

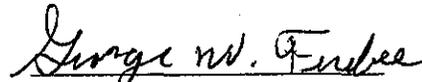
PETITION
FOR
DECLARATORY RULING

(1) The authority by which the petition is presented: SDCL 1-26-15 & ARSD 74:02:01:46

(2) The name of person submitting the petition: George W. Ferebee

(3) The requested action and reasons for the action: Declare ARSD 74:53:01:18 the

exclusive province of the State of South Dakota. Put another way, declare that local governments do not have authority to prohibit the operation of pit privies (outhouses) constructed prior to February 28, 1975. Reason for *Petition*: To eliminate the existing controversy.


GEORGE W. FEREBEE

Instruction to Newspaper - Publish first Notice on June 16, 2016. George Ferebee is responsible for authorizing the publication and payment.

NOTICE OF HEARING ON PETITION FOR A DECLARATORY RULING ON THE AUTHORITY REGARDING ADMINISTRATIVE RULE OF SOUTH DAKOTA 74:53:01:18

Notice is given that a petition for declaratory ruling has been filed with the Water Management Board pursuant to South Dakota Codified Law (SDCL) 1-26-15 and Administrative Rule of South Dakota (ARSD) 74:02:01:46 by George W Ferebee, 11495 Gillette Prairie Road, Hill City SD 57745. Mr. Ferebee requests the Board declare Administrative Rule of South Dakota 74:53:01:18 is the exclusive province of the State of South Dakota and declare that local governments do not have authority to prohibit the operation of pit privies (outhouses) constructed prior to February 28, 1975. The reason cited in the petition for submitting the declaratory ruling request is to eliminate the existing controversy.

ARSD 74:53:01:18 reads "The construction of a cesspool or a pit privy is prohibited. The operation of a cesspool or a pit privy constructed after February 28, 1975, is prohibited."

The applicable statutes and administrative rules are SDCL 34A-2-93, 34A-2-20 and 34A-2-21 and ARSD 74:53:01:18.

The petition for a declaratory ruling to determine authority under ARSD 74:53:01:18, will be considered by the Water Management Board at 10:30 AM on Wednesday, July 6, 2016 at the Floyd Matthew Training Center, Joe Foss Building, 523 E Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior agenda items. The board may issue one of the following decisions regarding the petition for a declaratory ruling after all the evidence is taken at the hearing: 1) that ARSD 74:53:01:18 is the exclusive province of the state of South Dakota and local governments do not have authority to prohibit the operation of pit privies constructed prior to February 28, 1975, 2) take other action as the Board deems warranted after hearing the evidence presented, 3) defer action, or 4) take no action.

Any interested person who intends to participate in the hearing by presenting evidence or cross-examining witnesses according to SDCL 1-26, shall file by June 27, 2016, a written petition to oppose or support the declaratory ruling request to declare that local governments do not have authority to prohibit the operation of a pit privy constructed prior to February 28, 1975. The petition shall be filed with the Chief Engineer and Mr. Ferebee. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605) 773-3352"; and Mr. Ferebee's address is given above. The petition may be informal but must include a statement describing the petitioner's interest in the petition for a declaratory ruling, the petitioner's reasons for opposing or supporting the petition for declaratory ruling, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Mr. Ferebee is a party to the hearing and need not file a petition to intervene. The July 6, 2016, hearing date will be automatically delayed for at least 20 days upon written request of Mr. Ferebee or any person who has filed a timely petition to oppose or support the request for declaratory ruling. The request for an automatic delay must be filed by June 27, 2016.

This hearing is an adversary proceeding. Any person filing a petition, including Mr. Ferebee has the right to be represented by a lawyer. These and other due process rights will be forfeited if not exercised. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law. Contact Eric Gronlund by June 27, 2016, at the above Water Rights Program address to request copies of information pertaining to this petition for declaratory ruling. The declaratory ruling, public notice and any subsequent filings may also be found on DENR's website at <http://denr.sd.gov/des/wr/pubnotice.aspx>. Please notify the Department of Environment and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing.

According to SDCL 1-26-18.3, in any contested case, if the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request no later than ten days after service of a notice of hearing issued pursuant to § 1-26-17. If you choose to use the Office of Hearing Examiners rather than the hearing procedure before the Water Management Board set forth above, you need to notify the Chief Engineer (Water Rights Program, 523 E Capitol Avenue, Pierre SD) by June 27, 2016.

This petition for a declaratory ruling is made pursuant to Board General Rules, Sections 74:02:01:46 through 74:02:01:49. The Board has legal authority and jurisdiction to consider this matter pursuant to SDCL 46-2-5, 46-2-9 and 34A-2-93. Steven M. Pirner, Secretary, Department of Environment and Natural Resources.