



LEGACY DAMS POLICY

POLICY | REG_04.2024

NORTH
Dakota | Water Resources
Be Legendary.

Effective Date: 01/01/2024

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1 POLICY STATEMENT

The Department of Water Resources (Department) permits and manages dams in North Dakota. As a part of its continual review of national dam safety practices, the Department may occasionally initiate modifications to rules, statutes, or policy in support of public safety and property protection.

This Policy establishes a Legacy Dam designation for existing dams that the Department will use when Department-initiated updates to statutes or policies occur.

1.1 POLICY AUTHORITY OR IMPLEMENTATION

This Policy garners authority from North Dakota Century Code (N.D.C.C.) §§ 61-03-21.2 and 61-16.1-38, as well as North Dakota Administrative Code (N.D.A.C.) article 89-08 and will be implemented through the Regulatory Division Dam Safety Program's construction 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 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 per the process outlined in N.D.C.C. §§ 61-03-21.2 and 61-16.1-38, as well as N.D.A.C. article 89-08.

1.3 APPEALS

Decisions may be appealed 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 deviations from applicants may be considered by the Department if the applicant can justify why the outlined elements 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 Regulatory Division at (701) 328-4956 or dwrreregpermits@nd.gov for questions regarding this Policy or the ND Dam Safety Program.

2 LEGACY DESIGNATION

When there are Department-initiated modifications to rules, statutes, or policy, dams will be placed in Legacy status. Legacy status will remain in effect and the Department will not require compliance activities until a permissible action under N.D.C.C. § 61-16.1-38 occurs.

The Legacy designation is only applicable to the permitting jurisdiction of N.D.C.C. § 61-16.1-38, and compliance with all other appropriate sections of N.D.C.C. and N.D.A.C. is expected by the Department.

A Legacy designation may be removed or otherwise modified at the Director's discretion due to public or life safety concerns.

3 DEFINITIONS

Dam: Defined in N.D.A.C. § 89-08-01-01 as, “any barrier, including any appurtenant works, constructed across a watercourse, or an area that drains naturally to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.”

Legacy: Existing dams temporarily exempt from Department of Water Resources’ dam design criteria based on hazard classification change due Department-initiated modification to rules, statutes, or policy.

Permittable Action: Any action to construct a new dam, or modify an existing dam, that requires a construction permit from the Department to be obtained as outlined in N.D.C.C. § 61-16.1-38 and N.D.A.C. ch. 89-08-02. Routine maintenance that restores a dam to its original design is not a permittable action.

4 POLICY HISTORY

Policy Adopted: 06/02/2023

Policy Version REG_04.2024 Effective: 01/01/2025.

REG_04.2024 transfers the hazard classification review policy to REG_05.2024.

Previous Revision(s):

06/02/2023 REG_04.2023 was developed alongside N.D.A.C. updates effective January 2023.