

ARTICLE 74:36

AIR POLLUTION CONTROL PROGRAM

Chapter

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CHAPTER 74:36:01

DEFINITIONS

Section

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74:36:01:01. Definitions. Unless otherwise specified, the terms used in this article mean:

- (1) "Act," chapter 34A-1 of the South Dakota Codified Laws;
- (2) "Acid rain permit," a legally binding written document or portion of a document that is issued by the department and specifies the acid rain program requirements applicable to an affected source and to the owners and operators and the designated representative of the affected source;
- (3) "Acid rain program," the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Clean Air Act;

(4) "Administrator," the administrator of the Environmental Protection Agency or the secretary or their authorized representatives;

(5) "Affected source," a source that includes one or more affected units under Title IV of the Clean Air Act;

(6) "Affected unit," a unit that is subject to any of the emission reduction requirements or emission limits pursuant to Title IV of the Clean Air Act or chapter 74:36:16;

(7) "Air pollutant," one or a combination of the regulated air pollutants listed in § 74:36:01:15;

(8) "Allowable emissions," the emission rate calculated using the maximum rated capacity of a source unless the source is subject to federally enforceable limits which restrict operating rate, hours of operation, or both, and the most stringent of the following:

- (a) The applicable new source performance standards in chapter 74:36:07;
- (b) The applicable national emission standards in chapter 74:36:08;
- (c) Any applicable emission limitations specified in this article, including those with a future compliance date;
- (d) The emission rate specified as a permit condition; or
- (e) The applicable standards in 40 C.F.R. Part 60, 61, or 63 (July 1, 2009);

(9) "Ambient air," that portion of the atmosphere external to buildings to which the general public has access;

(10) "ASTM," the American Society for Testing and Materials;

(11) "Board," the Board of Minerals and Environment;

(12) "Btu," British thermal unit;

(13) "CO," carbon monoxide;

(14) "Chairman," chairman of the board;

(15) "Clean Air Act," the Clean Air Act, 42 U.S.C. 7401 et seq., as amended through January 1, 2010;

(16) "Clean Air Act Amendments," the amendments to the Clean Air Act enacted in Pub. L. No. 101-549, November 15, 1990;

(17) "Control equipment," a device which prevents or reduces emissions;

(18) "Criteria pollutant," selected and specified pollutants for which limiting ambient air quality standards have been set, including sulfur dioxides, particulate matter, carbon monoxide, ozone, nitrogen oxides, and lead;

(19) "Department," the South Dakota Department of Environment and Natural Resources;

(20) "Designated representative," the responsible person or official authorized by the owner or operator of an affected unit, in accordance with the Clean Air Act, to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to the unit and the submission of and compliance with permits, permit applications, and compliance plans for the unit;

(21) "Draft permit," the version of a permit for which the department offers public participation or affected state review;

(22) "Emissions allowable under the permit," a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including work practice standards, or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject;

(23) "Emission standard," the maximum amount of a pollutant legally permitted to be discharged from a single unit;

(24) "Emission unit," "Unit," any part or activity of a stationary source which emits or has the potential to emit a regulated air pollutant or any pollutant listed under section 112(b) of the Clean Air Act;

(25) "EPA," the Environmental Protection Agency;

(26) "Equivalent method," any method of sampling and analysis for an air pollutant which has a consistent and quantitatively known relationship to the reference method under specified conditions;

(27) "Existing source," a source that has an approved state-issued variance or permit;

(28) "Facility," a building, structure, or installation of pollutant-emitting activities which belong to the same industrial grouping, located on one or more contiguous or adjacent properties and under the control of the same person or of persons under common control, except the activities of a water-borne vessel. Pollutant-emitting activities are part of the same industrial grouping if they belong to the same major group, i.e., have the same two-digit code, as described in the Standard Industrial Classification Manual, 1987;

(29) "Federally enforceable," all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 C.F.R. §§ 60 and 61 (July

1, 2009), requirements within the state implementation plan, and permit requirements established pursuant to this article or 40 C.F.R. § 51 Subpart I (July 1, 2009). The use of this term does not impede the department's authority under state law to enforce these limits and conditions;

(30) "Final permit" the version of an operating permit issued by the permitting authority for a source that has completed all required review procedures;

(31) "Fuel-burning unit," a furnace, boiler, apparatus, stack, or any of their components used in the process of burning fuel or other combustible material for the primary purposes of producing heat or power by indirect heat transfer;

(32) "Fugitive emissions," those air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening;

(33) "General permit," a permit issued by the board in accordance with SDCL 34A-1-56 that may be made applicable to numerous similar sources;

(34) "Heat input," the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks, using the heat input value of the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater;

(35) "Incinerator," a furnace used to burn solid waste to reduce the volume of the waste by removing its combustible material;

(36) "Malfunction," any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner, but not a failure caused entirely or in part by poor maintenance, careless operation, preventable equipment breakdown, or any other cause within the control of the owner or operator of the source;

(37) "Minor source," a source whose potential emissions of a criteria pollutant are less than 100 tons a year and which does not meet the definition of a Part 70 source;

(38) "New source," a source that has not been constructed and does not possess a permit or an approved state-issued variance;

(39) "Nonattainment area," an area that does not meet or that contributes to ambient air quality in a nearby area that does not meet the national primary or secondary ambient air quality standard for the pollutant;

(40) "NSR," new source review;

(41) "Opacity," the degree to which emissions reduce the transmission of light and obscure the view of an object in the background;

(42) "Open burning," the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passage through a stack, duct, or chimney;

(43) "Operating permit," a written authorization issued by the board or the secretary for the operation of a source;

(44) "Owner or operator," any person who owns, leases, operates, controls, or supervises a source;

(45) Repealed;

(46) "Part 70 operating permit," any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised;

(47) "Part 70 source," any source subject to § 74:36:05:03;

(48) "Particulate matter," a broad class of chemically and physically diverse substances that exist as discrete particles, liquid droplets, or solids over a wide range of sizes;

(49) "Permit modification," a change to a source which operates under a minor source operating permit or Part 70 operating permit that meets the requirements of § 74:36:01:10;

(50) "Permit revision," a revision to a minor source operating permit or Part 70 operating permit to incorporate a permit modification, administrative permit amendment, or minor permit amendment;

(51) "Person," an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or state agency or any legal successor, representative, agent, or agency of the foregoing;

(52) "PM10," particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by an applicable reference or equivalent method;

(53) "Proposed Part 70 operating permit," a permit that the department has forwarded to EPA for review after the closure of the public notice period and after considering any public comments, including those from affected states;

(54) "PSD," prevention of significant deterioration;

(55) Repealed;

(56) "Salvage operation," an operation conducted in whole or in part for the reclaiming of product or material;

(57) "Secretary," the secretary of the South Dakota Department of Environment and Natural Resources or an authorized representative;

(58) "Shutdown," the cessation of operation of any control equipment, process equipment, or process for any purposes;

(59) "Smoke," small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air;

(60) "Source," a facility that emits or may emit any air pollutant regulated under the Clean Air Act;

(61) "Start-up," the setting into operation of any control equipment, process equipment, or process for any purpose;

(62) "Title I," Title I of the Clean Air Act Amendments, provisions for attainment and maintenance of national ambient air quality standards;

(63) "Title IV," Title IV of the Clean Air Act Amendments, acid deposition control;

(64) "Title V," Title V of the Clean Air Act Amendments, permits;

(65) "Title VI," Title VI of the Clean Air Act Amendments, stratospheric ozone protection;

(66) "Variance," a written authorization issued by the board to operate a minor source in an attainment area that is not in compliance with certain portions of the Act;

(67) "VOC," "volatile organic compounds," as defined in 40 C.F.R. § 51.100(s) (July 1, 2009);

(68) "Wire reclamation furnace," a furnace that uses either direct or indirect heat transfer to salvage nonferrous metals through the thermal destruction of solid waste materials;

(69) "PM2.5," particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an applicable reference or equivalent method;

(70) "SO₂," sulfur dioxide;

(71) "NO₂," nitrogen dioxide; and

(72) "Construction permit," a written authorization issued by the board or the secretary for the construction and operation of a new source or modification to an existing source.

[\(73\) “Subject to regulation” as defined in 40 CFR § 70.2 \(July 1, 2009\), as revised in publication 75 Fed. Reg. 31607 \(June 3, 2010\), in accordance with EPA requirements.](#)

Source: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:01, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:01, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 16 SDR 88, effective November 14, 1989; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:01, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 23 SDR 106, effective December 29, 1996; 25 SDR 123, effective April 4, 1999; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 32 SDR 209, effective June 13, 2006; 36 SDR 207, effective June 28, 2010.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

Reference: Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget. Copies may be obtained from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, order no. PB 87-100012. Cost: \$31.

74:36:01:08. Major source defined. A major source is any source or any group of sources that is located on one or more contiguous or adjacent properties, that is under control of

the same person or of persons under common control, that belongs to a single major industrial grouping, and that is any of the following:

(1) A major source under § 112 of the Clean Air Act defined as a source or group of sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to § 112(b) of the Clean Air Act, 25 tpy or more of any combination of such hazardous air pollutants, or a lesser quantity established by rule by the administrator of the EPA. Emissions from any oil exploration or production well and its associated equipment and emissions from any pipeline compressor or pump station may not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(2) A major source of air pollutants, as defined in § 302 of the Clean Air Act, that directly emits or has the potential to emit 100 tpy or more of any air pollutant [subject to regulation as required by EPA](#), including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator of the EPA; or

(3) A major source as defined in Part D of Title I of the Clean Air Act, including;

(a) For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in

areas classified as "severe," and 10 tons or more per year in areas classified as "extreme." The references in this subdivision to 100, 50, 25, and 10 tons per year of nitrogen oxides do not apply to any source for which the administrator of the EPA has made a finding, under § 182(f)(1) or (2) of the Clean Air Act, that the requirements of § 182(f) of the Clean Air Act do not apply;

(b) For ozone transport regions established pursuant to § 184 of the Clean Air Act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) For carbon monoxide nonattainment areas that are classified as "serious" and in which sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator of the EPA, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

A source or group of sources is considered as part of a single industrial grouping if all of the pollutant-emitting activities of the source or group of sources belong to the same major group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

Source: List of stationary sources transferred from § 74:26:01:03, 17 SDR 170, effective May 13, 1991; transferred from §§ 74:26:01:06.05 and 74:26:01:06.07, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

Cross-Reference: Classification defined, Title I of the Clean Air Act.

Reference: Standard Industrial Classification Manual, 1987, Executive Office of the President, Office of Management and Budget. Copies may be obtained from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, order no. PB 87-100012. Cost: \$31.

74:36:01:15. Regulated air pollutant defined. A regulated air pollutant is one of the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Nitrogen dioxide, PM10, sulfur dioxide, carbon monoxide, lead, ozone, or any pollutant for which a national ambient air quality standard has been promulgated in the Clean Air Act;

(3) Any pollutant that is addressed by any standard promulgated under § 111 of the Clean Air Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; ~~or~~

(5) Any pollutant subject to a standard promulgated under § 112 of the Clean Air Act or other requirements established under §§ 112(g), (j), and (r) of the Clean Air Act, including the following:

(a) Any pollutant subject to a standard promulgated under § 112(j) of the Clean Air Act. If the administrator of the EPA fails to promulgate a standard by the date established in § 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on that date; and

(b) Any pollutant for which the requirements of § 112(g)(2) of the Clean Air Act have been met, but only for the individual source subject to § 112(g)(2) requirement; or

(6) Any of the six greenhouse gases designated by EPA as regulated air pollutants: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

CHAPTER 74:36:09

PREVENTION OF SIGNIFICANT DETERIORATION

Section

74:36:09:01 Applicability.

74:36:09:01.01 Prevention of significant deterioration permit required.

74:36:09:02 Prevention of significant deterioration.

74:36:09:03 Public participation.

74:36:09:02. Prevention of significant deterioration. For the purposes of this chapter, the state's definitions and requirements for the prevention of significant deterioration are those in 40 C.F.R. § 52.21 (July 1, 2009), [as revised by EPA in publication 75 Fed. Reg. 31606 and 31607 \(June 3, 2010\)](#), except for 40 C.F.R. § 52.21(a)(1), (a)(2)(iv)(e), (a)(2)(vi), (b)(2)(iii)(h), (b)(3)(iii)(b), (b)(3)(vi)(d), (b)(32), (b)(42), (b)(55), (b)(56), (b)(57), (b)(58), (f), (q), (s), (t), (u), (x), (y), (z), and (cc) (July 1, 2009) with the following differences:

(1) For the purposes of this section, all terms defined in this section have the meaning defined in 40 C.F.R. § 52.21, except for the term "administrator" which means the secretary with the following exceptions:

(a) In 40 C.F.R. §§ 52.21(b)(3)(iii) and 52.21(b)(37)(iii), the term "administrator" means either the secretary or the administrator of EPA, as applicable;

(b) In 40 C.F.R. §§ 52.21(w)(2) to 52.21(w)(4), inclusive, the term "administrator" means either the secretary or the administrator of EPA, as applicable;

(c) In 40 C.F.R. §§ 52.21(b)(17); 52.21(b)(37)(i); 52.21(b)(43); 52.21(b)(48)(ii)(c); 52.21(b)(50)(i); 52.21(g)(1) to 52.21(g)(6), inclusive; 52.21(l)(2); and 52.21(p)(2) the term "administrator" means the administrator of EPA;

(2) For the purposes of this section, the term "Act" means the Clean Air Act;

(3) For the purposes of this section, in 40 C.F.R. § 52.21(c), the Class I areas in South Dakota are Wind Cave National Park and the Badlands National Park;

(4) For the purposes of this section, 40 C.F.R § 52.21(a)(2)(iv)(f) is incorporated by reference excluding the last sentence which states, "For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in paragraph (a)(2)(iv)(c) of this section for the

existing unit and using the method specified in paragraph (a)(2)(iv)(e) of this section for the Clean Unit";

(5) For the purposes of this section, 40 C.F.R. § 52.21(b)(2)(iii)(a) is incorporated by reference excluding the second sentence which states, "Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section";

(6) For the purposes of this section, 40 C.F.R. § 52.21(r)(6) is incorporated by reference excluding the phrase, "(other than projects at a Clean Unit or at a source with a PAL)";

(7) For the purposes of this section, 40 C.F.R. § 52.21(v)(1) is incorporated by reference excluding the phrase, "under 40 CFR 124.10"; and

(8) For the purposes of this section, 40 C.F.R. § 52.21(w)(1) is incorporated by reference excluding the phrase, "expires under paragraph (s) of this section or".

The secretary shall transmit to the administrator of the EPA a copy of each permit application subject to this section and shall notify the administrator of the EPA of each significant action the secretary takes on the application.

[If EPA stays or withdraws the regulation of greenhouse gases as identified in publication 75 Fed. Reg. 31606 and 31607 \(June 3, 2010\), or a court issues an order vacating or otherwise](#)

invalidating EPA's regulation of greenhouse gases for any reason, the regulation of greenhouse gases by Article 74:36 are void as of the date of such administrative or judicial action and shall have no further force and effect.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 33 SDR 43, effective September 18, 2006; 33 SDR 217, effective June 13, 2007; 36 SDR 207, effective June 28, 2010.

General Authority: SDCL 34A-1-6, 34A-1-18.

Law Implemented: SDCL 34A-1-18.

CHAPTER 74:36:20

CONSTRUCTION PERMITS FOR NEW SOURCES OR MODIFICATIONS

Section

74:36:20:01 Applicability.

74:36:20:02 Construction permit required.

74:36:20:02.01 [Initiating construction prior to permit issuance.](#)

74:36:20:03 Construction permit exemption.

74:36:20:04 Emission unit exemptions.

- 74:36:20:05 Standard for issuance of construction permit.
- 74:36:20:06 Timely and complete application for a construction permit required.
- 74:36:20:07 Required contents of complete application for a construction permit.
- 74:36:20:08 Applicant required to supplement or correct application.
- 74:36:20:09 Permit application -- Completeness review.
- 74:36:20:10 Time period for department's recommendation.
- 74:36:20:11 Public participation in permitting process.
- 74:36:20:12 Public review of department's draft permit.
- 74:36:20:13 Final permit decision -- Notice to interested persons.
- 74:36:20:14 Right to petition for contested case hearing.
- 74:36:20:15 Contents of construction permit.
- 74:36:20:16 Administrative permit amendment.
- 74:36:20:17 Procedures for administrative permit amendments.
- 74:36:20:18 Reopening construction permit for cause.
- 74:36:20:19 Procedures to reopen construction permit.
- 74:36:20:20 Construction permit does not exempt from other requirements.
- 74:36:20:21 Expiration of a construction permit.
- 74:36:20:22 Notice of constructing or operating noncompliance -- Contents.
- 74:36:20:23 Petition for contested case or alleged violation.
- 74:36:20:24 Circumvention of emissions not allowed.

74:36:20:02. Construction permit required. A person may not construct, install, modify, or operate any source or unit likely to cause the emission of air pollutants into the ambient air or any equipment that prevents or controls the emission of air pollutants into the ambient air until a construction permit has been issued by the board or the secretary, unless it meet the requirements in § 74:36:20:02.01.

Source: 36 SDR 207, effective June 28, 2010.

General Authority: SDCL 34A-1-6, 34A-1-21.

Law Implemented: SDCL 34A-1-21.

74:36:20:02.01. Initiating construction prior to permit issuance. The owner or operator of a new source or modification to an existing source may initiate construction prior to issuance of the construction permit by the department if the owner or operator meets the following requirements:

(1) The owner or operator has submitted a construction permit application to the department in accordance with § 74:36:20:06;

(2) The owner or operator has submitted a notification to the department of its intentions to initiate construction prior to issuance of the construction permit five working days before initiating construction;

(3) The new source or modification to an existing source is not subject to chapters 74:36:09 or 74:36:10. The provisions in chapters 74:36:09 or 74:36:10 remain applicable until the new source or modification to an existing source legally obtains a construction permit with federally enforceable conditions which limit the sources potential to emit below the applicable thresholds in chapters 74:36:09 or 74:36:10;

(4) The new source or modification to an existing source is not subject to § 74:36:08:03.01. The provisions in § 74:36:08:03.01 remain applicable until the new source or modification to an existing source legally obtains a construction permit with federally enforceable conditions which limit the sources potential to emit below the applicable thresholds in § 74:36:08:03.01;

(5) The owner or operator must assume any liability for construction conducted on a source before the permit is issued and in no case will the applicant be allowed to operate the equipment in any way that may emit any air pollutant prior to receiving a construction permit;

(6) The owner or operator must cease construction if the department's evaluation demonstrates the construction of the new source or modification to the existing source will interfere with the attainment or maintenance of a national ambient air quality standard or increment; and

(7) The owner or operator will be required to make any changes to the new source or modification of an existing source that may be imposed in the issued construction permit.

Source:

General Authority: SDCL 34A-1-6, 34A-1-21.

Law Implemented: SDCL 34A-1-21.