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Sixty-seventh
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1437

Introduced by

Representatives Schreiber-Beck, D. Anderson, Beltz, D. Johnson, J. Nelson, O'Brien, Schmidt

Senators Klein, Kreun

A BILL for an Act to create and enact section 61-32-03.2 of the North Dakota Century Code, relating to small subsurface water management systems; to amend and reenact subsection 3 of section 61-02-01.4 and section 61-32-03.1 of the North Dakota Century Code, relating to large subsurface water management system permits and the state water commission cost-share policy; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-02-01.4 of the North Dakota Century Code is amended and reenacted as follows:

3. Must consider all project costs potentially eligible for reimbursement, except the commission shall exclude operations expense, regular maintenance, and removal of vegetative materials and sediment, for assessment drains, and may exclude operations expense and regular maintenance for other projects. Snagging and clearing of watercourses ~~are not regular maintenance~~and deepening or widening of existing drains are eligible for reimbursement. The commission shall require a water project sponsor to maintain a capital improvement fund from the rates charged customers for future extraordinary maintenance projects as condition of funding an extraordinary maintenance project.

SECTION 2. AMENDMENT. Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.

1.~~a.~~ Installation of a subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. ~~The watershed area drained by a subsurface water management system may not be used to determine whether~~

~~the system requires a permit under this section.~~A person that violates this section is guilty of an infraction.

~~b.~~ Subsurface water management systems that use surface intakes or lift stations must be permitted exclusively under this section ~~if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].~~

~~c.~~ ~~Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit~~.

2. For purposes of this section, a "natural watercourse" includes, in addition to watercourses defined in section 61-01-06, any waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map.

3. a. The state engineer shall develop an application form for a permit required under this section. A person seeking to construct a subsurface water management system ~~that requires a permit under this section must~~shall submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. The ~~water resource~~ district ~~board~~ may charge permit applicants a fee up to ~~one~~five hundred ~~fifty~~ dollars. ~~Water resource districts shall forward copies of all approved permits to the state engineer~~The fee must be paid before the water resource district may approve the application.

b. ~~Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse,~~

~~slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.~~

~~3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.~~

~~b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.~~

~~c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal~~

~~assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.~~

~~d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.~~

~~e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.~~

~~f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.~~

~~4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by~~

~~a water resource district board or the state engineer if the application meets the requirements of this section.~~

~~5.~~ A completed permit application includes:

(1) A completed application form signed by an applicant and filed with the district;

(2) Evidence of ownership for each parcel to be tiled according to the tax rolls of the county in which the parcel is located;

(3) A project design, including:

(a) A detailed drawing depicting the subsurface water management system's location overlain on an aerial photograph showing the system's location by legal description identifying either the relevant quarter, section, township, and range or the relevant block and lot number;

(b) The physical footprint of the system's layout;

(c) The tile-main sizes and locations;

(d) The laterals to the tile-main sizes and locations;

(e) Surface inlet sizes and locations; and

(f) Outlet sizes, locations, and types;

(4) A detailed map or depiction of the flow direction from each outlet location for one mile [1.61 kilometers] downstream which includes the location of the downstream parcels by legal description identifying either the relevant quarter, section, township, and range or the relevant block and lot number; and

(5) Evidence of ownership for each parcel within one mile [1.61 kilometers] downstream of each project outlet according to the tax rolls for the county in which the parcel is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of a proposed outlet, in which case the applicant shall provide evidence of ownership for each parcel between the outlet and the nearest assessment drain, natural watercourse, slough, or lake.

c. Unless the district notifies an applicant the application is incomplete and provides a list of information required to complete the application within three business days after the day the district receives the application, the application is deemed complete.

d. Project designs submitted as part of an application for a permit under this section before or after the effective date of this Act are exempt records under section 44-04-18 and may be provided to individuals only as necessary to make a decision whether to approve the permit.

4. A district may attach conditions to an approved permit for a subsurface water management system if the conditions address:

a. Outlet locations including requirements for pump and control structures to be installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;

b. Installation and maintenance of proper erosion control at all outlets;

c. Re-establishment of disturbed areas to previous conditions;

d. The minimum distance from rural water supply lines. However, a district may not attach a condition requiring a system to extend beyond an existing easement for a rural water line, or, if the rural water line was installed under a blanket easement, requiring a system to extend beyond twenty feet [6.1 meters] from either side of a rural water line;

e. Installation and operation of control structures at project outlets including requirements for control structures to be closed or pump outlets to be turned off during critical flood periods;

f. Requirements for a permittee to obtain an amendment to a permit for alterations to outlet locations, new outlets, or improvements resulting in drainage of additional acres;

g. If the subsurface water management system will discharge into the watershed area of a assessment drain, inclusion of the relevant property into the assessment district for the assessment drain in accordance with the benefits the property receives. The water resource district may include the new property into the assessment district, and determine the benefits and assessment amounts

under chapters 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under sections 61-21-44 and 61-16.1-26.

h. Requirements for a permittee to remove silt and vegetation, or repair erosion and scour damages directly caused by the subsurface water management system, up to one mile [1.61 kilometers] downstream from a proposed outlet, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district may require silt and vegetation removal or erosion and scour damage repair between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. For purposes of this subdivision and subdivision i:

(1) Downstream damage repair does not include deepening or widening a road ditch or existing drain;

(2) The timing and method of silt and vegetation removal or damage repair in a county or township road ditch must be preapproved by the appropriate road authority; and

(3) The applicant shall follow any construction site protection requirements of the road authority.

i. If a downstream landowner or road authority presents substantial evidence a subsurface water management system directly has caused accumulation of silt, vegetation erosion, or scouring, the requirement or authorization of the applicant to remove the silt and vegetation or repair the erosion and scour damages directly caused by the system. However, the applicant may not spread silt, vegetation, or debris along adjoining land without the permission of all parties having a legal interest in the land.

5. A district shall approve a permit, including any permissible conditions, within thirty days after the district receives the completed application. If the district fails to approve the permit application within that period, the permit is deemed approved with no conditions.

6. Upon approval of a permit, the district shall forward notice of the approved permit and of the downstream flow map to the state engineer and to each landowner who owns property within one mile [1.61 kilometers] downstream of each project outlet according

to the tax rolls of the county in which the property is located, unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers] downstream of the proposed outlet, in which case the district shall provide notice to landowners with property between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The district shall send copies of approved permits by first-class mail, attested by an affidavit of mailing.

7. An amendment of a previously approved subsurface water management system permit must be made according to the provisions for approving a permit under this section.

8. A water resource district board may not be held liable to any person for issuing a permit under this section.

~~6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.~~

~~7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.~~

9. Approval of a permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.

SECTION 3. Section 61-32-03.2 of the North Dakota Century Code is created and enacted as follows:

61-32-03.2. Smaller subsurface water management systems discharging into assessment drains - Reports and conditions - Penalty.

1. A person may not install a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area and which drains directly into an assessment drain or directly into a tributary of an assessment drain, until the person has reported to the board of the water resource district within which is found a majority of the land area of the system:

   a. The system's maximum discharge;

   b. The system's discharge location; and

   c. The direction of the discharge flow.

2. A person required to submit a report under subsection 1 shall design and install the subsurface water management system such that:
   a. Pump and control structures at pump outlets are installed no closer than twenty-five feet [7.62 meters] from the top of the back slope of an assessment drain;
   b. Proper erosion controls are installed and maintained at all outlets; and
   c. Pumps and control structures at project outlets are closed or turned off during critical flood periods.
3. If a subsurface water management system for which a report is required under subsection 1 will discharge into the watershed area of an assessment drain, the water resource board that receives the report may require the relevant property to be included in the assessment district for the assessment drain in accordance with the benefits the property receives. The water resource district also may include the property in the assessment district and determine the benefits and assessment amounts under chapter 61-21 and 61-16.1, without conducting the reassessment of benefit proceedings under section 61-21-44 and 61-16.1-26.
4. The board of the water resource district within which the subsurface water management system is located may order the system's owner or operator to bring the system into compliance with subsection 2 if the board finds the system violates that subsection.
5. A subsurface water management system that drains into a slough or other body of water completely encompassed by land owned by the person that owns the land drained by the system may not be deemed a system that drains directly into an assessment drain or directly into a tributary of an assessment drain.
6. A person that violates this section is guilty of an infraction.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.