

STATEMENT OF BASIS

Revisions to ARSD 74:52:12

Surface Water Quality Program

TABLE OF CONTENTS		
Section	Description	Page
1.0	Background	3
2.0	Chapter 74:52:12 – Industrial Stormwater Fees	4
2.1	§74:52:12:01 – Definitions	4
2.2	§74:52:12:02 – Sector J Annual Fees	4
2.3	§74:52:12:03 – Other Industrial Sectors Fees	5
2.4	§74:52:12:04 – Annual Fee Due Date	7
2.5	§74:52:12:05 – Maximum Annual Fee	7

1.0 Background

The federal permitting program was delegated to the South Dakota Department of Environment and Natural Resources in 1993. To make that delegation happen, the state had to have the laws, administrative rules, and resources to administer the program in a manner approvable by the United States Environmental Protection Agency (EPA). To provide the resources to fund the program, the State Legislature approved permitting fees in 1992.

For over 25 years, DENR did not change its fees, but the federal program grew with new stormwater control permits required for construction sites and industrial sites. The federal funding provided to this program did not grow with the increased requirements. Therefore, with flat fee revenues and declining federal funding, the department reached a point where we did not have the revenue to fully fund the surface water discharge permitting program. To address this situation, we held positions vacant, streamlined our internal processes, and pursued one-time federal funding. But this was not a long-term solution. Therefore, in 2018, the South Dakota Legislature passed Senate Bill 25, which authorized the department to begin charging an annual fee for its stormwater permits.

The annual fees for stormwater discharges associated with construction activities were implemented directly in SB 25, which has since been codified as South Dakota Codified Law §34A-2-119.1. SB 25 also authorized the department to establish an annual tiered fee for each industrial site that is required to operate under a general water pollution control permit for stormwater discharges associated with industrial activities. The law states that the “tiered fee structure shall equitably assess an annual fee to cover the reasonable costs of developing and administering the stormwater permitting requirements for industrial activities that include:

- (a) Preparing regulations and general stormwater permits for applicable industrial activities;
- (b) Reviewing and acting on applications for an industrial stormwater permit or permit revision;
- (c) Implementing the industrial stormwater permits and inspecting permitted facilities, to include enforcing the terms and conditions of the permits if needed; and
- (d) Providing training, technical support, and customer services to permitted entities to include developing on-line functions.”

In accordance with SDCL 34A-2-119.1, the department is proposing industrial stormwater fees.

2.0 Chapter 74:52:12 – Industrial Stormwater Fees

The department is proposing a new chapter to Article 74:52, which details the administrative rules for the surface water discharge permitting program, including stormwater permitting.

2.1 §74:52:12:01 – Definitions

To establish a tiered fee structure, the department reviewed the industrial sectors established by EPA for their industrial stormwater permit. EPA’s permit establishes 30 sectors, which are based primarily on the Standard Industrial Classification (SIC)¹ system. This is a system for classifying industries by a four-digit code. SIC codes have a hierarchical, top-down structure that begins with general characteristics and narrows down to the specifics. The first two digits of the code represent the major industry group to which a business belongs. The third and fourth digits describe the sub-classification of the business group and specialization.

Each of the 30 sectors is defined in the proposed ARSD §74:52:12:01

2.2 §74:52:12:02 – Sector J Annual Fees

Sector J sites are active and inactive mining, quarrying, and processing operations for nonmetallic minerals (except fuels), as defined by standard industrial classification major group 14.

For these sites, the department is proposing to tier the annual fee based on the disturbed acreage of the mine site. As the footprint of a mining site grows, the potential for stormwater impact grows. Therefore, the department chose the following approach to ensure an equitable method of assessing the annual permitting fees for these sites:

SECTOR J FEES

Unreclaimed Mining Acreage	Fee Amount
Less than 1.0 acre	\$100
1.0 acre to less than 20.0 acres	\$200
20.0 acres to less than 40.0 acres	\$400
40.0 acres to less than 80.0 acres	\$600
80.0 acres or more	\$800

SDCL 45-6-72 requires these sites to submit an annual report to the department. This report contains information that will be used to determine the unreclaimed acreage as of December 31st of each year. This rule will use an existing reporting requirement and does not require any additional reporting for these sites.

¹ 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. The document is available online at https://www.osha.gov/pls/imis/sic_manual.html.

2.3 §74:52:12:03 – Other Industrial Sectors Fees

The remaining 29 industrial sectors were grouped into tiers based on the type of pollutants that may be present at the site and the potential for those pollutants to be present in stormwater runoff from the sites.

Tier I

The first tier includes industries such as railroads, bussing systems, delivery services (such as UPS), feed mills, and food manufacturing. These businesses have a low potential for pollutants such as metals or volatile chemicals to be present in the discharge. Pollutants such as petroleum or total suspended solids can be managed with best management practices at the site. Wastewater treatment plants, furniture manufacture, and printing operations are also included in this tier. These types of activities typically have low potential for any contact with stormwater.

TIER I

Industrial Sector	Description	Fee Amount
B	Paper and Allied Products Manufacturing	\$100
P	Land Transportation	\$100
Q	Water Transportation	\$100
R	Ship and Boat Building and Repair Yards	\$100
T	Treatment Works	\$100
U	Food and Kindred Products	\$100
V	Textile Mills, Apparel, and Other Fabric Product Manufacturing	\$100
W	Furniture and Fixtures	\$100
X	Printing and Publishing	\$100

Tier II

The second tier includes manufacturing machinery such as transportation equipment and industrial or commercial machinery, including trailers, excavators, and skid steers. If stormwater comes into contact with raw materials or unfinished metal parts, there is a potential for metals to be present in the runoff. Ethanol production and fertilizer manufacturing are also included in this tier due to the potential for total suspended solids or nutrients to be present in the stormwater runoff from these sites.

Under the department’s general permit for stormwater runoff associated with industrial activity, the Secretary can designate a site that is not otherwise required to obtain permit coverage. The department would use this option if an industrial site demonstrated actual water quality impacts or pollutants in the runoff. Therefore, these sites also have a higher potential for pollutants to be present in the runoff and these designated sites are included in the second tier.

Tier II

Industrial Sector	Description	Fee Amount
AA	Fabricated Metal Products	\$200
AB	Transportation Equipment, Industrial or Commercial Machinery	\$200
AC	Electronic, Electrical, Photographic and Optical Goods	\$200
AD	Secretary-Designated Sites	\$200
C	Chemical and Allied Products Manufacturing	\$200
F	Primary Metals	\$200
O	Steam Electric Generating Facilities	\$200
S	Air Transportation Facilities	\$200
Y	Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	\$200
Z	Leather Tanning and Finishing	\$200

Tier III

The third tier of industries includes sawmills, auto salvage yards, asphalt plants, and concrete production. These industries typically operate outdoors and store their raw and finished products outdoors. The runoff from stockpiles of these materials can potentially contain total suspended solids, petroleum-based products, and other chemical wastes.

Tier III

Industrial Sector	Description	Fee Amount
A	Timber Products	\$400
D	Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers	\$400
E	Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing	\$400
M	Automobile Salvage Yards	\$400
N	Scrap Recycling Facilities	\$400

Tier IV

The fourth tier is hazardous waste treatment and landfills. These sites have a wide variety of potential pollutants in the stormwater runoff, such as heavy metals, phenols, petroleum products, and high or low pH wastes.

Tier IV

Industrial Sector	Description	Fee Amount
K	Hazardous Waste Treatment, Storage, or Disposal Facilities	\$600
L	Landfills and Land Applications	\$600

Tier V

The final tier is for oil and gas extraction and metal mining.

Tier III

Industrial Sector	Description	Fee Amount
G	Metal Mining (Ore Mining and Dressing)	\$800
H	Coal Mines and Coal Mining-Related Facilities	\$800
I	Oil and Gas Extraction	\$800

2.4 §74:52:12:04 – Annual Fee Due Date

The annual fees will be due on January 31st of each year, beginning January 31, 2022. The department will invoice each permittee in late December or early January. In accordance with SDCL 34A-2-199.1, the fees will be deposited in the surface water discharge and pretreatment permit administrative subfund established in SDCL 34A-2-121.

2.5 §74:52:12:05 – Maximum Annual Fee

A few of the permittees covered under the general permit for stormwater runoff associated with industrial activities own multiple sites. During the stakeholder outreach, the department received feedback from one site owner that the stormwater fees for all of their covered sites would result in a 150% increase in the total environmental fees this owner paid. Based on that feedback, the department is proposing to cap the total fees at \$2,500 per year for an owner with multiple sites.