



DRAINAGE PERMITTING CONSIDERATIONS

POLICY | REG_02.2024

NORTH
Dakota | Water Resources
Be Legendary.

Effective Date 04/01/2024

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1 POLICY STATEMENT

In an effort to clarify definitions of “drain” and what constitutes “drainage” or “draining” requiring a permit under North Dakota Century Code (N.D.C.C.) § 61-32-03 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-01, the North Dakota Department of Water Resources (Department) has developed the following definitions and parameters. This Policy aims to provide transparency to the drainage permitting jurisdictional limits.

1.1 POLICY AUTHORITY OR IMPLEMENTATION

This policy garners authority from N.D.C.C. § 61-32-03 and N.D.A.C. ch. 89-02-01 and will be implemented through drainage permit application and permit requirements.

1.2 ACCEPTANCE OR ENFORCEMENT

The Department reserves the right to change this Policy as necessary to ensure the Department fulfills its statutory duties.

The Department reserves the right to return any application submitted under this Policy to the applicant for correction if, in determination, it does not comply with the Policy’s intent or is insufficient for the Department to make an informed decision.

The Department reserves the right to enforce this policy as per the process outlined in N.D.C.C. § 61-32-03 and N.D.A.C. ch. 89-02-01.

1.3 APPEALS

Decisions may be appealed as per the process outlined in N.D.C.C. § 61-03-22.

1.4 POLICY DEVIATIONS

The Department reserves the right to deviate from policy as deemed appropriate and within requirements outlined in N.D.C.C. or N.D.A.C.

Policy deviation requests from applicants may be considered by the Department if the applicant can justify why requirements of this policy are not necessary or applicable. Such a deviation will not be granted without significant justification. Additionally, a deviation request does not guarantee that a deviation will be granted, and any work performed to pursue such a deviation request will be solely at the applicant’s expense.

1.5 DEPARTMENT CONTACT

Please contact the Department’s Engineering and Permitting Section at (701) 328-4956 or dwrregpermit@nd.gov for questions regarding this Policy or other water drainage questions.

2 PRE-APPLICATION CONSULTATION

The Department strongly encourages pre-application consultation prior to a drainage permit application submittal. Early consultation between the applicant, the applicant's representative(s), and the Department will support early understanding and compliance with this policy to limit unexpected project costs or delays.

3 GENERAL POLICY CONSIDERATIONS

N.D.C.C. ch. 61-32 and N.D.A.C. art. 89-02 require permits for “drainage of a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty areas or more.” In interpreting codified statutes, rules, and definitions, the Department will use the parameters laid out within this Policy.

The definitions used within this Policy are used by the Department only when reviewing drainage permits and appeals.

3.1 DRAIN

"Drain" is defined in N.D.C.C. § 61-16.1-02 as, “any natural watercourse opened, or proposed to be opened, and improved for drainage, and any artificial channel constructed for drainage. The term includes dikes and appurtenant works and may include more than one watercourse or artificial channel when the watercourses or channels drain land within a practical drainage area.”

In practice, “drain” means a physical feature, such as a ditch, pipe, or pump, constructed or used to accomplish drainage or draining of a pond, slough, lake, or sheetwater, or any series thereof, including appurtenant works.

Other common terms that may be associated with a drain include legal drain, assessment drain, lateral drain, ditch, canal, channel, pipe, or diversion.

3.1.1 ACCEPTED AS ‘DRAINS’:

The Department considers the following items to be “drains”:

- a. A ditch or pipe constructed, installed, or operated to drain by gravity a pond, slough, lake, or sheetwater, or any series thereof.
- b. A mechanical pump or siphon constructed, installed, or operated to drain a pond, slough, lake, or sheetwater, or any series thereof.
- c. Placement of fill, as defined in this policy.
- d. Modifications to a watercourse for the purpose of enhancing, opening, or improving the watercourse, including slope modifications or improvements, deepening, widening, straightening, rerouting, or diverting of watercourses.
- e. Modifications to an existing drain or its appurtenant works for the purpose of modifying how the original drain operates or accomplishes drainage or draining, including slope modifications or improvements, deepening, widening, enlarging, rerouting, or extending existing drains, as well as changes to a drain’s previously authorized or permitted control(s) or operation plan(s).

- f. Municipal or city stormwater management activities that occur within the jurisdictional limits of a municipality or city for the purposes of draining a watercourse, pond, slough, or lake, or any series thereof or constructing or modifying an assessment drain.

3.1.2 UNACCEPTED AS 'DRAINS':

The Department does not consider the following to be drains:

- a. Maintenance of a drain or watercourse, which includes removal of silt and vegetation from a drain or watercourse including removal of obstructions or woody debris, such as the case with snagging or clearing. This is not synonymous with the "cleaning out and repairing a drain" definition in N.D.C.C. § 61-16.1-02(5).
- b. Construction, installation, modification, or removal of a stream crossing that does not involve other drainage activities.
- c. Municipal or city stormwater management activities that occur within the jurisdictional limits of a municipality or city and for the purposes of managing sheetwater runoff. These activities include constructing, modifying, and maintaining storm sewer and appurtenant works to alter the sheetwater flow. It is recommended that such activities be regulated under a stormwater management plan recognized by the municipal or city government, as defined in N.D.C.C. ch. 40-01.
- d. Land use changes, such as the construction, modification, or maintenance of buildings, parking lots, streets, lots, or similar activities, that alter sheetwater flow.
- e. Agricultural practices, such as farming, plowing, or working the soil to prepare soil for planting or seeding agricultural crops.
- f. Temporary dewatering of dam or pond reservoirs or construction sites for inspection, repair, or construction.
- g. Reservoir operation of dam and pond spillways.
- h. Beneficial use of water, as described in N.D.C.C. ch. 61-04, including domestic, municipal, livestock, irrigation, industrial, fish, wildlife, or recreational uses. This includes replacement of baseflow in a watercourse for the purpose of water supply, as is the case under drought conditions.
- i. Highway or road ditch and drainage activities, including constructing, modifying, and maintaining reasonable road ditch drainage for and by federal, state, county, and township roadways within the state. This does not include the following:

- Drainage features constructed, modified, or maintained within a highway or road right-of-way by someone other than the road authority of jurisdiction;
 - Modification of a watercourse;
 - Assessment drains; or
 - Drainage of ponds, sloughs, lakes, or any series thereof.
- j. Subsurface water management, as described and regulated under N.D.C.C. § 61-32-03.1.
- k. Bank stabilization projects, such as hardening the banks of a watercourse with riprap or similar material to inhibit head cutting or bank erosion, that will not deepen or widen the channel or otherwise measurably or intentionally increase the conveyance of the watercourse.

3.2 PLACEMENT OF FILL

“Placement of fill” means material, such as earth, soil, concrete, rubble, or riprap, placed in a pond, slough, lake, or any series thereof, with the intent to accomplish drainage or draining of one of those water features by storage removal.

Placement of fill means or includes more than ten-percent reduction in a pond, slough, lake, or any series thereof as a function of fill volume (acre-feet) versus the pond’s, slough’s, or lake’s existing surface area (acres).

3.2.1 UNACCEPTED AS ‘PLACEMENT OF FILL’

Placement of fill does not mean or include:

- a. Fill placed in “sheetwater.”
- b. Fill placed in an existing drain or watercourse, as that action would either be a modification to or an obstruction of an existing drain or watercourse.
- c. Fill or earthwork to construct or modify a “dam, dike, or other device” under N.D.C.C. § 61-16.1-38 and N.D.A.C. article 89-08.
- d. Fill or earthwork necessary to construct or modify a road or highway embankment otherwise subject to the road authority’s jurisdiction.
- e. Transmission poles, pilings, foundations, or any other infrastructure of a similar footprint.

- f. Fill placed above the natural outlet elevation of a slough, pond, lake, or any series thereof, otherwise not removing available volume or storage of those water features.

3.3 ADDITIONAL DEFINITIONS

- a. Appurtenant works to a drain: Drain features that are integral design and function components, including control structures, stream crossings, dikes, and spoil piles.
- b. Control Structure: A pump(s), sluice gate(s), stop-log structure(s), grade or drop control structure(s), or passive weir(s).
- c. Drainage/ Draining: The removal of water from a pond, slough, lake, or sheetwater, or any series thereof by the construction of a new drain or modification of an existing drain. This includes the removal of water volume or storage or the removal of water faster than occurs under existing conditions.
- d. Sheetwater: Defined in N.D.C.C. § 61-32-03 as “shallow water that floods land not normally subject to standing water.” Generally, sheetwater is synonymous with the terms overland flow, runoff, surface water, excess water, and floodwater. Specifically, sheetwater includes water running or flowing over land or the surface of the earth as the result of normal precipitation, such as rainfall or snowmelt, or as the result of water beyond normal runoff or precipitation, such as the case with flooding.

4 POLICY HISTORY

Policy Adopted: 9/21/2020

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