



DRAINAGE COMPLAINT APPEALS AND REVIEW

INTERIM GUIDELINES | REG_08.2025

POLICY OUTLINE

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1 OVERVIEW

North Dakota Water Resource Districts (WRDs) have primary jurisdiction over drainage complaints under North Dakota Century Code (N.D.C.C.) § 61-32-07. WRDs are required to investigate drainage complaints and determine whether the alleged unauthorized drainage was in violation of N.D.C.C. Title 61 or rules adopted by the board at the time of the unauthorized activity.

The North Dakota Department of Water Resources (Department) regularly reviews drainage complaints and drainage complaint appeals as a part of its regulatory duties. Department Policy REG_02 Drainage Permitting Considerations provides further information on the Department's definitions related to drains and can be found on the Department's website.

This document, REG_08, serves as interim guidance and provides transparency and clarity on the Department's processes and procedures used when evaluating drainage complaints and drainage complaint appeals.

1.1 AUTHORITY OR IMPLEMENTATION

These guidelines garner authority from N.D.C.C. §§ 61-32-07 and 61-32-08 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-04 and are implemented by the Department's Regulatory Division.

1.2 ACCEPTANCE OR ENFORCEMENT

The Department reserves the right to change these guidelines as necessary to ensure the Department fulfills its statutory duties.

1.3 APPEALS

Department 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.

1.5 DEPARTMENT CONTACT

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

2 SUBMISSIONS TO THE DEPARTMENT

The Department has limited jurisdiction over drainage complaints and appeals through N.D.C.C. § 61-32-08. The Department must follow the processes outlined in N.D.C.C. ch. 61-32 and N.D.A.C. ch. 89-02-04 to process drainage complaints and appeals.

The Department will evaluate a drainage complaint or appeal only when the request is submitted within the timeline requirements dictated in statute and all of the required information is provided to the Department as outlined in this section.

For the purposes of these guidelines, “petitioner” means any aggrieved party who files a timely and proper appeal, or an affected landowner who files a timely and proper demand for hearing with the Department (N.D.A.C. § 89-02-04-02(7)).

2.1 APPEAL OF WRD SUBMISSION

Any aggrieved party (petitioner) of a WRD’s decision on a drainage complaint may appeal the WRD’s decision to the Department within 30 days of receiving the WRD’s decision (N.D.C.C. § 61-32-08).

The following information is required by N.D.A.C. § 89-02-04-05 and the Department in order to be considered a complete appeal. The Department will not begin evaluating the appeal until all necessary documentation is provided to the Department by the petitioner.

If all required documentation is not provided within the 30-day submission timeline, the appeal will be considered incomplete and void.

- a. A completed and filled out [SFN 61409: Appeal of Water Resource District Decision](#);
- b. A copy of the original complaint submitted to the WRD ([SFN 60840: Complaint For Water-Related Issues](#));
- c. A copy of the WRD’s decision;
- d. Evidence that the appeal documents were submitted to the WRD and to all non-appealing parties;
- e. Identity of all parties to the complaint;
- f. The petitioner’s interest in the WRD’s decision, including impact the decision has on petitioner;
- g. The relief the petitioner seeks;
- h. A statement identifying the errors in the WRD’s decision that entitle petitioner to the relief sought;
- i. All facts presented to WRD that support the petitioner’s position;
- j. A legal description of the location of the water-related issue and drainage area involved;
- k. A map depicting the watershed area and identifying the issue complained of
- l. A cashier’s check to cover the cost of preparing a transcript of the proceedings before the board (if applicable); and
- m. Any other information the petitioner wishes the Department to review.

2.2 WRD INACTION COMPLAINT SUBMISSION

If a WRD does not act upon a drainage complaint within 120 days, the person filing the complaint may file a drainage complaint directly with the Department. The Department must receive the drainage complaint from the person filing the complaint between 120 days and 150 days of the date the original drainage complaint was received by the WRD to be accepted under this scenario (N.D.C.C. § 61-32-08(3)).

The following information is required in order to be considered a complete complaint. The Department will not begin evaluating the complaint until all necessary documentation is provided to the Department by the person filing the complaint.

If all required documentation is not provided within the 120–150 day submission timeline, the complaint will be considered incomplete and void.

- a. A copy of the original complaint submitted to the WRD ([SFN 60840: Complaint For Water-Related Issues](#)) and all associated supporting information;
- b. Proof of submittal of the complaint to the WRD (certified letter, email, postage date, or WRD meeting minutes);
- c. Map, such as aerial photograph or plat map, depicting the watershed area and identifying the issue complained of; and
- d. Any documentation or correspondence received from the WRD regarding the submitted complaint.

3 DEPARTMENT CONSIDERATIONS

Under N.D.C.C. § 61-32-08(1), the Department is required to make an independent determination of drainage complaints or appeals. In order to fulfill that duty, the Department will do the following:

- a. The Department will determine if it has authority to review the complaint or appeal by determining if it includes all the required information to the Department within the statutory timeline requirements (Section 2).
- b. If the submission is an appeal of a WRD's decision (Section 2.1), the Department will consider the WRD's decision using only the criteria listed in N.D.A.C. § 89-02-04-06 (Section 3.1) to determine if the information provided as a part of the WRD's decision is sufficient to make a sound decision listed in N.D.A.C. § 89-02-04-07 (Section 3.2).

If the submission is due to WRD inaction on a complaint (Section 2.2) or is an appeal of a WRD's decision that is determined insufficient to make a sound decision, the Department will either perform further investigations (Section 3.3) or return the record to the WRD for its further investigation (Section 3.4).

- c. Once the Department has sufficient evidence to make a sound decision, the Department will determine if a drain, lateral drain, or ditch has been opened or established contrary to N.D.C.C. Title. 61 or any rules adopted by the Department or WRD and will take a final action as established in N.D.C.C. § 61-32-08 or dismiss the complaint under N.D.A.C. § 89-02-04-07 (Section 4).

3.1 DEPARTMENT CONSIDERATION OF WRD DECISION

When reviewing a drainage appeal of a WRD decision, the Department is only allowed to review the items listed in N.D.A.C. § 89-02-04-06 to determine sufficiency as outlined in N.D.A.C. § 89-02-04-07:

- Ownership of the land on which the drain is located.
- Topographic maps and aerial photographs of the area.
- Any existing surveys of the area.
- The documentation and testimony given to the board for its consideration.
- Any pertinent rules of the appropriate board.
- The board's decision.

3.2 WRD REVIEW SUFFICIENCY

The Department reviews the information provided in Section 3.1 as a part of the WRD's decision to ascertain if sufficient evidence exists to determine if unauthorized drainage occurred. The Department will determine if drainage occurred and if a permit was required by doing the following:

- a. **Drainage Occurred:** The Department reviews the information in Section 3.1 to identify the existence of the drainage, when it occurred, and the extent of the watershed (i.e., 80 acres or more) drained. The nature and extent of drainage (i.e., channel dimensions, such as depth, width, and location) must be clear enough to make a sound decision on how to inform compliance with any potential violations found.
- b. **Permit Required:** If drainage occurred, the Department reviews N.D.C.C. Title. 61 and any rules and policies adopted by the Department or WRD that were in place at the time of the drainage activity.

If the Department is able to either determine that unauthorized drainage did not occur or positively determine that both drainage occurred and a permit was required, then the Department has sufficient evidence to make a sound decision (Section 4).

3.3 DEPARTMENT FURTHER INVESTIGATION

The Department will perform further investigations of a submission when it is received due to WRD inaction or is an appeal of a WRD's decision that is determined insufficient to make a sound decision by the Department (Section 3.2).

Further investigations by the Department to identify if drainage occurred and if a permit was required may include any of the following:

- a. Review of the Department's databases;
- b. Review of aerial imagery and topographic information available on the Department's MapServices platform;
- c. Conduct a site visit under the authority of N.D.C.C. § 61-32-08 (1). The determination of whether a site visit is necessary is a subjective decision based upon whether received or in-office data is sufficient to make a sound decision. If deemed necessary, a site visit will be completed as soon as practicable after the complaint or appeal is received. A site visit may include drone imagery and site survey to procure additional imagery and data; or
- d. Additional legal analysis of N.D.C.C. Title. 61 and any rules and policies adopted by the Department or WRD that were in place at the time of the drainage activity.
- e. Additional information provided by the petitioner to the Department at the time of the initial appeal submission (Section 2.1(m)).

Once the Department has enough information to determine if unauthorized drainage occurred, it will make its determination (Section 4).

3.4 WRD FURTHER INVESTIGATION

The Department has the authority to return the submission to the WRD for further investigation under N.D.A.C. § 89-02-04-07. The Department may exercise this authority under the following circumstances:

- a. The WRD requests a chance to review the submission with updated information.
- b. The Department has identified that the WRD was missing key information that may have informed their decision or failed to adequately review the required information.
- c. The petitioner requests the submission be re-reviewed by the WRD.
- d. Court order.

The Department will detail what information is insufficient for any complaints or appeals returned to a WRD for further investigation and include a request for the review to be returned to the Department within 90 days. Upon receipt of the WRDs further investigation or expiration of the 90-day window, whichever occurs first, the Department will continue its review (Section 4).

4 DEPARTMENT FINAL DETERMINATION

4.1 UNAUTHORIZED DRAINAGE DETERMINATION

If the Department determines through its review that the unauthorized construction of a drain, lateral drain, or ditch has occurred and the extent of noncompliance is determined, the Department will take one of the actions detailed in N.D.C.C. § 61-32-08(3):

- a. The Department may issue an order that unauthorized drainage occurred, stating the nature and extent of noncompliance and order the drain, lateral drain, or ditch closed (N.D.C.C. § 61-32-08(4)). The Department is the compliance enforcement entity under this action.;
- b. The Department may refer the drainage complaint jurisdiction back to the WRD with the Department's independent investigation (N.D.C.C. § 61-32-08(5)). The Department is deferring any compliance determination and enforcement to the WRD under this action.; or
- c. The Department may refer the drainage complaint and its independent investigation to the county state's attorney (N.D.C.C. § 61-32-08(6)). The Department is deferring any compliance or violation of law determination to the county state's attorney under this action.

If the Department determines through its review that the unauthorized construction of a drain, lateral drain, or ditch has not occurred or that insufficient evidence exists to determine the extent of the alleged unauthorized drainage, the Department will dismiss the complaint as outlined in N.D.A.C. § 89-02-04-07(3).

4.2 FURTHER APPEAL REMEDIES

- a. If the Department issues a corrective order under N.D.C.C. § 61-32-08(4) for unauthorized drainage, the affected landowner may demand a hearing within 15 days of the date the notice is mailed. The hearing requested will be processed in accordance with N.D.C.C. § 54-57-03(1).

Once a hearing has been held or the hearing request is denied, the final Department order may be appealed to District Court under N.D.C.C. ch. 28-32.

- b. If the Department takes any action other than issuing a corrective order on a complaint or appeal, any person aggrieved by the Department's decisions is able to demand a hearing within 30 days after the aggrieved person knew or reasonably should have known of the Department's decisions under N.D.C.C. § 61-03-22. If the Department grants a hearing request, the hearing will be processed in accordance with N.D.C.C. § 54-57-03(1). Once a hearing has been held or the hearing request is denied, the final Department decision may be appealed to District Court under N.D.C.C. ch. 28-32.

5 APPLICATION OF SURFACE DRAIN

If, either during the Department's complaint or appeal review or after a Department order has been issued, an Application for Surface Drain is submitted to the Department covering the identified unauthorized works, any Department order or appeal review will be suspended until the Application for Surface Drain review has been processed.

An approved Application for Surface Drain covering the alleged unauthorized works will terminate outstanding Department complaint or appeal reviews and fulfill any pending Department corrective orders in regards to the identified works.

6 POLICY HISTORY

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