

2026

North Dakota CO₂ Geological Storage, Regulation and Pore Space Amalgamation

804.14 — “We support the repeal of NDCC 38-22 referring to amalgamation authority over non-consenting landowners.”

901.11 — “We oppose the non-use injection of carbon dioxide (CO₂) for sequestration.”

CO₂ GEOLOGICAL STORAGE IN NORTH DAKOTA

North Dakota has significant geologic capacity for carbon dioxide (CO₂) storage in deep saline formations and depleted oil and gas reservoirs, primarily in the Williston Basin. Capture of CO₂ from industrial sources such as ethanol plants, fertilizer manufacturing, and energy facilities, then transporting it by pipeline and injecting it underground for storage or use in enhanced oil recovery. These projects often cross agricultural land and involve pipeline easements as well as limited surface facilities.

REGULATORY FRAMEWORK

- **Governing Authorities:** NDCC Chapter 38-22 (Geologic Storage of Carbon Dioxide) and N.D.A.C. Chapter 43-05 establish permitting, financial assurance, monitoring, post-injection liability transfer, and pore space rules.
- **Pore Space Ownership:** Under North Dakota law, pore space ownership is vested in the surface estate owner and generally cannot be severed. Operators must secure rights for utilization.
- **Key Requirements:** Site characterization, well integrity standards, comprehensive measurement monitoring/verification plans, financial responsibility instruments (bonds, insurance), and post-injection stewardship with potential liability transfer after a monitoring period and establishment of a long-term trust fund.
- **Amalgamation Process:** Operators must demonstrate good-faith efforts to obtain 100% voluntary consent. Upon reaching 60% pore space interest consent, the NDIC may issue an order compelling the inclusion of the remaining interests, with a provision for equitable compensation.

LITIGATION AND CURRENT STATUS (JUNE 2026)

- **Northwest Landowners Association & NDFB Lawsuit:** Challenged the constitutionality of the amalgamation statute (NDCC 38-22), arguing that forced inclusion of non-consenting pore space without jury-determined just compensation violates state constitutional takings protections.
- **North Dakota Supreme Court (August 2025):** Reversed lower court dismissal of core constitutional claims and remanded for merits review, while upholding dismissal of certain other claims. The Court noted potential national implications for pore space pooling authority.
- **District Court Ruling (Late 2025):** Struck down key statutory provisions enabling forced amalgamation, holding that the law violates constitutional protections by compelling storage without a mechanism for jury-determined just compensation.

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- **Permit Revocations (March 2026):** Following the district court decision, a judge revoked certain NDIC-issued underground CO₂ storage permits, including those associated with Summit Carbon Solutions projects in Oliver, Mercer, and Morton counties, because they relied on the invalidated amalgamation authority.
 - **Current Status:** Amalgamation authority remains in legal limbo pending appeals or legislative action. Storage permits, dependent on the 60% mechanism, have been revoked or face uncertainty. This has created significant regulatory uncertainty for large-scale CO₂ storage hub development intended to serve Midwest ethanol and industrial sources.

IMPLICATIONS FOR STAKEHOLDERS

- **Landowners:** Court rulings have strengthened procedural protections and compensation requirements. Any revised framework is likely to emphasize higher voluntary consent thresholds or enhanced safeguards.
- **Project Developers & Industry:** Increased legal and regulatory risk for storage facilities. Developers may need to achieve higher voluntary consent rates, pursue alternative siting, or adjust project economics and timelines.
- **State Regulators (NDIC):** Must navigate permitting under current court constraints. Potential need for revised statutes or rules to establish a constitutionally sound process while maintaining a workable framework for storage development.
- **Broader Policy Context:** Until the ND Supreme Court rules on the NDFB lawsuit, it is unlikely that any major policy decisions can be made.

QUESTIONS TO CONSIDER

NDFB policy currently opposes both CO₂ sequestration and the amalgamation authority contained in NDCC Chapter 38-22.

- ▶ Should NDFB continue opposing both CO₂ sequestration and pore space amalgamation, or focus mainly on protecting landowner rights in these projects?
- ▶ What protections should be in place for farmers and ranchers affected by CO₂ storage projects?
- ▶ What is the best way for NDFB to protect private property rights while supporting opportunities for business, ethanol, and energy development that could benefit North Dakota farmers, ranchers, and rural communities?