



Dams, Dikes, and Other Devices Statutes & Rules

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NORTH DAKOTA CENTURY CODE

CHAPTER 61-03 STATE ENGINEER

61-03-21. State engineer may require plan of operation - Adequate structure. Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet [1233481.84 cubic meters] shall annually, between the first and fifteenth day of February, file with the state engineer an operating plan for such reservoir for the calendar year in which the same is filed. The operator of any such reservoir shall be required to cooperate with the state engineer to the end that all water releases shall be compatible with the best interest of the greatest number of downstream water users and affected landowners. In the event that the state engineer declares an emergency to exist in connection with the operation of any such reservoir, the operator thereof shall promptly submit to the state engineer a separate interim operating plan therefor in addition to the annual reservoir operating plan herein required. Such interim operating plan shall then be coordinated and integrated with the suggestions and plans of the state engineer to best serve the affected interests during such emergency. The state engineer may also require such operators to maintain adequate structures and to operate them in a manner that will prevent waste, promote the beneficial use of water and not endanger the general health and welfare of persons affected thereby. In the event such operator fails to maintain and operate adequate structures in the manner provided in this section, the state engineer shall set a place and time for hearing and shall serve notice upon such operator to show cause at such time and place why his water permit should not be declared terminated and canceled. A copy of any order terminating or canceling such water right shall be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

History: Enacted 1957; amended 1963, 2001.

61-03-21.1. Inspection by state engineer. Whenever the state engineer is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the state engineer shall have the authority to enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer, the state engineer shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer may request the district court of the district containing the property for an order authorizing the state engineer to enter the property to inspect or investigate the alleged violation.

History: Enacted 1985.

61-03-21.2. Removal or modification of unsafe or unauthorized works. If the state engineer pursuant to the state engineer's authority under this title determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last known post-office address of record. A copy of the notice must also be sent to any tenant, if the state engineer has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal or modification of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well founded and are not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

History: Enacted 1985; amended 1989, 1991.

61-03-25. Emergency action plan - High-hazard or medium-hazard dam. The owner of a high-hazard or medium-hazard dam shall develop, periodically test, and update an emergency action plan to be implemented if there is an emergency involving the dam. The emergency action plan and any subsequent updates must be submitted to the state engineer for approval.

History: Enacted 2015.

CHAPTER 61-04 APPROPRIATION OF WATER

61-04-11. Inspections of works. If the state engineer, in the course of the state engineer's duties, shall find that any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the state engineer at once shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works. If such fees are not paid by the owner of such works within thirty days after the decision of the state engineer, they shall be a lien against any property of such owner, and shall be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in the state engineer's opinion it is necessary, may inspect any works under construction for the storage, diversion, or carriage of water, and may require any changes necessary to secure their safety. The fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any agency thereof shall be required to pay such fees.

History: Enacted 1905; amended 1961.

CHAPTER 61-16.1 OPERATION OF WATER RESOURCE DISTRICTS

61-16.1-38. Permit to construct or modify dam, dike, or other device required – Penalty – Emergency. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's

initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. If the board fails to respond within forty-five days, it shall be determined the board has no changes, conditions, or modifications. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

History: Enacted 1981; amended 1985, 1997, 2003, 2013.

61-16.1-53. Removal of a noncomplying dike, dam, or other device - Notice and hearing – Appeal – Injunction

1. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dike, dam, or other device, capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by certified mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost of the removal, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from

constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. If a complaint is frivolous in the discretion of the board, the board may assess the costs of the frivolous complaint against the complainant.

2. Following removal of an unauthorized dike, dam, or other device, either by a water resource board or by a party complying with an order of a water resource board, the board may assess its costs against the property of the responsible landowner.

History: Enacted 1981; amended 1989, 1999, 2003, 2013.

61-16.1-53.1. Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the state engineer. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer, which must specifically set forth the reason why the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer within one hundred fifty days of the submittal date of the original complaint. The state engineer shall, without reference to chapter 28-32, cause the investigation and determination to be made, either by action

against the board or by conducting the investigation and making the determination.

3. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:
 - a. Notify the landowner by certified mail at the landowner's post-office address of record;
 - b. Return the matter to the jurisdiction of the board along with the investigation report; or
 - c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state that if the dam, dike, or other device is not removed within a reasonable time as determined by the state engineer, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court under chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to an appeal.
5. If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned

to its jurisdiction, the board shall carry out the state engineer's decision under the terms of this section.

6. If the state engineer, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the dam, dike, or other device removed within a reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

History: Enacted 1999; amended 2013, 2015.

NORTH DAKOTA ADMINISTRATIVE CODE

**ARTICLE 89-08
DAMS, DIKES, AND OTHER DEVICES**

**CHAPTER 89-08-01
DEFINITIONS**

Chapter	
89-08-01	Definitions
89-08-02	Construction Permits
89-08-03	Inspections
89-08-04	Operation and Maintenance

**CHAPTER 89-08-01
DEFINITIONS**

Section	
89-08-01-01	Definitions
89-08-01-02	Definition of Unsafe Dam, Dike, or Other Device [Repealed]

89-08-01-01. Definitions. The following definitions apply in this article:

1. "Appurtenant works" means all works incident or attached to a dam, dike, or other device, including:
 - a. A spillway, either in the dam or separate from it;
 - b. The reservoir and its rim;
 - c. A low-level outlet; and
 - d. A water conduit, such as a tunnel, pipeline, or penstock, either through the dam, dike, or other device or their abutments.
2. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.
3. "Dam" means 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.

4. "Dike" means any artificial barrier, including any appurtenant works, constructed along a watercourse or an area that drains naturally to divert the flow of water to protect real or personal property.
5. "Diversion" means any open channel, culvert, or ditch constructed to reroute a watercourse as defined by North Dakota Century Code section 61-01-06.
6. "Embankment" means a structure created by an artificial deposit of material upon the natural surface of the land that is designed to act as a water control device, support roads or railways, or for other similar purposes.
7. "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.
8. "Height" means the maximum vertical distance from the stream channel bottom or lowest elevation of a naturally draining area to the top of dam.
9. "High-hazard dam" means a dam located upstream of developed or urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is potential for the loss of more than a few lives if the dam fails.
10. "Holding pond, lagoon, or dugout" means any artificial, hydraulically disconnected structure, including any appurtenant works, constructed to store water.
11. "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.
12. "Low-hazard dam" means a dam located in a rural or agricultural area where there is little possibility of future development. Failure of low-hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails.
13. "Medium-hazard dam" means a dam located in a predominately rural or agricultural area where failure may damage isolated homes, main highways, or railroads, or cause interruption of minor public utilities. There is potential for the loss of a few lives if the dam fails.

14. "Other device" means a water control structure, other than a dam or dike, including diversions and holding ponds, lagoons, or dugouts.
15. "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device. For the purpose of a construction permit application, "owner" means the person who owns the property or interest in property where the dam, dike, or other device will be built.
16. "Top of dam" means the top of the settled embankment or the elevation of the uppermost surface of a nonembankment dam, excluding accessory features, such as railings.
17. "Unsafe dam, dike, or other device" means any such structure that threatens harm to life or property or is improperly maintained.

History: Effective November 1, 1989; amended effective January 1, 2015.

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

Law Implemented: NDCC 61-16.1-38

89-08-01-02. Definition of unsafe dam, dike, or other device. Repealed effective January 1, 2015.

CHAPTER 89-08-02 CONSTRUCTION PERMITS

Section

89-08-02-01	Determining the Capacity of Dams, Dikes, or Other Devices
89-08-02-02	Contents of Application
89-08-02-03	Permit Does Not Absolve Liability for Damages
89-08-02-03.1	Time to Complete Construction of Structure
89-08-02-03.2	Extending Time to Complete Construction of Structure
89-08-02-04	Emergency Construction Permits
89-08-02-05	Extension of Emergency Construction Permits
89-08-02-06	Removal of Emergency Structures
89-08-02-07	As Built Plans

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 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

CHAPTER 89-08-03 INSPECTIONS

Section	
89-08-03-01	Inspections and Reports During Construction of Dams Over Ten Feet [3.05 meters] in Height
89-08-03-02	Monitoring During Construction by the State Engineer
89-08-03-03	Changes in Construction
89-08-03-04	Requested Inspections
89-08-03-05	Periodic Inspections After Construction
89-08-03-06	As Built Plans [Repealed]
89-08-03-07	Access to Dams for Inspection

89-08-03-01. Inspections and reports during construction of dams over ten feet [3.05 meters] in height. To protect property and assure safety, the following are conditions to all construction permits for dams over ten feet [3.05 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. The information obtained during each inspection must be documented in a written report. The report will specify any changes necessary under section 89-08-03-03. The inspection reports must be provided to the state engineer upon request.

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

89-08-03-02. Monitoring during construction by the state engineer. The state engineer may monitor any dam, dike, or other device during construction to ensure conformity with the construction permit and the plans and specifications.

History: Effective November 1, 1989.

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

Law Implemented: NDCC 61-04-11

89-08-03-03. Changes in construction. If the state engineer or engineer in charge determines changes in construction are necessary to ensure safety, the state engineer may order the appropriate changes and may order construction be stopped until the changes are made.

History: Effective November 1, 1989; amended effective January 1, 2015.

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

Law Implemented: NDCC 61-04-11

89-08-03-04. Requested inspections.

1. Upon receipt of a written complaint that a dam, dike, or other device is unsafe because of its construction, maintenance, or operation, the state engineer will examine the available information and determine if the complaint is justified.
2. If the state engineer determines the complaint is unjustified, the state engineer must notify the complainant in writing of that fact.
3. If the state engineer determines the complaint is justified, the state engineer will complete the necessary inspection and make a determination regarding the structure's safety. If construction is ongoing, all construction activities must cease until the state engineer completes the inspection.

History: Effective November 1, 1989; amended effective January 1, 2015.

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

Law Implemented: NDCC 61-04-11, 61-03-21.1, 61-03-21.2

89-08-03-05. Periodic inspections after construction. The state engineer may require inspection of a dam, dike, or other device as often as necessary after construction to protect property and assure safety.

History: Effective November 1, 1989; amended effective January 1, 2015.

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

Law Implemented: NDCC 61-04-11, 61-16.1-38

89-08-03-06. As built plans. Repealed effective January 1, 2015.

89-08-03-07. Access to dams for inspection. The state engineer has authority to enter upon land to inspect a dam during construction, conduct periodic dam inspections after construction, or conduct a dam inspection in response to a complaint that the dam is unsafe. Except in emergency situations as determined by the state engineer, the state engineer will request permission from the landowner to enter the property. If the landowner refuses to give permission or fails to respond within five days of the request, the state engineer may request a district court order for authorization to enter the property to inspect the dam.

History: Effective January 1, 2015.

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

Law Implemented: NDCC 61-03-21.1

**CHAPTER 89-08-04
OPERATION AND MAINTENANCE**

Section	
89-08-04-01	Operating Plan
89-08-04-02	Maintenance Plan
89-08-04-03	Emergency Action Plan

89-08-04-01. Operating plan. By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre-feet must submit an operating plan for that year to the state engineer. The state engineer will review the operating plan, and if deficiencies or discrepancies exist, the state engineer must notify the owner of the dam of the deficiencies or discrepancies. The owner of the dam must correct the deficiencies or discrepancies and return the corrected operating plan to the state engineer within fourteen days of receiving notice of the deficiencies or discrepancies. The operating plan must be approved by the state engineer before the operation of the dam. If the operator receives no response from the state engineer within thirty days, the operating plan is approved.

History: Effective November 1, 1989; amended effective January 1, 2015.

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

Law Implemented: NDCC 61-03-21

89-08-04-02. Maintenance plan. Dam owners must maintain their structures in an adequate manner. The state engineer may require the owner of a dam with a capacity of more than one thousand acre-feet to submit a maintenance plan for the dam and appurtenant works.

History: Effective January 1, 2015.

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

Law Implemented: NDCC 61-03-21

89-08-04-03. Emergency action plan. The owner of a dam with a storage capacity of more than one thousand acre-feet must submit an emergency action plan for the dam to the state engineer. The plan must be approved by the state engineer. The plan must be maintained and updated on a regular basis, and copies of all updates must be submitted to the state engineer.

History: Effective January 1, 2015.

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

Law Implemented: NDCC 61-03-21