

CHAPTER 61-03 STATE ENGINEER

61-03-01. State engineer - Appointment - Qualifications - Term - Salary - Engaging in private practice.

Repealed by S.L. 2021, ch. 488, § 225.

61-03-01.1. Department of water resources established - Appointment and salary of director.

The department of water resources is established and is the primary state water agency. The governor shall appoint a director of the department subject to approval by a majority of the members of the state water commission. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director. The position of director of the department is not a classified position, and the state water commission shall set the salary of the director within the limits of legislative appropriations.

61-03-01.2. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Department" means the department of water resources.
2. "Director" means the director of the department.

61-03-01.3. Director - State engineer - Powers and duties.

1. The director shall:
 - a. Enforce all rules adopted by the department;
 - b. Hire a state engineer who is a qualified professional engineer, has appropriate hydrology experience, and will report to the director;
 - c. Hire other employees as necessary to carry out the duties of the department and director;
 - d. Organize the department in an efficient manner; and
 - e. Take any other action necessary and appropriate for administration of the department.
2. The state engineer is responsible for and shall manage the department's oversight of dam safety, water appropriations, and construction and drainage permits, and associated technical duties related to public safety and property protection.

61-03-02. Oath of state engineer.

Repealed by S.L. 2021, ch. 488, § 225.

61-03-03. Approval of claims.

All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the director and which are payable from the funds appropriated for the work under the director's direction and supervision must be approved by the director before payment.

61-03-04. Biennial report.

The director may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

61-03-05. Fees of state engineer.

Repealed by S.L. 2015, ch. 471, § 4.

61-03-05.1. Deposit of certain fees in special fund - Purposes of fund.

Repealed by S.L. 2021, ch. 56, § 15.

61-03-06. Records of the department.

The records of the department are public records. The records must show in full all permits, certificates of completion of construction, licenses issued, actions taken on permits and licenses, and actions or decisions of the department affecting any rights or claims to appropriate water.

61-03-07. Investigations and reports for board of university and school lands.

Repealed by S.L. 1989, ch. 747, § 1.

61-03-08. Duty to cooperate with boards of county commissioners when requested.

When asked by a board of county commissioners, the department shall cooperate with the board in the engineering work required to lay out, establish, and construct any drain to be used by any county or portions of a county to divert floodwaters, lakes, or watercourses, and shall assist counties in making preliminary surveys and establishing systems of drainage.

61-03-09. State engineer's duties in construction of bridges and culverts.

Repealed by S.L. 1989, ch. 747, § 1.

61-03-10. Custodian of government plats.

The department is the custodian of all plats, field notes, and similar records provided to the state by a federal government entity. Suitable rooms in the capitol building containing vaults for fireproof protection and the safekeeping of the records must be provided to the department.

61-03-11. Furnishing copies.

Repealed by S.L. 1993, ch. 595, § 2.

61-03-12. Attorney general and state's attorney to provide legal counsel.

The attorney general, and the state's attorney of the county in which legal questions arise, shall provide legal counsel for the department without compensation other than their salaries as fixed by law, except when otherwise provided.

61-03-13. Rulemaking authority.

The department may adopt rules necessary to carry out the duties of the department. The department shall amend rules relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water, if required to do so by a vote of the state water commission.

61-03-14. State water commission votes on modifications of rules.

The state water commission may vote on a modification of a department rule which is required under section 61-03-13 only on an appeal from a decision of the director.

61-03-15. Hydrographic surveys and investigations made by the department - Cooperating with federal agencies.

The department shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and shall obtain and record all available data for the determination, development, and appropriation of the water supply of the state. The department may cooperate with the agencies of the federal government engaged in similar surveys, investigations, or the construction of works for the development and use of the water supply of the state, and may expend funds appropriated to the department for that purpose.

61-03-16. Suit for adjudication of water rights.

Upon the completion of a hydrographic survey of any stream system, the department shall deliver a copy of the survey and all data necessary for the determination of all rights to the use of the waters of the system to the attorney general, who, within sixty days, shall enter suit on

behalf of the state for the determination of all rights to the use of the water and proceed with the litigation until a final adjudication of the rights. If private parties initiated the suit, the attorney general shall intervene in the suit if the department notifies the attorney general intervening is necessary to protect the interests of the state.

61-03-17. Parties to and costs of suit for adjudication of water rights.

In any suit for the determination of a right to the use of the waters of any stream system, all persons that claim the right to use the waters must be made parties, and the department shall provide the court a complete hydrographic survey of the stream system. The cost of the suit including the litigation and survey costs incurred by the state must be charged to each of the private parties to the suit in proportion to the amount of the water right allotted.

61-03-18. Hydrographic survey fund - Use - Payments.

The hydrographic survey fund, a permanent fund, may be used only for the payment of the expenses of the surveys required under section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the department for the surveys must be approved by the department. The amounts paid by private parties under section 61-03-17 for the surveys must be paid to the state treasurer, who shall credit the payments to the hydrographic survey fund.

61-03-19. Decree adjudicating water rights - Filing - Contents.

Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree must be prepared by the clerk of the court at the cost of the parties, and must be filed in the department. The decree must declare the water right adjudged to each party, the priority, amount, purpose, and place of use, and, as to water used for irrigation, the specific tracts of land to which the right is appurtenant, with any other conditions necessary to define the right and the priority of the right.

61-03-20. Cooperation with United States geological survey in making topographic maps.

The department may confer with the director of the United States geological survey and may accept the cooperation of the United States to execute topographic surveys and maps of this state. The department may arrange with the director or other authorized representative of the United States geological survey concerning the details of the surveys or maps, the method of execution, and the order in which the surveys and maps of different parts of the state are undertaken.

61-03-21. Plans of operation for reservoirs - 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] annually shall file with the department, between the first and fifteenth day of February, an operating plan for the reservoir for the calendar year in which the plan is filed. The operator of the reservoir shall cooperate with the department to make all water releases compatible with the best interest of the greatest number of downstream water users and affected landowners. If the department declares an emergency in connection with the operation of the reservoir, the operator promptly shall submit to the department a separate interim operating plan for the reservoir. The interim operating plan must be coordinated and integrated with the suggestions and plans of the department to serve the affected persons during the emergency. The department may require reservoir operators to maintain adequate structures and operate them in a manner to prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of persons affected by the reservoirs. If an operator fails to maintain and operate adequate structures, the department shall set a place and time for hearing and serve notice upon the operator to show cause why the operator's water permit should not be canceled. A copy of any order canceling the water right must 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 department in accordance with chapter 28-32.

61-03-21.1. Inspection by department.

When the department is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the department may enter upon land to conduct the inspection or investigation. Except in emergency situations as determined by the department, the department 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 department may request the district court of the district containing the property for an order authorizing the department to enter the property to inspect or investigate the alleged violation.

61-03-21.2. Removal or modification of unsafe or unauthorized works.

If the department determines works are unsafe or unauthorized, the department shall notify the landowners by registered mail at the landowner's last-known post-office address of record. A copy of the notice also must be sent to any tenant, if the department has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance and the modifications necessary for compliance, and must state if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the department shall cause the removal or modification of the works and assess the cost of the removal or modification, or a portion of the cost as the department determines, against the property of the landowner responsible. The notice also must state the affected landowner may demand in writing a hearing on the matter within fifteen days of the date the notice is mailed. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the department determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the department shall set a hearing date without undue delay. In an emergency, the department immediately may 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 this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the director, 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 a decision of the department under this section may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing under this section is a prerequisite to an appeal unless the hearing was denied by the department.

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.

61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable waters.

1. If the department finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are likely to be, a menace to life or property or public health or safety, the department may issue an order to the person responsible for the object. If the department issues an order, the order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the department determines an object covered by flood insurance is likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or had

- control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.
2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the department may cause the action to be taken. The department may require the action to be taken in less than twenty days if an emergency exists.
 3. a. The department may bring an action to enforce an order of the department, or if the department causes the action to be taken, the department may:
 - (1) Assess the costs of taking the action, or a portion of the costs as the department determines, against any property of the person responsible; or
 - (2) Bring a civil action against the person responsible to recover the costs incurred in taking the action.b. If the department chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the department may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.
 4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the department determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the department shall set a hearing date without undue delay.
 5. In an emergency, the department immediately may apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
 6. Any person aggrieved by the action of the department may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing under this section is a prerequisite to an appeal unless the hearing was denied by the department.
 7. If the department has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object the department has determined is likely to be a menace to life or property or public health or safety, and it later becomes known the object would not have become a menace, a person who has taken action required by the order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the notice from the department.
 8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the department in the form and manner required by the department. Unless the amount of compensation is agreed to between the claimant and the department, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

61-03-21.4. Economic analysis process required for certain projects.

The department of water resources shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than one million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the department of water resources shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

61-03-22. Hearing - Appeals from decision of department.

Any person aggrieved by an action or decision of the department under this title has the right to a hearing. The department must receive a request for a hearing within thirty days after the aggrieved person knew or reasonably should have known of the action or decision. Once a hearing has been held or if the hearing request is denied, the person aggrieved has the right to petition for reconsideration or appeal under chapter 28-32.

61-03-23. Penalties - Civil.

1. In addition to criminal sanctions that may be imposed pursuant to law, a person who violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed twenty-five thousand dollars for each day the violation occurred and continues to occur and may be required by the department to forfeit any right to the use of water. The civil penalty for violation of an irrigation appropriation permit may not exceed five thousand dollars for each day the violation occurred and continues to occur. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the department through an administrative hearing under chapter 28-32.
2. If a civil penalty levied by the department after an administrative hearing is not paid within thirty days after a final determination the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the department for enforcement of the order.

61-03-24. Pending administrative actions and permits.

If an applicant for any permit processed by the department has an unresolved administrative order or complaint under this title, the permit may not be processed until the order is complied with or complaint is resolved. At the discretion of the department, the permit may be processed if issuing the permit would resolve the administrative order or complaint. If an applicant is not an individual, this section applies if the applicant is at least twenty-five percent owned by an individual with an unresolved administrative order or complaint under this title.

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 department for approval.