

**GUIDANCE FOR WATER RESOURCE DISTRICTS ON PROCESSING  
SUBSURFACE WATER MANAGEMENT PERMIT APPLICATIONS  
(ACCORDING TO NORTH DAKOTA CENTURY CODE § 61-32-03.1)**

Water resource districts (WRD) are responsible for processing permit applications for subsurface water management systems under North Dakota Century Code § 61-32-03.1. Please review the language of North Dakota Century Code § 61-32-03.1, follow the steps below, and if necessary, consult an attorney for further guidance.

1. Upon receipt of a subsurface water management application (application), the WRD of jurisdiction must determine if the application is “complete.”

NOTE: The North Dakota Office of the State Engineer reference document titled “INSTRUCTIONS FOR FILING A SUBSURFACE WATER MANAGEMENT PERMIT APPLICATION” provides guidance to WRDs in assessing applications for completeness.

2. Upon submission of a completed application for a permit, the WRD shall immediately give notice and a copy of the submission (application) 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 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 (application) must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake.

NOTE: This notice requirement must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice. If the WRD receives notarized letters of approval from all downstream landowners entitled to notice, the WRD shall approve the completed permit application as soon as practicable, but no later than thirty days after receipt of the last letter. Otherwise, the WRD shall review the completed application at its next meeting that is at least thirty days after receipt of the application.

3. The WRD shall consider any written, “technical evidence” (see supporting definitions) provided by the applicant or a notified landowner [within one mile downstream of the proposed system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile] addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system.

NOTE: Technical evidence must be submitted to the permit applicant, notified landowners, and the WRD within thirty days of the receipt of the completed permit application by the WRD. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

4. If the WRD finds, based on “technical evidence,” the proposed subsurface water management system will flood or unreasonably harm lands of a landowner entitled to notice, the WRD may require the applicant to obtain a notarized letter of approval before issuing a permit for the system.

NOTE: The WRD 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 landowners entitled to notice did not provide technical evidence to the WRD.

5. A WRD may not deny a completed permit application unless the WRD determines, based on technical evidence submitted by a landowner required to be notified, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the WRD has not been obtained by the applicant.

NOTE: The WRD 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 entitled to notice of the approval or denial.

## **Special Considerations**

1. **A WRD may not deny a permit more than sixty days after receipt of the completed subsurface water management (application) for the permit. If the WRD fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.**
2. If the system includes a surface intake and has an overall drainage coefficient of greater than 3/8 inches per day, the application must be forwarded to the Office of the State Engineer for review along with a completed surface drain permit application.
3. A WRD 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.
4. A WRD 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.
5. Any condition to locate the system 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.
6. A denial of a completed permit application by a WRD may be appealed under North Dakota Century Code § 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 WRD if the application meets the requirements of this section.
7. A WRD may not be held liable to any person for issuing a permit under this section. 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.
8. 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.

## **Supporting Definitions**

North Dakota Century Code § 61-32-03.1 defines the following:

“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.

“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 [within one mile downstream of the proposed subsurface water management system outlet unless the distance to the nearest assessment drain, natural watercourse, slough, or lake is less than one mile].

“Unreasonable Harm” - means hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile downstream of the system’s outlet.