

December 1997

WATER RESOURCE DISTRICTS - AUTHORITY TO ENFORCE ILLEGAL DRAINAGE

This memorandum discusses the statutory authority of water resource districts to enforce illegal drainage; cause the removal of obstructions to drains or watercourses; and remove noncomplying dikes, dams, and other devices.

DRAINAGE

North Dakota Century Code Section 61-32-03 requires any person draining a pond, slough, lake, or sheetwater that has a watershed area comprising 80 acres or more to obtain a drainage permit. Although the permit application must be submitted to the State Engineer, this section requires the State Engineer to refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, lake, or sheetwater for its consideration and approval.

Section 61-32-03 provides that a permit may not be granted until an investigation discloses that the quantity of water that will be drained from the pond, slough, lake, or sheetwater will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource district board may not issue the permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds in the county or counties in which the lands are situated.

Finally, Section 61-32-03 provides that any person draining, or causing to be drained, a pond, slough, lake, or sheetwater that has a watershed area comprising 80 acres or more, without first acquiring a permit to do so, is liable for all damage sustained by any person caused by the draining and is guilty of an infraction. An infraction is punishable by a maximum fine of \$500 and if a person convicted of an infraction has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction, that person may be sentenced as though convicted of a Class B misdemeanor. A Class B misdemeanor is punishable by a maximum penalty of 30 days' imprisonment, a fine of \$1,000, or both.

REMOVAL OF OBSTRUCTIONS

North Dakota Century Code Section 61-16.1-51 governs the removal of obstructions to drains. This section provides that if a water resource district board determines that obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board is required to notify the landowner by registered or certified mail at the landowner's post-office address of record. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board determines, but not less than 30 days, the board will procure the removal of the obstruction and assess the cost, or such portion as the board determines appropriate, against the property of the landowner responsible. As used in this section, an obstruction to a drain means any barrier to a watercourse or any artificial drain that materially affects the free flow of waters in the watercourse or drain.

REMOVAL OF NONCOMPLYING STRUCTURES

North Dakota Century Code Section 61-16.1-53 governs the removal of noncomplying dikes or dams. This section provides that upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or the storage of water, a water resource district board will properly investigate and make a determination. If the board determines that the dam or other device is capable of retaining, obstructing, or diverting more than 12.5 acre-feet of water and has been established or constructed by a landowner or tenant contrary to the provisions of Title 61 or any rules adopted by the board, the board will notify the landowner by registered or certified mail at the landowner's post-office address of record. 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 such period as the board determines, but not less than 30 days, the board will cause the removal of the dike, dam, or other device and assess the cost, or such portion as the

board determines, against the property of the landowner responsible.

ENFORCEMENT ACTIONS

North Dakota Century Code Section 61-32-07 provides for enforcement actions for unauthorized drainage of wetlands. This section provides that a landowner experiencing flooding or adverse effects from an unauthorized drain constructed prior to January 1, 1975, may file a complaint with the water resource district board of the district in which the land is located. Any person may file a complaint concerning an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource district board will investigate and make a determination of the facts with

respect to the complaint. If the board determines that the drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of Title 61 or any rules adopted by the board, the board is to notify the landowner by registered mail at the landowner's post-office address of record. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the board determines, but not less than 30 days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion that the board determines, against the property of the landowner responsible.