



PROPOSED AMENDMENTS

ARSD 74:36

AIR POLLUTION CONTROL PROGRAM

March 2010

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1.0 Background

The Air Quality Program within the South Dakota Department of Environment and Natural Resources (DENR) implements federal air quality programs to maintain the air quality in South Dakota in attainment with the federal National Ambient Air Quality Standards and meet other requirements under the federal Clean Air Act. There are several methods in which the U.S. Environmental Protection Agency (EPA) gives states approval to implement federal air quality programs. The more traditional method is for states to adopt rules and submit the state rules to EPA for implementation into what is called a state implementation plan (SIP). For this process, EPA reviews the state's rules to determine if the rules are equivalent to the federal regulations and if the state's rules are equivalent, EPA approves the state's rules through a federal register notice. The following sections and chapters in the Administrative Rules of South Dakota (ARSD) are part of South Dakota's SIP:

- Chapter 74:36:01 – Definitions;
- Chapter 74:36:02 – Ambient air quality;
- Chapter 74:36:03 – Air quality episodes;
- Chapter 74:36:04 – Operating permits for minor sources, except section 74:36:04:03.01;
- Chapter 74:36:06 – Regulated air pollutant emissions;
- Section 74:36:07:08 – Ash disposal requirements;
- Section 74:36:07:29 – Operating requirements for wire reclamation furnaces;
- Section 74:36:07:30 – Monitoring requirements for wire reclamation furnaces;
- Chapter 74:36:09 – Prevention of Significant Deterioration program;
- Chapter 74:36:10 – New source review;
- Chapter 74:36:11 – Performance testing;
- Chapter 74:36:12 – Control of visible emissions;
- Chapter 74:36:13 – Continuous emission monitoring systems, except for section 74:36:13:08;
- Chapter 74:36:17 – Rapid City street sanding and deicing; and
- Chapter 74:36:18 – Regulations for state facilities in the Rapid City area.

Section 74:36:04:03.01 allows DENR to issue a variance to a minor source that is unable to meet a state emission limit. The variance allows the minor source to operate even though the state emission limit is being exceeded while the minor source makes changes to bring the operations back into compliance with the state emission limit. This section is not included in South Dakota's SIP because EPA will not approve variances in a SIP.

Section 74:36:07:08 was implemented to ensure ash generated from municipal waste combustors are disposed of in accordance with article 74:27 – Solid Waste. There is no corresponding federal New Source Performance Standard. Therefore, DENR included this section in South Dakota's SIP.

Sections 74:36:07:29 and 74:36:07:30 was implemented to establish the operating and monitoring requirements for wire reclamation furnaces to minimize air emissions from these operations. There are no federal regulations under the New Source Performance Standards that

are applicable to wire reclamation furnaces. Therefore, DENR included these sections in South Dakota's SIP.

Section 74:36:13:08 was implemented as part of DENR's Title V air quality permit program and establishes the requirements for "Compliance Assurance Monitoring." This section is a part of DENR's approved Title V air quality operating permit program.

A second method for administering a federal air quality program is to request delegation of the program. The first step in requesting delegations is to adopt state rules that are equivalent to the federal regulations. The easiest method DENR has found to achieve this goal is to adopt the federal regulations by reference. The federal regulations delegated to DENR are located in the following chapters in ARSD:

- Chapter 74:36:07 – New Source Performance Standards, except for section 74:36:07:08, 74:36:07:29, and 74:36:07:30;
- Chapter 74:36:08 – Maximum Achievable Control Technology Standards; and
- Chapter 74:36:16 – Acid Rain program.

A third method for administering a federal air quality program is to have the particular program approved. EPA established this method for the Title V air quality operating permit program. Just like the first two methods, the state must adopt rules equivalent to the federal program and submit the rules to EPA for approval. DENR developed an approved Title V air quality operating permit program, which is located in Chapter 74:36:05 and section 74:36:13:08.

DENR is obligated by an agreement with EPA to adopt new federal regulations periodically to ensure the state's rules are equivalent to EPA's regulations. EPA has passed several new regulations and revised existing regulations that affect South Dakota since DENR last revised ARSD 74:36 in June 2007. As part of the proposed revisions, DENR will update article 74:36 to reflect new federal changes and make minor changes necessary to ensure the rules are equivalent to the federal regulations.

Before DENR adopted its Title V air quality operating permit program, sources were required to obtain a construction permit before a new source could construct and an existing source could modify its operations. In an effort to streamline the process DENR combined its construction permit program with the Title V air quality operating permit program and with DENR's minor operating permit program. This worked well for many years by allowing DENR to issue air quality permits to new sources and existing sources in a timely manner. However, in recent years DENR has discovered that sources may be hampered by this process because a Title V air quality operating permit requires an EPA 45-day review period and the possibility that EPA or some other group may object to the issuance of the permit even though the permit meets all of South Dakota's requirements in the SIP, New Source Performance Standards, Maximum Achievable Control Technology Standards, etc. In addition, EPA recently indicated they have legal concerns with South Dakota's combined construction and Title V air quality operating permit. Therefore, DENR is separating its construction permit from both the minor air quality operating permit and Title V air quality operating permit program.

The proposed revisions to South Dakota's Air Pollution Control Program may be viewed in Appendix A.

2.0 Chapter 74:36:01 – Definitions

Periodically chapter 74:36:01 is reviewed to ensure all definitions are up-to-date and consistent with the other chapters in the Air Quality Program. DENR is proposing to revise this chapter to incorporate the following:

1. Minor changes to this chapter are proposed such as deleting “Fixed capital cost,” “Municipal-type solid waste,” “Title II,” “Title III,” “Title VII,” “Title VIII,” “Title IX,” “Title X,” “Title XI,” and “Unit,” which are not being used in Article 74:36, correcting grammatical errors, and revising definition to specify if the word or phrase pertains to operating permits, construction permits, or both;
2. The federal regulations have updated the definition for volatile organic compounds by adding additional compounds to the list of compounds that are not considered a volatile organic compound. In the past, DENR defined volatile organic compounds by listing those compounds EPA determined did not participate in atmospheric photochemical reactions. DENR defined volatile organic compounds so the reader could easily determine what compounds were not volatile organic compounds. Today, this definition is readily available on EPA's website and listing each compound is unnecessary. Therefore, this definition is being revised to reference the federal regulation;
3. Several of the definitions reference a specific year of the federal regulations. These definitions are being revised to reflect the most current version of the federal reference; and
4. Two new phrases are being defined in this chapter associated with the addition of a construction permit program. The proposed definitions will define what constitutes a “construction permit” and “commenced construction.”

3.0 Chapters 74:36:02 – Ambient Air Quality and 74:36:03 – Air Quality Episodes

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

4.0 Chapter 74:36:04 – Operating Permits for Minor Sources

DENR is proposing to revise this chapter to incorporate the following:

1. This chapter requires a permit to allow a minor source to construct and operate. The permit covered both the construction and operation of the source. DENR is proposing a construction permit program. Therefore, this chapter needs only to cover the operation of the source. The chapter is being revised to remove the references that a permit be obtained prior to construction or modification of an existing source. A new source or source that is modifying its operations will be required to submit a permit application for an operating permit within 12-months after commencing operation;

2. DENR answers several questions a year involving the exemptions for the operating permits for minor sources. The exemptions in ARSD 74:36:04:03 is being separated into two proposed separate sections. The first section identifies the criteria for a business as a whole to meet before an operating permit is required. The second section identifies the emission units that are not required to be included in a minor permit;
3. The types of exempt emission units are being revised. The subsections for each type of emission unit was compared to the insignificant activities associated with the Title V air quality operating permit program and adjusted so they were equivalent;
4. One of the exemptions for an emission unit involves burning waste oil meeting the requirements of ARSD 74:28:27:01. This exemption does not distinguish between the size of equipment or the amount of air emissions generated. This exemption could be construed not to require a permit for a boiler at a power plant. This section is being revised to delete this automatic exemption. The intention of this section was to exempt small businesses that burn waste oil for heat recovery. These types of small businesses would still meet one of the other noted exemptions;
5. There are certain sections in this chapter that reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference; and
6. Section 74:36:04:11 is being repealed since the main portion of this section is already stated in section 74:36:04:10.

5.0 Chapter 74:36:05 – Operating Permits for Part 70 Sources

DENR is proposing to revise this chapter to incorporate the following:

1. This chapter references a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference;
2. Section 74:36:05:03.01 identifies that sources required to obtain a PSD or NSR preconstruction permit in chapter 74:36:09 and 74:36:10, respectively, are required to apply for a Part 70 operating permit within 12-months after commencing operation. DENR is repealing this section since it is being specified in section 74:36:05:08 – Timely and complete application for operating permit required;
3. EPA has promulgated several federal regulations that are applicable to small sources of emissions such as emergency generators, gasoline stations, etc. These standards were promulgated under Sections 111 or 112 of the Clean Air Act. South Dakota had the option to require a Part 70 permit for any or all of those sources applicable to a standard promulgated under 111 or 112 of the Clean Air Act. In general, these regulations have basic recordkeeping and reporting requirements, are manufacturer based regulations, or do not have requirements for specific operations. The chapter is being revised to exempt these small sources applicable to these regulations from obtain a Part 70 permit;
4. This chapter requires a permit to allow a major source to construct and operate. The permit covered both the construction and operation of the source. DENR is proposing a construction permit program. Therefore, this chapter needs only to cover the operation of the source. The chapter is being revised to remove the references that a permit be obtained prior to construction or modification of an existing source; and

5. This permit program contains an EPA review period, where EPA may object to the permit proposed by DENR. ARSD 74:36:05:21.01 requires DENR to treat EPA's objection, including typographical changes, to the permit as a permit modification. The permit program establishes three procedural methods to be used to revise the permit. This section is being revised to allow all three procedural methods, as applicable.

6.0 Chapter 74:36:07 – New Source Performance Standards

DENR is proposing to revise this chapter to incorporate the following:

1. This chapter references a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference; and
2. EPA has passed several new regulations that affect South Dakota since DENR last revised ARSD 74:36 in June 2007. The chapter will be revised to include the following three standards that may be applicable to existing or new sources in South Dakota;
 - a. ARSD 74:36:07:22.01 - Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006;
 - b. ARSD 74:36:07:46.01 – Standards of performance for petroleum refineries for which construction, reconstruction, or modification commenced after May 14, 2007.
 - c. ARSD 74:36:07:76.01 - Standards of performance for equipment leaks of VOC in petroleum refineries; and
 - d. ARSD 74:36:07:90 - Standards of performance for stationary spark ignition internal combustion turbines.

7.0 Chapter 74:36:08 – National Emission Standards for Hazardous Air Pollutants

DENR is proposing to revise this chapter to incorporate the following:

1. This chapter references a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference; and
2. EPA has passed several new regulations or have existing regulations that now do or may affect South Dakota since DENR last revised ARSD 74:36 in June 2007. The chapter will be revised to include the following standards
 - a. ARSD 74:36:08:02.02 - Emission standards for benzene emissions from benzene storage vessels;
 - b. ARSD 74:36:08:02.03 - Emission standards for benzene emissions from benzene transfer operations;
 - c. ARSD 74:36:08:02.04 - Emission standards for benzene waste operations;
 - d. ARSD 74:36:08:103 - National emission standards for hospital ethylene oxide sterilizers;
 - e. ARSD 74:36:08:104 - National emission standards for electric arc furnace steelmaking facility area sources;
 - f. ARSD 74:36:08:105 - National emission standards for iron and steel foundry area sources;

- g. ARSD 74:36:08:106 - National emission standards for gasoline distribution bulk terminals, bulk plants, and pipeline facilities;
 - h. ARSD 74:36:08:107 - National emission standards for gasoline dispensing facilities;
 - i. ARSD 74:36:08:108 - National emission standards for paint stripping and miscellaneous surface coating area sources;
 - j. ARSD 74:36:08:109 - National emission standards for acrylic and modacrylic fiber production area sources;
 - k. ARSD 74:36:08:110 - National emission standards for carbon black production area sources;
 - l. ARSD 74:36:08:111 - National emission standards for chemical manufacturing area sources – chromium compounds;
 - m. ARSD 74:36:08:112 - National emission standards for flexible polyurethane foam production and fabrication area sources;
 - n. ARSD 74:36:08:113 - National emission standards for lead acid battery manufacturing area sources;
 - o. ARSD 74:36:08:114 - National emission standards for wood preserving area sources;
 - p. ARSD 74:36:08:115 - National emission standards for clay ceramic manufacturing area sources;
 - q. ARSD 74:36:08:116 - National emission standards for glass manufacturing area sources;
 - r. ARSD 4:36:08:117 - National emission standards for secondary nonferrous metal processing area sources;
 - s. ARSD 74:36:08:118 - National emission standards for plating and polishing area sources;
 - t. ARSD 74:36:08:119 - National emission standards for nine metal fabrication and finishing area sources;
 - u. ARSD 74:36:08:120 - National emission standards for ferroalloys production area sources; and
 - v. ARSD 74:36:08:121 - National emission standards for aluminum, copper, and other nonferrous foundry area sources.
3. ARSD 74:36:08:93 is a duplicate regulation of ARSD 74:36:08:35. ARSD 74:36:08:93 was to cover polyurethane foam production facilities and not polyurethane foam fabrication facilities, which are covered by ARSD 74:36:08:35. This section will be revised to incorporate the appropriate type of facility.

8.0 Chapter 74:36:09 – Prevention of Significant Deterioration

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

9.0 Chapter 74:36:10 – New Source Review

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

10.0 Chapter 74:36:11 – Performance Testing

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

11.0 Chapter 74:36:12 – Control of Visible Emissions

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

12.0 Chapter 74:36:13 – Continuous Emission Monitoring Systems

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

13.0 Chapter 74:36:16 – Acid Rain Program

This chapter reference a specific year of the federal regulations. These references are being revised to reflect the most current version of the federal reference.

14.0 Chapter 74:36:18 – Regulations for State Facilities in the Rapid City Area.

ARSD 74:36:18:10 requires the Tennessee Visual Emission Evaluation Method 1 be the test method used to determine compliance with the opacity requirement. The method is part of Tennessee's state implementation plan and is not directly listed in the code of federal regulations. Each year, DENR administers two certifications to meet Environmental Protection Agency's Method 9 requirements to measure opacity. The majority of federal regulations and state regulations require the opacity to be determined using Environmental Protection Agency's Method 9. This section is being revised to require the Environmental Protection Agency's Method 9 to determine compliance with the opacity requirement.

15.0 Chapter 74:36:19 – Mercury Budget Trading Program.

On March 15, 2005, EPA promulgated the Clean Air Mercury Rule to permanently cap and reduce mercury emissions from coal-fired power plants by approximately 70% nation-wide. In September 2006, South Dakota promulgated regulations to implement the Clean Air Mercury Rule. On February 8, 2008, the D.C. Circuit vacated EPA's rule removing power plants from the Clean Air Act list of sources of hazardous air pollutants. At the same time, the Court vacated the Clean Air Mercury Rule. In February 2009, EPA asked the Supreme Court to dismiss its request to have the Supreme Court review the D.C. Circuit Court's decision. Instead, EPA plans to develop mercury standards for power plants under a different portion of Clean Air Act.

Since the underlying federal regulations have been vacated by the court system and EPA no longer plans to pursue these types of regulations, South Dakota is removing this Chapter.

16.0 Chapter 74:36:20 – Construction Permits for New Sources or Modifications.

In calendar year 2004, EPA reviewed South Dakota's Title V permitting program. On September 19, 2006, EPA finalized and submitted a copy of its report to DENR. In the report, EPA identified a concern that permits issued under South Dakota's Title V permitting program, which is a combined construction and operational permitting program, could expire. As such, conditions developed because of the construction activities could be voided, superseded, or replaced by future Title V permits. EPA's concern is that conditions in construction permits should be independently enforceable under Title I of the Clean Air Act.

Even though DENR disagrees with EPA's concern on our Title V permitting program, DENR is proposing a construction permitting program to eliminate the confusion on which conditions are due to construction of a facility and which ones are associated with the operations.

The construction permitting program will follow a similar process as the permitting under the minor permitting and Title V permitting programs. The construction permitting program will require an application, a review of that application will be conducted, a draft permit will be prepared, the public will be given an opportunity to comment on the draft permit and application, DENR will review any comments received and make a final permit decision, and the public will be given an opportunity to contest DENR's final permit decision, which will be heard by the Board of Minerals and Environment.

17.0 Response to Initial Comments

During January 2010, DENR emailed the proposed changes to 17 different organizations that include EPA Region VIII, Badlands National Park, Wind Cave National Park, industry, and environmental groups for initial comments. A summary of the comments received and DENR's responses follows:

1. **Comment:** "... question the elimination of the exemption for emergency generators units deleted under 74:36:04:03."

Response: EPA promulgated federal regulations under the New Source Performance Standards that are applicable to new emergency generators. The federal regulations establish requirements for the manufacturers and owners of these new emergency generators. An emergency generator can not be considered an insignificant activity if a federal requirement is applicable. In addition, by removing the exemption for emergency generators, DENR is being consistent between the Minor air quality permit program and the Title V air quality permit program. Even though we are removing the exemption, an emergency generator may still not require a minor air quality permit if the potential emissions from the facility is less than or equal to 25 tons per year (ARSD 74:36:04:02.01(1)). However, a new emergency generator would still have to meet the requirements of the federal regulation. DENR considered the comment; but did not propose any changes to the draft rule revisions.

2. **Comment:** "...what constitutes an emergency generator losing the classification of being mobile or portable?"

Response: The question or concern appears to center around when a nonroad engine such as a portable emergency generator becomes a stationary source and would be covered by one of the permit programs. Section 216(10) of the Clean Air Act defines a "nonroad engine" as an internal combustion engine that is not used in a motor vehicle or a vehicle used solely for competition or that is not subject to standards promulgated under section 111 (New Source Performance Standards) or 202 (mobile sources) of the federal Clean Air Act. A more specific definition of a nonroad engine is outlined in 40 CFR § 89.2. It not only states what a nonroad engine is but also specifies when an internal combustion engine is no longer a nonroad engine and becomes a permitted unit. It states that an internal combustion engine is not a nonroad engine if the engine remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

A portable emergency generator is generally an internal combustion engine located on a trailer and is not subject to section 111 or 202 of the federal Clean Air Act. Therefore, a portable emergency generator is considered a nonroad engine and not subject to permitting. This was more of a question and did not request any changes to the draft rule revisions.

3. **Comment:** "...do not understand the basis for the minor source exemption levels (74:3604:02.01 and 74:36:05:04) ..."

Response: The exemptions noted in ARSD 74:36:05:04 are based on the federal regulations. 40 CFR 70.3(b)(4) notes that a source subject to the Standards of Performance for New Residential Wood Heaters and Standard for Demolition and Renovation are not required to obtain a Title V air quality operating permit. The exemptions noted in ARSD 74:36:04:02.01 are not new exemptions. These exemptions were originally part ARSD 74:36:04:03. These exemptions were developed for sources that were considered to have a negligible impact to air quality in South Dakota. DENR considered the comment; but did not propose any changes to the draft rule revisions.

4. **Comment:** "Regarding the removal of the Mercury Budget Trading Program...assume the state will undergo a case-by-case MACT analysis for new or modified major sources with mercury emissions, in accordance with section 112(j) of the Clean Air Act."

Response: DENR will follow the regulations that are in affect at the time a new source or a modified source submits its application. For sources that construct or reconstruct a major source of hazardous air pollutants and is not being regulated by a current standard such as the maximum available control technology standards established in 40 CFR Part 63, DENR will follow the requirements for section 112(g) of the Clean Air Act for new or modified sources that is outlined in 40 CFR §§ 63.40 through 63.44 (ARSD 74:36:08:03.01). The requirements implemented in section 112(j) of the Clean Air Act are established in 40 CFR §§ 63.50 through 63.56 (ARSD 74:36:08:03.01) and are for

existing sources that EPA has failed to promulgate a standard by its established deadline. DENR considered the comment; but did not propose any changes to the draft rule revisions.

5. **Comment:** "...concern is the proposed requirement to include prepared plans and specification of any equipment or other facilities with application for a construction permit...prepared plans and specification are not available in the early stages of project development..."

Response: DENR agrees that for large projects, prepared plans and specifications are not available at the time an application is required prior to construction. Therefore, DENR agrees to revise the language in ARSD 74:36:20:07(4), by adding "If available" at the beginning of the subsection. This revision will require plans and specifications to be submitted only if they are available.

6. **Comment:** "...add language "actual on-site" to Administrative Rule of South Dakota 74:36:20:06."

Response: The term "actual on-site" is used as part of the definition for commenced construction in ARSD 74:36:01:21. Therefore, this language is already incorporated into the suggested section by the definition of commenced construction. DENR considered the comment; but did not propose any changes to the draft rule revisions.

7. **Comment:** "...consider adding a provision...contents of construction permit that would allow for construction and operation of units that differ from the design described in the application without obtaining approval from the Secretary provided the final design does not significantly differ from the design described in the application and the final design would still demonstrate compliance with the National Ambient Air Quality Standards and PSD increments..."

Response: DENR believes this request is best suited for the case-by-case review of the application for the minor or Title V air quality operating permit, whichever is applicable. During this review, DENR can determine if the actual construction differed and if so, is it significant enough to warrant operational limits or requirement more restrictive than the construction permit. DENR considered the comment; but did not propose any changes to the draft rule revisions.

8. **Verbal Comment:** "...can not exempt Subparts EEEEEEE, FFFFFFF, GGGGGG, YYYYYY, MMMMMM, and SSSSSS from obtaining a Title V permit."

Response: Some of the area source hazardous air pollutant regulations allow a source to be exempt from the obligation to obtain a Part 70 operating permit while others are required to obtain a Part 70 operating permit. In accordance with 40 CFR §§ 63.11146(d) (Subpart EEEEEEE), 63.11153(d) (Subpart FFFFFFF), 63.11160(c) (Subpart GGGGGG), 63.10680(d) (Subpart YYYYYY), 63.11400(d) (Subpart MMMMMM), and 63.11449(e) (Subpart SSSSSS) it states that an area source subject to these subparts must

obtain a Part 70 operating permit. DENR removed the recommended exemption in ARSD 74:36:08:100, 74:36:08:101, 74:36:08:102, 74:36:08:104, 74:36:08:110, and 74:36:08:116.

9. **Verbal Comment:** "...the Administrative Rules of South Dakota 74:36:08:02.02, 74:36:08:02.03, and 74:36:08:02.04 should reference 40 CFR Part 61 instead of 40 CFR Part 60."

Response: The federal regulations DENR is recommending to include do come from 40 CFR Part 61. DENR corrected the reference to the appropriate Part.

10. **Comment:** "The citation referenced in ARSD 74:36:07:03 should be revised..."

Response: The federal regulations for electric utility steam generators were recently revised. During the revision process, the federal citations were also revised. DENR will revise ARSD 74:36:07:03 to the correct federal citations.

11. **Comment:** "The title of ARSD 74:36:07:74 should be revised to clarify volatile organic compounds are addressed..."

Response: DENR will revise the title of ARSD 74:36:07:74 from "Standards of performance for volatile organic emissions from polymer manufacturing industry" to "Standards of performance for volatile organic compound emissions from polymer manufacturing industry".

12. **Comment:** "...there are instances...where titles are altered, abbreviated or contain typographical error...reiterate that a difference in title merits no difference in applicability."

Response: As noted in the Legislative Research Council's Guide to Form and Style for Administrative Rules of South Dakota, the title given to each rule is called a catchline. Catchlines help the reader find topics more quickly and provide a quick index to the rules when listed in the contents of the chapter. Catchlines are not part of the rules. Everything in the catchline that is essential to the rule must be repeated in the body of the rule. The important part of the rule is the reference to the federal citation. As such there is no difference in applicability because the federal citation identifies the applicability that is referenced by the administrative rule. DENR considered the comment; but did not propose any changes to the draft rule revisions.

13. **Comment:** "...proposed regulation at 74:36:04:15(9) would allow for compliance with either State law or the Clean Air Act. Compliance must be with both state and Federal Requirements, the "or"...should be "and"..."

Response: DENR agrees to make this recommended change.

14. **Comment:** "...74:36:04:06 needs language that a minor source applying for an initial operating has already complied with modification requirements in 74:36:20:06" and "... 74:36:05:08(2) may suggest a Permittee needs to only submit a complete application...to prevent confusion in the future, the language should be revised...If the source has already complied with the modification requirements of 74:36:20 or 74:36:09 or 74:36:10..."

Response: The concern appears to be that an owner or operator of source may think that just an operating permit is required and forgo the construction permitting process. A new source or modification to an existing source will be required to apply for and obtain a construction permit prior to constructing the facility or modification under one of the construction permit programs. The requirement to obtain one of these construction permits is not overridden by the requirements to obtain an operating permit. The operating permit is in addition to the construction permit. However, DENR does agree that it would be beneficial to identify that a construction permit is required before constructing the new source or modification in the operating permit program. DENR will identify this with a note at the end of ARSD 74:36:04:06 and 74:36:05:08.

15. **Comment:** "Minor Permit Amendment is inconsistent with Part 70 definition of a procedure...for consistency, this should be Minor Permit Modification..."

Response: DENR used a different term in an attempt to distinguish between the federal terms such as a major modification under the Prevention of Significant Deterioration program, a major modification under the Part 70 permitting program, and a minor modification under the Part 70 permitting program. DENR considers the term minor permit amendment instead of minor modification brings clarity and consistency to its permitting programs. DENR considered the comment; but did not propose any changes to the draft rule revisions.

16. **Verbal Comment:** "Several of the federal regulations for national emission standards for hazardous air pollutants have been revised by adding an additional section or a table to the subpart. It is recommended that for those Administrative Rules of South Dakota in chapter 74:36:08 that do not reference the subpart be revised to reference the subpart to account for these changes."

Response: Generally, the adoption by reference to a subpart was done because the subpart contained a table or an appendix that was not directly associated with the numbering of the federal regulation. If there was no such table or appendix, the adoption by reference was to a specific set of federal regulations numbers. For consistency and to incorporate the identified new sections, tables and appendixes, ARSD chapter 74:36:08 will be revised to reference the subpart lettering scheme.

17. **Verbal Comment:** The regulations for dry cleaners, chromium electroplating (09), and halogenated solvent cleaning (13) identified in Administrative Rules of South Dakota 74:36:08:04, 74:36:08:09, 74:36:08:13, reference a December 9, 2005, date. The federal regulations have been revised stating area sources have a permanent exemption from a

Part 70 operating permit. The reference to the December 9, 2005, date should be removed.

Response: In accordance with 40 CFR §§ 63.320(k), 63.340(e), 63.460(h), the federal rules note that an area source subject to these subparts is exempt from the obligation to obtain a Part 70 permit provided the source is not required to obtain a Part 70 permit for other reasons. DENR agrees to make the recommended changes.

Appendix A

Proposed Amendments

to

ARSD 74:36 – Air Pollution Control Program