

CHAPTER 89-08-02 CONSTRUCTION PERMITS

Section

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89-08-02-01. Determining if a permit is required.

1. 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.
2. The area protected by a dike is calculated based upon the area protected as measured from the effective top of dike.
3. 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.
4. 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; July 1, 2024.

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 July 1, 2024.

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; July 1, 2024.

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 [61674 cubic meters] of water. An emergency construction permit will expire in 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; July 1, 2024.

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