.
89-07-02-18	Language clarifications		
89-07-02-19	Language clarifications		
89-07-02-20	Language clarifications		
89-07-02-21	Language clarifications		
89-07-02-22	Language clarifications		
89-07-02-23	Language clarifications		
89-07-02-24	Language clarifications	Eliminated monthly reporting requirements. Changed final reporting from 30 days to 60 days.	Monthly reports duplicative with the capability of consolidating digital data. Allows completion of a more comprehensive final report.
89-07-02-25		Repealed.	State bidding and procurement laws still applicable.
89-07-02-26	Language clarifications	Eliminated point scoring system for bids. Eliminated preference to ND bidders.	State bidding and procurement laws still applicable. Bidding preference already in N.D.C.C. § 44-08-01.
Article 89-10 – Sovereign Lands			
Chapter 89-10-01 – Sovereign Lands			
TOC	Updating titles to reflect changes		
89-10-01-01	Language clarifications		
89-10-01-02	Language clarifications		
89-10-01-03	Language clarifications	Added definition for “livestock.” Removed partial list of navigable waters from definition. Added definition for “snagging and clearing.” Added equipment to definition for “structure.” Added definition for “watercraft.”	The list of navigable waters changes as additional water bodies are studied or additional evidence of navigation at statehood is discovered. While the rule indicates the list is only a partial list, confusion has resulted. The State Engineer will now just informally maintain the list.

Section	Housekeeping	Substantive	Comments
89-10-01-04	Language clarifications		
89-10-01-05	Language clarifications		
89-10-01-06	Language clarifications	Eliminated requirement to provide decision by certified mail.	
89-10-01-06.1		Added new section to automatically include various items as part of the sovereign land permit record unless otherwise specifically excluded.	The intent is to automatically include certain publications, photographs, maps, etc. in the official record for use by both parties in permit application review or legal proceedings.
89-10-01-07	Language clarifications		
89-10-01-08	Language clarifications		
89-10-01-09		Repealed.	A permit for sand/gravel mining is necessary under N.D.A.C. § 89-10-01-26. These conditions can be attached to the permit, as applicable.
89-10-01-10	Language clarifications	Added snagging and clearing performed by a federal or state entity or political subdivision as a project that does not require a permit.	Clarifying that snagging and clearing projects do not require a sovereign lands permit.
89-10-01-10.1		Clarified that fee for illegal docks is a per day fee. Also docks will be subject to removal at owner's expense.	
89-10-01-10.2	Language clarifications	Clarified that fee for non-registered docks not requiring a permit is per occurrence.	
89-10-01-11	Language clarifications		
89-10-01-13	Language clarifications	Narrowed vehicular use exception to adjacent riparian owners for livestock and agricultural purposes. Clarified that fee for vehicular access violations is per occurrence.	Trying to eliminate problem of people riding and driving motorized vehicles on sandbars and claiming they are adjacent owners.
89-10-01-14	Language clarifications	Added language that new applications submitted by those who are named in active enforcement actions may be held in abeyance under the enforcement actions are resolved.	
89-10-01-15	Language clarifications		
89-10-01-16	Language clarifications		
89-10-01-18	Language clarifications		
89-10-01-19	Language clarifications		
89-10-01-20	Language clarifications		
89-10-01-21	Language clarifications	Clarified that fee for organized group activity violations is per occurrence.	
89-10-01-22	Language clarifications	Clarified that fee for pet violations is per occurrence.	
89-10-01-23	Language clarifications	Clarified that fee for camping violations is per occurrence.	
89-10-01-24	Language clarifications	Clarified that fee for hunting, fishing, and trapping violations is per occurrence.	
89-10-01-25	Language clarifications	Eliminating ability for riparian owners to leave unattended watercraft below the OHWM unless moored to an authorized dock or to	

Section	Housekeeping	Substantive	Comments
		property above the OHWM. Clarified that fee for unattended watercraft violations is per day.	
89-10-01-26	Language clarifications	Clarified that fee for removal of public property violations is per occurrence.	
89-10-01-27	Language clarifications		
89-10-01-28	Language clarifications	Clarified that fee for disposal of waste violations is per occurrence.	
89-10-01-29	Language clarifications	Clarified that fee for glass containers violations is per occurrence.	
89-10-01-31	Language clarifications	Clarified that fee for firearms violations is per occurrence.	
89-10-01-32	Language clarifications	Clarified that fee for tree stand violations is per tree stand.	
89-10-01-33	Language clarifications	Clarified that fee for baiting violations is per occurrence.	
89-10-01-34	Language clarifications	Adds language allowing a violator 20 days to take corrective action unless an emergency exists.	Allowing 20 days to correct a violation is consistent with other N.D.C.C. and N.D.A.C. sections.
Article 89-11 – Drought Disaster Livestock Water Supply Project Assistance Program			
Chapter 89-11-01 - Drought Disaster Livestock Water Supply Project Assistance Program			
89-11-01-01	Language clarifications		
89-11-01-02	Language clarifications		
89-11-01-04	Language clarifications	Clarified there is a limit of three projects on land owned by an applicant.	Eliminates confusion about whether an applicant is an individual, corporation, etc. by tying to land ownership. This is consistent with federal rules.
89-11-01-05	Language clarifications		
89-11-01-06	Language clarifications		