



Board of Minerals and Environment

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3151 Fax: (605)773-4068

Live audio of the meeting is available at <http://www.sd.net>

AGENDA

**Board of Minerals and Environment
Matthew Training Center
523 East Capitol Avenue
Pierre, South Dakota**

May 18-19, 2023

Thursday, May 18 – 10:00 a.m. Central Time

Call to order and roll call

Approval of minutes from March 16, 2023, meeting

Request permission to advertise for a public hearing to consider amendments to ARSD 74:28, Hazardous Waste – Carrie Jacobson

Mining Issues

Consent Calendar – Tom Cline

Annual update of Preliminary List of Special, Exceptional, Critical, or Unique Lands – Eric Holm

Acceptance of Financial Assurance increase for Wharf Resources (USA), Inc., Large Scale Mine Permits 356, 434, 435, 464, and 476 – Eric Holm

Contested case hearing in the matter of Wharf Resources (USA), Inc. Large Scale Mine Permit application for Wharf's Boston Expansion – Roberta Hudson

Friday, May 19 – 8:30 a.m. Central Time

Continue hearing in the matter of Wharf Resources (USA), Inc. Large Scale Mine Permit application for Wharf's Boston Expansion

Public comment period in accordance with SDCL 1-25-1

Next meeting – July 20, 2023

Adjourn

The board packet is available at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Minutes of the
Board of Minerals and Environment
Telephone Conference Call Meeting
523 East Capitol Avenue
Pierre, South Dakota

March 16, 2023
10:00 a.m. Central Time

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. The roll was called, and a quorum was present.

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Doyle Karpen, Jessica Peterson, Bob Morris, John Scheetz and Gary Haag.

BOARD MEMBERS ABSENT: Gregg Greenfield.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Tom Cline and Bret Graves, DANR Minerals, Mining, and Superfund Program. Charles McGuigan, Deputy Attorney General, Mark Hollenbeck, Powertech, Paul Goranson, Encore Energy, Lillas Jarding, Rapid City, Carla Cushman, Deputy Attorney, city of Rapid City, Carissa Shilling, Joel Hartman and Dorothy VanOss, BLM, and Bruce Ellison, attorney from Rapid City.

APPROVAL OF MINUTES FROM JANUARY 19, 2023, MEETING: Gary Haag pointed out that his last name is spelled incorrectly on the first page of the minutes.

Motion by Karpen, seconded by Blumhardt, to approve the minutes from the January 19, 2023, Board of Minerals and Environment meeting, as corrected. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES CONSENT CALENDAR: Prior to the meeting the board received the consent calendar, which is a table listing the department recommendations for transfers of liability and releases of liability, transfer of liability, and releases of surety. (See attachment)

Tom Cline, Minerals, Mining, & Superfund Program, presented the consent calendar. There were no questions from the board members regarding the consent calendar.

Motion by Karpen, seconded by Haag, to accept the department recommendations for transfers of liability and releases of surety, transfer of liability, and releases of liability. A roll call vote was taken, and the motion carried unanimously.

UPDATE ON FEDERAL LEGISLATION TO PURCHASE FEDERAL PROPERTY AT THE GILT EDGE SUPERFUND SITE: Roberta Hudson reported that in May 2022 she provided the annual update for the Gilt Edge Mine. At that time there were two bills pending before the US Congress to sell all property within the Gilt Edge Superfund site to the state of South Dakota. These bills would cover a total of 266 acres of US Forest Service land within the Superfund boundary. The two bills were consolidated with several other land conveyance acts that were going through federal legislation and joined into HR 2617. The bill passed in both the House of Representatives and the Senate, was finalized on December 22, 2022, and signed by the President on December 29, 2022.

On February 2, 2023, the state of South Dakota initiated the purchasing process by submitting a letter of intent to the US Forest Service. The process to purchase land from the US Forest Service involves the Forest Service going through the NEPA process in order to purchase those lands. The state is waiting for the Forest Service to work through that process, which involves numerous studies, an analysis on the land, and land appraisals. Ms. Hudson said that process may take a couple of years to complete, and it will then be up for public comment.

The long-term management of the Gilt Edge Superfund site rests with the state of South Dakota. When remediation activities are completed, the site will revert back to the state for long-term continuing maintenance. By purchasing the property, it gives the state full authority over everything within the Superfund site and makes management of the site easier.

In response to a question from Mr. Scheetz, Ms. Hudson stated that either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) is required as part of the NEPA process, and that would be done sometime in the next couple of years while going through the process of evaluating the land.

Mr. Scheetz stated that if the land is purchased, it could preclude the necessity of an EIS or an EA.

Ms. Hudson stated that she believes the Forest Service has to complete either an EIS or an EA as part of the purchasing process.

Mr. Scheetz asked if there will still be Forest Service land adjacent to the site.

Ms. Hudson answered that there is Forest Service land within the Superfund site boundary, and that is the land the state of South Dakota will purchase. There is Forest Service land adjacent to the property, which is outside the Superfund site boundary that will not be part of the purchase.

UPDATE ON THE STATUS OF THE POWERTECH (USA), INC. MATTER: Chairman Hagg stated that this is a contested case hearing regarding a uranium mining permit that, in accordance with an Order issued by Chairman Hagg in late 2013, the Board of Minerals and Environment continued the hearing until the Nuclear Regulatory Commission and the US Environmental Protection Agency have ruled and the state Water Management Board has decided the water rights.

Chairman Hagg stated that following Mr. McGuigan's status update report, the public would be allowed to make comments as long as there is no argument on the merits of the case.

Charles McGuigan, Deputy Attorney General, is the board's legal counsel. He reported that the status of the Powertech matter has not changed significantly since his update at the October 2022 meeting.

The District of Columbia (DC) Circuit Court of Appeals had upheld licenses. Monday, March 13, 2023, was the Oglala Sioux Tribe's deadline to request that the Supreme Court review that decision. Mr. McGuigan said it appears that the tribe did not make that request, so he believes the NRC Source Material License is probably now final.

On Friday, March 10, 2023, the parties filed their 12th joint status report with the Eighth Circuit Court of Appeals, dealing with the Aquifer Exemption. Their suggestion to the Eighth Circuit was that the Aquifer Exemption appeal should continue to be held in abeyance pending the outcome of the appeal to the Environmental Appeal Board concerning the Underground Injection Control Permit.

On Monday, March 13, 2023, the parties filed their 8th status report with the Environmental Appeals Board. That status report acknowledged that the tribe did not file a petition for certiorari with the United States Supreme Court. The tribe requested that they be given 30 days from an order from the board to review the filings in the appeal to decide if they needed any amendment, and both Powertech and the United States requested a briefing schedule be set. As of the morning of March 16, 2023, the Environmental Appeals Board had not issued any orders concerning the status report.

This concluded Mr. McGuigan's status update.

Chairman Hagg asked that proponents of the matter identify themselves and/or offer comments.

Paul Goranson, Encore Energy, Parent Company of Powertech, was present. He had no comments.

Chairman Hagg asked that opponents of the matter identify themselves and/or offer comments.

Dr. Liliias Jarding was present. She had no comments.

Bruce Ellison, counsel for Black Hills Clean Water Alliance, was present. He stated that he had spoken with one of the attorneys that is handling the appeal matters for the tribe, and there is also the requirement for approval from the Bureau of Land Management (BLM).

Mr. Scheetz asked if the NEPA process has been started and if so, how long is it expected to take?

Board of Minerals and Environment
March 16, 2023, Meeting Minutes

Mr. McGuigan stated that he has been unable to find any information regarding the BLM approval.

Mr. Goranson stated that he does not have the complete information to provide an answer regarding the BLM process.

Joel Hartman, BLM, Billings, MT, stated that BLM is a cooperative agency with the NRC and a final EIS is on file, but he was not sure if it had been signed. A reclamation cost estimate has been sent to Powertech.

No board action was taken.

Chairman Hagg asked that the board receive another status update in two to four months.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

NEXT MEETING: The next meeting is scheduled for May 18-19, 2023, at the Foss Building Matthew Training Center in Pierre.

ADJOURN: Motion by Morris, seconded by Scheetz, to adjourn the meeting. A roll call vote was taken, and the motion carried unanimously.

Secretary, Board of Minerals and Environment Date

Witness Date

Consent Calendar

South Dakota Board of Minerals & Environment

March 16, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability & Release of Surety:</u>					
Merwyn Larson Minneapolis, MN	98-655		\$2,500	Dacotah Bank, Clark	Transfer liability and release \$2,500.
Transfer to: Clark County Highway Department Clark, SD	83-150	655001	NE1/4 Section 31; T117N-R57W, Clark County	NA	
Reynolds Construction Management Sioux Falls, SD	22-1107		\$20,000	North American Specialty Insurance Company	Transfer liability and release \$20,000.
Transfer to: Hilde Pipe & Gravel Inc. Madison, SD	22-1118	1107001	N1/2 NE1/4 Section 27, SE1/4 Section 22, & SW1/4 SW1/4 Section 23; T106N-R52W, Lake County	First Interstate Bank, Madison	

Consent Calendar

South Dakota Board of Minerals & Environment

March 16, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability & Release of Surety:</u>					
Sterzinger Construction LLC Ivanhoe, MN	83-204		\$5,000	Western Casualty & Surety Company	Transfer liability and release \$13,000.
Transfer to: Sterzinger Crushing Inc. Taunton, MN	15-997	204001	\$8,000	Western Surety Company NW1/4 Section 9; T109N-R47W, Brookings County	
<u>Transfer of Liability:</u>					
Friessen Construction Inc. Sioux Falls, SD	83-129		\$20,000	Ohio Farmers Insurance Company	Transfer liability.
Transfer to: Crusher Investment Company Sioux Falls, SD	83-24	129008	\$20,000	North American Specialty Insurance Company	

Consent Calendar

South Dakota Board of Minerals & Environment

March 16, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
Release of Liability: Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	Liberty Mutual Insurance Company	Release liability.
		54103	SW1/4 NW1/4 Section 17; T21N-R16E, Perkins County		
Midland Contracting, Inc. Huron, SD	03-768		\$20,000	Western Surety	Release liability.
		768011	N1/2 Section 10; T115N-R64W, Spink County		
Cavour Township Huron, SD	98-668		EXEMPT	NA	Release liability.
		668001	SW1/4 Section 9; T112N-R60W, Beadle County		
Custer County Highway Department Custer, SD	83-90		EXEMPT	NA	Release liability.
		90013	SE1/4 NE1/4 Section 6; T4S-R7E, Custer County		

Release of Liability:

Fisher Sand & Gravel Company
Dickinson, ND

54103 SW1/4 NW1/4 Section 17; T21N-R16E, Perkins County

Midland Contracting, Inc.
Huron, SD

768011 N1/2 Section 10; T115N-R64W, Spink County

Cavour Township
Huron, SD

98-668 EXEMPT

NA

Release liability.

668001 SW1/4 Section 9; T112N-R60W, Beadle County

Custer County Highway Department
Custer, SD

83-90

EXEMPT

NA

Release liability.

90013 SE1/4 NE1/4 Section 6; T4S-R7E, Custer County

Consent Calendar
South Dakota Board of Minerals & Environment

March 16, 2023

License Holder **License No.** **Site No.** **Surety Amount** **Surety Company or Bank** **DANR Recommendation**

Release of Liability:

Roberts County Highway
 Department
 Sisseton, SD

83-23

EXEMPT

NA

Release liability.

23004 SW1/4 SE1/4 Section 12; T125N-R50W, Roberts
 County

Consent Calendar
South Dakota Board of Minerals & Environment

May 18, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability & Release of Surety:</u>					
Hilde Pipe & Gravel & Gravel Inc. Madison, SD	22-1118		\$5,000	First Interstate Bank, Madison	Transfer liability and release \$5,000.
Transfer to: Woodland Marina II LLC Sioux Falls, SD		1118001		N1/2 NE1/4 Section 27, SE1/4 Section 22, & SW1/4 SW1/4 Section 23; T106N-R52W, Lake County	
	23-1122		\$5,000	Plains Commerce Bank, Sioux Falls	
<u>Transfer of Liability:</u>					
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company	Transfer liability.
Transfer to: Perkins County Highway Department Bison, SD	83-91	2057		SE1/4 Section 35; T16N-R11E, Perkins County	

***Consent Calendar
South Dakota Board of Minerals & Environment***

<i>May 18, 2023</i>					
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Release of Liability:</u>					
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company	Release liability.
		2006	N1/2 Section 29;	T9N-R25E, Stanley County	
		2018	Sections 29 & 30;	T9N-R24E, Ziebach County	

South Dakota Board of Minerals & Environment

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
May 18, 2023				
<u>Acceptance of Financial Assurance for Wharf Resources (USA), Inc.:</u>				
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$760,600	United States Fire Insurance Company	Accept rider to Bond No. 612408650, United States Fire Insurance Company, increasing the Financial Assurance amount to \$807,300.
<u>Application for Large Scale Mine Permit:</u>				
Wharf Resources (USA), Inc. Lead, SD	490	Reclamation Bond: \$72,152,900 Post Closure Bond: \$42,685,600	Legal: Portions of Sections 2 & 3; T4N-R2E, Lawrence County	Conditional Approval.

Board of Minerals and Environment
Notice of Public Hearing to Amend Rules

A public hearing will be held in the Floyd Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, South Dakota, on July 20, 2023, at 10:00 a.m. Central Daylight Time, to consider the adoption and amendment of proposed rules, numbered:

§§ 74:28:21:01; 74:28:21:01.01; 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01;
74:28:25:03; 74:28:25:04; 74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:28:03;
74:28:28:04; 74:28:28:05; 75:28:30:01; 74:28:33:01

The effect of the rules will be to update the state's existing hazardous waste rules by incorporating updated codified federal regulations by reference. The state's proposed rules reflect changes made to the federal hazardous waste regulations from July 1, 2018 through June 30, 2022. Once these updates are made, the state's rules will then be substantially the same as the federal hazardous waste regulations. Changes to the rules include the addition of waste aerosol cans to the universal waste regulations; updates to the flash point test method, cross reference corrections, and removal of obsolete information in the ignitability regulation; and conforming reference updates that pertain to imports and exports of waste to and from Canada.

The reason for updating the state's hazardous waste rules is to continue to ensure that companies generating, transporting, treating, storing, or disposing of hazardous waste in South Dakota manage those wastes in a way that is protective of human health and the environment. These proposed rules offer clarified requirements for the state's hazardous waste generators by ensuring a clear, protective system for managing discarded aerosol cans, eases regulatory burdens regarding the management of those materials; updates test methodologies and information regarding the ignitability characteristic; and updates references to certain Canada-specific operational codes and descriptions on import-export documents.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Department of Agriculture and Natural Resources, Waste Management Program, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. A copy of the draft rules and access to online commenting are also available at: <https://danr.sd.gov/public>. Electronic comments and those sent by mail must reach the Department by July 17, 2023, to be considered.

At the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Department of Agriculture and Natural Resources at 605-773-3153 at least 48 hours before the public hearing to make any necessary arrangements.

Copies of the proposed rules may be obtained without charge by calling Carrie Jacobson at 605-773-3153 or from the following website:
<https://danr.sd.gov/Environment/WasteManagement/HazardousWaste/default.aspx>

Hunter Roberts
Secretary
Department of Agriculture and Natural Resources

Published once at the approximate cost of \$ _____

ADMINISTRATIVE RULES

of

SOUTH DAKOTA

Cite as ARSD _____

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

ARTICLE 74:28
HAZARDOUS WASTE

Published By
South Dakota Legislative Research Council

~~Printed April 19, 2021~~

ARTICLE 74:28**HAZARDOUS WASTE**

Chapter

- 74:28:21 Administration.
- 74:28:22 Identification and listing.
- 74:28:23 Standards for generators.
- 74:28:24 Standards for transporters.
- 74:28:25 Treatment, storage, and disposal.
- 74:28:26 Permit requirements.
- 74:28:27 Management of specific hazardous wastes.
- 74:28:28 Interim status standards for facilities.
- 74:28:29 Interim status for existing surface impoundments.
- 74:28:30 Land disposal restrictions.
- 74:28:31 Polychlorinated biphenyl, Deleted.
- 74:28:32 Toxic cleanup day, Executed.
- 74:28:33 Management of universal hazardous waste.
- 74:28:34 Special requirements for landfills and surface impoundments.

CHAPTER 74:28:21**ADMINISTRATION**

Section

74:28:21:01 Definitions.

[74:28:21:01.01 Incorporation by Reference.](#)

74:28:21:02 General standards for a hazardous waste management system.

74:28:21:01. Definitions. Terms used in the federal rules ~~which are adopted~~ incorporated by reference in ~~this article § 74:28:21:01.01~~ have the following meanings. ~~All references in this article to federal regulations are those revised as of July 1, 2018, unless otherwise specified:~~

(1) "Administrator," the secretary of the Department of Agriculture and Natural Resources or a designee, except at:

(a) 40 C.F.R. § 260.10, the definitions of "administrator," "Regional Administrator," and "hazardous waste constituent";

(b) 40 C.F.R. Part 261, Appendix IX;

(c) 40 C.F.R. §§ 264.12(a) and 265.12(a);

(d) 40 C.F.R. § 268.40(b);

(e) 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "Regional Administrator," and "state/EPA agreement";

(f) 40 C.F.R. §§ 270.3; 270.5; 270.10(e)(2), (3), and (4); 270.10(f) and (g); 270.11(a)(3); 270.14(b)(20); 270.32(b)(2); and 270.51;

(2) "Director," the secretary of the Department of Agriculture and Natural Resources or a designee;

(3) "EPA," the state Department of Agriculture and Natural Resources, except for:

(a) Any references to "EPA identification numbers," "EPA forms," "EPA hazardous waste numbers," "EPA test methods," "EPA publications," "EPA manuals," "EPA guidance," or "EPA Acknowledgment of Consent";

(b) Any reference to EPA in the following regulations:

(i) 40 C.F.R. § 260.10, the definitions of "administrator," "electronic manifest," "electronic manifest system," "EPA region," "Regional Administrator," and "user of the electronic manifest system";

(ii) 40 C.F.R. Part 261, Appendix IX;

(iii) 40 C.F.R. §§ 262.21; and 262.32(b);

(iv) 40 C.F.R. §§ 264.11 and 265.11;

(v) 40 C.F.R. § 268.1(e)(3), 268.2(j) and 268.40(f);

(vi) 40 C.F.R. §§ 270.1(a)(1); 270.1(b); 270.3; 270.5; 270.10(e)(2); 270.11(a)(3); 270.32(a) and (c); 270.51; 270.72(a)(5); and 270.72(b)(5);

(vii) 40 C.F.R. § 270.2, the definitions of "administrator," "approved program or approved state," "director," "Environmental Protection Agency," "EPA," "final authorization," "permit," "Regional Administrator," and "state/EPA agreement";

(viii) 40 C.F.R. § 273.32(a)(3);

(ix) The second reference to EPA at 40 C.F.R. §§ 264.1082(c)(4)(ii) and 265.1083(c)(4)(ii);

(x) 40 C.F.R. § 260.11(a);

(xi) 40 C.F.R. § 261.41;

(xii) 40 C.F.R. §§ 260.4; 260.5; 264.71(a)(2)(v); 265.71(a)(2)(v); 264.71(j); and 265.71(j);

(4) "EPA hazardous waste number," the number assigned by the secretary to each hazardous waste;

(5) "EPA identification number," the number assigned by the secretary to each generator, transporter, and treatment, storage, or disposal facility;

(6) "Existing hazardous waste management facility" or "existing facility," a facility that was in operation or for which construction commenced on or before November 19, 1980, for HSWA facilities, or before April 8, 1984, for non-HSWA facilities;

(7) "Existing tank system" or "existing component," a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation or for which installation commenced on or before July 14, 1986, for HSWA tanks, as defined in subdivision (9) of this section, or June 7, 1989, for non-HSWA tanks, as defined in subdivision (12) of this section;

(8) "Federal Register," a newspaper of general circulation in the state of South Dakota, except at:

- (a) 40 C.F.R. § 260.11(a);
- (b) 40 C.F.R. § 270.6(a);
- (c) 40 C.F.R. § 270.10(e)(2);

(9) "HSWA tank," a tank owned or operated by a small quantity generator, a new underground tank, or a tank which cannot be entered for inspection;

(10) "New hazardous waste management facility" or "new facility," a facility that began operation, or for which construction commenced, after November 19, 1980, for HSWA facilities, and April 8, 1984, for non-HSWA facilities;

(11) "New tank system" or "new tank component," a tank system or component that will be used for the storage or treatment of hazardous waste for which installation commenced after July 14, 1986, for HSWA tanks, as defined in subdivision (9) of this section, and June 7, 1989, for non-HSWA tanks, as defined in subdivision (12) of this section or, for the purposes of 40 C.F.R. § 264.193(g)(2) (~~July 1, 2018~~) and 40 C.F.R. § 265.193(g)(2) (~~July 1, 2018~~), for which construction commenced after July 14, 1986, for HSWA tanks and June 7, 1989, for non-HSWA tanks;

(12) "Non-HSWA tank," a tank which is not owned or operated by a small quantity generator and is either an existing underground tank or a tank that can be entered for inspection;

(13) "Region," the state of South Dakota, at these two sections:

- (a) 40 C.F.R. § 261.4(e)(3)(iii);
- (b) 40 C.F.R. § 262.42(a)(2) and (b);

(14) "Resource Conservation and Recovery Act," "RCRA," or any references to any sections of RCRA, SDCL chapter 34A-11, the South Dakota Hazardous Waste Management Act, except at:

- (a) 40 C.F.R. § 260.10, the definition of "Act" or "RCRA";
- (b) 40 C.F.R. Part 261, Appendix IX;
- (c) 40 C.F.R. §§ 270.1(a)(2) and 270.51;
- (d) 40 C.F.R. § 270.2, the definition of "RCRA";
- (e) 40 C.F.R. §§ 264.4 and 265.4;
- (f) 40 C.F.R. § 260.5;

(15) "Regional Administrator," the secretary of the Department of Agriculture and Natural Resources or a designee, except at:

- (a) 40 C.F.R. § 260.10, the definitions of "administrator," "Regional Administrator," and "hazardous waste constituent";
- (b) 40 C.F.R. Part 261, Appendix IX;
- (c) 40 C.F.R. § 263.11;
- (d) 40 C.F.R. §§ 264.12(a) and 265.12(a);
- (e) 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "Regional Administrator," and "state/EPA agreement";

(f) 40 C.F.R. §§ 270.3; 270.5; 270.10(e)(2) and (4); 270.10(f) and (g); 270.11(a)(3); 270.14(b)(20); 270.32(b)(2); and 270.51;

(16) "Secretary," the secretary of the Department of Agriculture and Natural Resources or a designee;

(17) "State," the state of South Dakota, except at:

(a) 40 C.F.R. § 260.10, the definitions of "person," "state," and "United States";

(b) 40 C.F.R. §§ 264.143(e)(1); 265.143(d)(1); 264.145(e)(1); 265.145(d)(1); 264.147(a)(1)(ii), (b)(1)(ii), (g)(2), and (i)(4); and 265.147(a)(1)(ii), (b)(1)(ii), (g)(2) and (i)(4); and

(c) 40 C.F.R. § 270.2, the definitions of "approved program or approved State," "director," "final authorization," "interim authorization," "person," and "state";

(18) Any reference to 40 C.F.R. § 124.15 should be replaced with § 124.5 at the following locations: §§ 264.1030(c), 264.1050(c), 264.1080(c), and 265.1080(c);

(19) "EPA Environmental Appeals Board," the South Dakota State Circuit Court;

(20) Any reference to "United States," "U.S.," "U.S. Customs Official," "U.S. national procedures," "United Nations," "U.N.," "U.N. classification number," "Organization for Economic Cooperation and Development," "OECD," "Federal Register," "Freedom of Information Act", "EPA Acknowledgment of Consent," "Environmental Protection Agency," "EPA," and any other Federal Agencies or Offices within Federal Agencies should be retained at §§ 260.2(c) and (d); 260.11(a) to (e), inclusive; 261.39(a)(5); 262.24(a)(3); 262.25; 262.80 to 262.89, inclusive; ~~263.10(d);~~

HAZARDOUS WASTE

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263.20(a)(2); 263.20(a)(4)(iv); 263.20(c); 263.20(e)(2); 263.20(f)(2); 263.20(g)(4); 264.12(a); 264.71(a)(2)(v); 264.71(a)(3); 264.71(d); 264.71(f)(4); 264.71(j); 264.1300 to 264.1316, inclusive; 265.12(a); 265.71(a)(2)(v); 265.71(a)(3); 265.71(d); 265.71(f)(4); 265.71(j); 265.1300 to 265.1316, inclusive; 267.71(a)(6); and 267.71(d);

(21) "AES Filing Compliance Date," the date that EPA announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform;

(22) "Electronic Import-Export Reporting Compliance Date," the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving ~~facileities~~facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system;

(23) "Recognized Trader," a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

Source: 10 SDR 106, effective April 8, 1984; 11 SDR 44, effective September 30, 1984; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 24 SDR 11, effective August 5, 1997; 26 SDR 26,

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effective August 29, 1999; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9.

74:28:21:01.01. Incorporation by Reference. For purposes of this article and unless otherwise specified, 40 C.F.R. parts 124; 144; 260 to 268, inclusive; 270; 273; and 279, as amended to July 1, 2022, are incorporated by reference. Sections reserved in 40 C.F.R. parts 124; 144; 260 to 268, inclusive; 270; 273; and 279, as amended to July 1, 2022, are not incorporated by reference in this article.

Source:

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9.

74:28:21:02. General standards for a hazardous waste management system. The definitions, except as specified in § 74:28:21:01, references, petitions, variances, and other procedures in 40 C.F.R. §§ 260.2(c) to 260.43, inclusive, ~~(July 1, 2018); and 83 Fed. Reg. 231, 61562-61563 (November 30, 2018) (to be codified at 40 C.F.R. 260.10)~~, constitute the general hazardous waste management system.

Source: 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9.

CHAPTER 74:28:22

IDENTIFICATION AND LISTING

Section

74:28:22:01 Identification and listing of hazardous wastes.

74:28:22:01. Identification and listing of hazardous wastes. Solid wastes which are subject to regulation as hazardous wastes are those identified and listed in 40 C.F.R. §§ 261.1 to 261.1089, inclusive, except 40 C.F.R. § 261.4(b)(~~16~~) and (17); and Appendices I, VII, VIII, and IX (~~July 1, 2018~~); ~~83 Fed. Reg. 231, 61562-61563 (November 30, 2018) (to be codified at 40 C.F.R. 261); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 261).~~

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 16 SDR 203, effective May 27, 1990; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-8.

Law Implemented: SDCL 34A-11-8.

CHAPTER 74:28:23

STANDARDS FOR GENERATORS

Section

74:28:23:01 Standards for generators.

74:28:23:01. Standards for generators. The standards for generators of hazardous waste are those in 40 C.F.R. §§ 262.1 to 262.84, inclusive, except 40 C.F.R. § 262.10(k); and §§ 262.200 to

262.265, inclusive ~~(July 1, 2018); and 83 Fed. Reg. 231, 61562-61563 (November 30, 2018) (to be codified at 40 C.F.R. 262).~~

Source: 10 SDR 106, effective April 8, 1984; 11 SDR 44, effective September 30, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-16.

CHAPTER 74:28:24

STANDARDS FOR TRANSPORTERS

Section

74:28:24:01 Standards for transporters.

74:28:24:01. Standards for transporters. The standards for transporters of hazardous waste are those in 40 C.F.R. §§ 263.10 to 263.31, inclusive ~~(July 1, 2018)~~.

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-16.

CHAPTER 74:28:25

TREATMENT, STORAGE, AND DISPOSAL

Section

- 74:28:25:01 Standards for hazardous waste treatment, storage, and disposal facilities.
- 74:28:25:03 Assessment of existing tank system's integrity.
- 74:28:25:04 Containment and detection of releases from tanks.
- 74:28:25:05 Definition of new and existing drip pads for certain wood preserving wastes.

74:28:25:01. Standards for hazardous waste treatment, storage, and disposal facilities.

The standards for hazardous waste treatment, storage, and disposal facilities are those in 40 C.F.R. §§ 264.1 to 264.1316, inclusive, except for 40 C.F.R. §§ 264.1(f), 264.1(g)(12), 264.18(c), 264.149, 264.150, 264.191(a) and (c), ~~264.193(a)~~, 264.301(l), 264.570(a), 264.1030(d), 264.1050(g), and 264.1080(e), (f), and (g); Appendices I, IV, V, VI, and IX; and §§ 267.1 to 267.1108, inclusive, except § 267.71(d) ~~(July 1, 2018); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 264).~~

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

Cross-Reference: Exposure information from landfills and surface impoundments, § 74:28:34:01.

74:28:25:03. Assessment of existing tank system's integrity. For each existing tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 264.193 (~~July 1, 2018~~), the owner or operator must determine that the tank system is not leaking or is unfit for use.

The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, registered professional engineer licensed to do business in South Dakota, in accordance with 40 C.F.R. § 270.11(d) (~~July 1, 2018~~), that attests to the tank system's integrity by January 12, 1988, for HSWA tanks and September 14, 1990, for non-HSWA tanks.

Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, for HSWA tanks and subsequent to June 7, 1989, for non-HSWA tanks must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

For existing tank systems or existing components, a tank system or component installation is considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within one year.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-12, 34A-11-13, 34A-11-14.

74:28:25:04. Containment and detection of releases from tanks. To prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this chapter must be provided, except as provided in 40 C.F.R. § 264.193(f) and (g) ~~(July 1, 2018)~~, as follows:

- (1) For all new tank systems or components, before they are put into service;
- (2) For all existing tank systems used to store or treat EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks;
- (3) For those existing tank systems of known and documented age, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks or when the tank system has reached 15 years of age, whichever comes later;

(4) For those existing tank systems for which the age cannot be documented, within eight years after January 12, 1987, for HSWA tanks and within eight years after September 14, 1989, for non-HSWA tanks; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years after January 12, 1987, for HSWA tanks or within two years after September 14, 1989, for non-HSWA tanks, whichever comes later; and

(5) For tank systems that store or treat materials that become hazardous waste subsequent to January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks, within the time intervals required in subdivisions (1) to (4), inclusive, of this section, except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-12, 34A-11-13, 34A-11-14.

74:28:25:05. Definition of new and existing drip pads for certain wood preserving wastes. The requirements of 40 C.F.R. Part 264, Subpart W (~~July 1, 2018~~) apply to owners and

operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water runoff to an associated collection system.

For EPA hazardous waste number F032 wastes, existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into before December 6, 1990, binding financial or other agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, existing drip pads are those constructed before July 7, 1992, and those for which the owner or operator has a design and has entered into before July 7, 1992, binding financial or other agreements for construction. All other drip pads are new drip pads.

For EPA hazardous waste number F032 wastes, the requirement at 40 C.F.R. § 264.573(b)(3) ~~(July 1, 2018)~~ to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, for which the owner or operator has a design and has entered into before December 24, 1992, binding financial or other agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, the requirement at 40 C.F.R. § 264.573(b)(3) ~~(July 1, 2018)~~ to install a leak collection system applies only to those drip pads that are constructed after September 29, 1994, for which the owner or operator has a design and has entered into before September 29, 1994, binding financial or other agreements for construction.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44,

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effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October
10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-12, 34A-11-13, 34A-11-14.

CHAPTER 74:28:26

PERMIT REQUIREMENTS

Section

74:28:26:01 Requirements to permit a treatment, storage, or disposal facility.

74:28:26:01. Requirements to permit a treatment, storage, or disposal facility. The requirements to permit a treatment, storage, or disposal facility are those in 40 C.F.R. §§ 270.1 to 270.320, inclusive, except §§ 270.1(c)(2)(ix) and 270.14(b)(18); and Appendix I to § 270.42 (~~July 1, 2018~~); 40 C.F.R. §§ 124.1(b); 124.2(a); 124.3(a); 124.5(a); 124.5(c); 124.6(a), (b), (d), and (e); 124.11; 124.31(b), (c), and (d); 124.32(b) and (c); 124.33(b) to (f); and §§ 124.200 to 124.214, inclusive (~~all July 1, 2018~~); 40 C.F.R. §§ 144.31(g)(1) to (3), inclusive (~~July 1, 2018~~); and ~~84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 270)~~. Any interested person may contest the issuance of a permit by following the procedures in chapter 74:09:01.

The requirements for a preapplication public meeting and notice found in 40 C.F.R. § 124.31 (~~July 1, 2018~~) apply to all hazardous waste permit applications seeking initial permits for hazardous waste management units, to hazardous waste permit applications seeking coverage under a standardized permit under § 270 subpart J (~~July 1, 2018~~), and to hazardous waste permit applications seeking renewal of permits if the renewal application is proposing a significant change in facility

operations. A significant change to a hazardous waste permit is any change that is considered a Class 3 permit modification under 40 C.F.R. § 270-~~(July 1, 2018)~~. A significant change to a standardized permit is defined at § 124.211(c)-~~(July 1, 2018)~~. The requirements of this paragraph for a preapplication public meeting and notice do not apply to hazardous waste permit applications or permit modifications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

The requirements for public notice at the application stage found in 40 C.F.R. § 124.32-~~(July 1, 2018)~~ apply to all hazardous waste permit applications seeking initial permits for hazardous waste management units and to applications seeking renewal of permits for such units under 40 C.F.R. § 270.51-~~(July 1, 2018)~~. The requirements for public notice at the application stage do not apply to hazardous waste units permitted under a standardized permit under 40 C.F.R. § 270 subpart J ~~(July 1, 2018)~~, to hazardous waste permit modifications under 40 C.F.R. § 270.42 ~~(July 1, 2018)~~ or to applications submitted for the sole purpose of conducting post-closure activities or post-closure and corrective action at a facility.

The requirement for an information repository found in 40 C.F.R. § 124.33 ~~(July 1, 2018)~~ applies to all applications seeking a hazardous waste permit for hazardous waste management units.

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999;

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27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-12, 34A-11-13, 34A-11-14, 34A-11-15.

Cross-Reference: Special requirements for landfills and surface impoundments, § 74:28:34:01.

CHAPTER 74:28:27

MANAGEMENT OF SPECIFIC HAZARDOUS WASTES

Section

74:28:27:01 Requirements for the management of specific hazardous wastes.

74:28:27:01. Requirements for the management of specific hazardous wastes. The requirements for the management of specific hazardous wastes and specific types of hazardous waste management facilities are those in 40 C.F.R. §§ 266.20 to ~~266.360~~ 266.510, inclusive, ~~and~~ Appendices I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, and XIII; ~~84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 266);~~ and §§ 279.1 to ~~279.82~~279.82(a), inclusive, ~~except 40 C.F.R. § 279.82(b) and (c) (July 1, 2018).~~

The language in 40 C.F.R. § 279.82(a) "except when such activity takes place in one of the states listed in paragraph (c) of this section" is not incorporated by reference.

Source: 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12.

CHAPTER 74:28:28

INTERIM STATUS STANDARDS FOR FACILITIES

Section

- 74:28:28:01 Interim status standards for treatment, storage, and disposal facilities.
- 74:28:28:03 Assessment of existing tank system's integrity.
- 74:28:28:04 Containment and detection of releases from tanks.
- 74:28:28:05 Definition of new and existing drip pads for certain wood preserving wastes.

74:28:28:01. Interim status standards for treatment, storage, and disposal facilities. The

interim status standards for hazardous waste treatment, storage, and disposal facilities are those in 40 C.F.R. § 144.1(h); §§ 265.1 to 265.1316, inclusive, except 40 C.F.R. §§ 265.1(c)(4), 265.1(c)(15), 265.18, 265.149, 265.150, 265.191(a) and (c), ~~265.193(a)~~, 265.440(a), 265.1030(c), 265.1050(f), and 265.1080(e), (f), and (g); Appendices I, III, IV, V, and VI ~~(July 1, 2018)~~; and ~~84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 265)~~.

Source: 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

Cross-Reference: Special requirements for landfills and surface impoundments, § 74:28:34:01.

74:28:28:03. Assessment of existing tank system's integrity. For each tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 265.193 ~~(July 1, 2018)~~, the owner or operator must determine that the tank system is not leaking or is unfit for use.

The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, registered professional engineer licensed to do business in South Dakota in accordance with 40 C.F.R. § 270.11(d) (~~July 1, 2018~~), that attests to the tank system's integrity by January 12, 1988, for HSWA tanks and September 14, 1990, for non-HSWA tanks.

Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, for HSWA tanks and subsequent to June 7, 1989, for non-HSWA tanks must conduct this assessment within 12 months after the date that the wastes become a hazardous waste.

Source: 24 SDR 11 effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34-11-10, 34A-11-12, 34A-11-16.

74:28:28:04. Containment and detection of releases from tanks. To prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this chapter must be provided, except as provided in 40 C.F.R. § 265.193(f) and (g) (~~July 1, 2018~~), as follows:

- (1) For all new tank systems or components, before they are put into service;

(2) For all existing tank systems used to store or treat EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks;

(3) For those existing tank systems of known or documented age, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks or when the tank system has reached 15 years of age, whichever comes later;

(4) For those existing tank systems for which the age cannot be documented, within eight years after January 12, 1987, for HSWA tanks and within eight years after September 14, 1989, for non-HSWA tanks; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years after January 12, 1987, for HSWA tanks or within two years after September 14, 1989, for non-HSWA tanks, whichever comes later; and

(5) For tank systems that store or treat materials that become hazardous waste subsequent to January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks, within the time interval required in subdivisions (1) to (4), inclusive, of this section, except that the date that a material becomes hazardous waste must be used in place of January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44,

effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

74:28:28:05. Definition of new and existing drip pads for certain wood preserving wastes. The requirements of 40 C.F.R. Part 265, Subpart W (~~July 1, 2018~~) apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water runoff to an associated collection system.

For EPA hazardous waste number F032 wastes, existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. For EPA hazardous waste numbers F034 and F035 wastes, existing drip pads are those constructed before July 7, 1992, and those for which the owner or operator has a design and has entered into before July 7, 1992, binding financial or other agreements for construction. All other drip pads are new drip pads.

For EPA hazardous waste number F032 wastes, the requirement at 40 C.F.R. § 265.443(b)(3) (~~July 1, 2018~~) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, for which the owner or operator has a design and has entered into before December 24, 1992, binding financial agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, the requirement at 40 C.F.R. § 265.443(b)(3) (~~July 1, 2018~~) to install a leak collection system applies only to those drip pads that are constructed after September

29, 1994, for which the owner or operator has a design and has entered into before September 29, 1994, binding financial or other agreements for construction.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

CHAPTER 74:28:30

LAND DISPOSAL RESTRICTIONS

Section

74:28:30:01 Land disposal restrictions.

74:28:30:01. Land disposal restrictions. The requirements for hazardous wastes that are restricted from land disposal are those in 40 C.F.R. §§ 268.1 to 268.4, inclusive; 40 C.F.R. §§ 268.7 to 268.50, inclusive, except 40 C.F.R. §§ ~~268.10, 268.11, 268.12~~, 268.13, 268.42(b) and 268.44; Appendices III, IV, VI, VII, VIII, IX, and XI ~~(July 1, 2018); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 268).~~

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Source: 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

CHAPTER 74:28:33

MANAGEMENT OF UNIVERSAL HAZARDOUS WASTE

Section

74:28:33:01 Management of universal hazardous waste.

74:28:33:01. Management of universal hazardous waste. The standards for management of universal hazardous waste are those in 40 C.F.R. §§ 273.1 to 273.81, inclusive (~~July 1, 2018~~); and ~~84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 273)~~.

Source: 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective

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August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-16.