

CHAPTER 89-08-02 CONSTRUCTION PERMITS

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89-08-02-01. Determining the capacity of dams, dikes, or other devices.

The impounding capacity of a dam is calculated based upon the elevation at the top of dam. The diverting capacity of 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.

General Authority: NDCC 28-32-02, 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; 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 state engineer.

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

General Authority: NDCC 28-32-02, 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 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

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

Construction must be completed and the state engineer must be notified of completion in writing within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.

History: Effective January 1, 2015.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38

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

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

History: Effective January 1, 2015.

General Authority: NDCC 28-32-02, 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 state engineer along with any additional information required by the state engineer. If the state engineer determines an emergency exists, the state engineer 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 months unless extended by the state engineer under section 89-08-02-05.

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

General Authority: NDCC 28-32-02, 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 state engineer 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.

General Authority: NDCC 28-32-02, 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 state engineer in writing when the emergency structure has been completely removed.

History: Effective January 1, 2015.

General Authority: NDCC 28-32-02, 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 state engineer 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.

General Authority: NDCC 28-32-02, 61-03-13

Law Implemented: NDCC 61-16.1-38