

## **CHAPTER 74:36:01**

### **DEFINITIONS**

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

- (1) "Act," chapter 34A-1 of the South Dakota Codified Laws;
- (2) "Acid rain permit," a legally binding written document or portion of a document that is issued by the department and specifies the acid rain program requirements applicable to an affected source and to the owners and operators and the designated representative of the affected source;
- (3) "Acid rain program," the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Clean Air Act;
- (4) "Administrator," the administrator of the Environmental Protection Agency or the secretary or their authorized representatives;
- (5) "Affected source," a source that includes one or more affected units under Title IV of the Clean Air Act;
- (6) "Affected unit," a unit that is subject to any of the emission reduction requirements or emission limits pursuant to Title IV of the Clean Air Act or chapter 74:36:16;
- (7) "Air pollutant," one or a combination of the regulated air pollutants listed in § 74:36:01:15;
- (8) "Allowable emissions," the emission rate calculated using the maximum rated capacity of a source unless the source is subject to federally enforceable limits which restrict operating rate, hours of operation, or both, and the most stringent of the following:
  - (a) The applicable new source performance standards in chapter 74:36:07;
  - (b) The applicable national emission standards in chapter 74:36:08;
  - (c) Any applicable emission limitations specified in this article, including those with a future compliance date;
  - (d) The emission rate specified as a permit condition; or
  - (e) The applicable standards in 40 C.F.R. Part 60, 61, or 63 (July 1, 2016);
- (9) "Ambient air," that portion of the atmosphere external to buildings to which the general public has access;
- (10) "ASTM," the American Society for Testing and Materials;

- (11) "Board," the Board of Minerals and Environment;
- (12) "Btu," British thermal unit;
- (13) "CO," carbon monoxide;
- (14) "Chairman," chairman of the board;
- (15) "Clean Air Act," the Clean Air Act, 42 U.S.C. 7401 et seq., as amended through January 1, 2010;
- (16) "Clean Air Act Amendments," the amendments to the Clean Air Act enacted in Pub. L. No. 101-549, November 15, 1990;
- (17) "Control equipment," a device which prevents or reduces emissions;
- (18) "Criteria pollutant," selected and specified pollutants for which limiting ambient air quality standards have been set, including sulfur dioxides, particulate matter, carbon monoxide, ozone, nitrogen oxides, and lead;
- (19) "Department," the South Dakota Department of Environment and Natural Resources;
- (20) "Designated representative," the responsible person or official authorized by the owner or operator of an affected unit, in accordance with the Clean Air Act, to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to the unit and the submission of and compliance with permits, permit applications, and compliance plans for the unit;
- (21) "Draft permit," the version of a permit for which the department offers public participation or affected state review;
- (22) "Emissions allowable under the permit," a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including work practice standards, or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject;
- (23) "Emission standard," the maximum amount of a pollutant legally permitted to be discharged from a single unit;
- (24) "Emission unit," "Unit," any part or activity of a stationary source which emits or has the potential to emit a regulated air pollutant or any pollutant listed under section 112(b) of the Clean Air Act;
- (25) "EPA," the Environmental Protection Agency;
- (26) "Equivalent method," any method of sampling and analysis for an air pollutant which has a consistent and quantitatively known relationship to the reference method under specified conditions;

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

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

(29) "Federally enforceable," all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 C.F.R. §§ 60 and 61 (July 1, 2016), requirements within the state implementation plan, and permit requirements established pursuant to this article or 40 C.F.R. § 51 Subpart I (July 1, 2016). The use of this term does not impede the department's authority under state law to enforce these limits and conditions;

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

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

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

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

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

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

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

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

(38) "New source," a source that has not been constructed and does not possess a permit;

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

(40) "NSR," new source review;

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

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

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

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

(45) Repealed;

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

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

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

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

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

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

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

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

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

(55) Repealed;

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

- (57) "Secretary," the secretary of the South Dakota Department of Environment and Natural Resources or an authorized representative;
- (58) "Shutdown," the cessation of operation of any control equipment, process equipment, or process for any purposes;
- (59) "Smoke," small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air;
- (60) "Source," a facility that emits or may emit any air pollutant regulated under the Clean Air Act;
- (61) "Start-up," the setting into operation of any control equipment, process equipment, or process for any purpose;
- (62) "Title I," Title I of the Clean Air Act Amendments, provisions for attainment and maintenance of national ambient air quality standards;
- (63) "Title IV," Title IV of the Clean Air Act Amendments, acid deposition control;
- (64) "Title V," Title V of the Clean Air Act Amendments, permits;
- (65) "Title VI," Title VI of the Clean Air Act Amendments, stratospheric ozone protection;
- (66) Repealed;
- (67) "VOC," "volatile organic compounds," as defined in 40 C.F.R. § 51.100(s) (July 1, 2016);
- (68) "Wire reclamation furnace," a furnace that uses either direct or indirect heat transfer to salvage nonferrous metals through the thermal destruction of solid waste materials;
- (69) "PM2.5," particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an applicable reference or equivalent method;
- (70) "SO<sub>2</sub>," sulfur dioxide;
- (71) "NO<sub>2</sub>," nitrogen dioxide;
- (72) "Construction permit," a written authorization issued by the board or the secretary for the construction and operation of a new source or modification to an existing source; and
- (73) "Subject to regulation," subject to regulation means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of this chapter, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Greenhouse gases are not subject to regulation unless a PSD preconstruction permit is issued regulating greenhouse gases in accordance with chapter 74:36:09.

**Source:** SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:01, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:01, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 16 SDR 88, effective November 14, 1989; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:01, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 23 SDR 106, effective December 29, 1996; 25 SDR 123, effective April 4, 1999; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 32 SDR 209, effective June 13, 2006; 36 SDR 207, effective June 28, 2010; 37 SDR 182, effective April 20, 2011; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

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

**74:36:01:02. Actual emissions defined.** Repealed.

**Source:** SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:01, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:01, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 16 SDR 88, effective November 14, 1989; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:01, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; repealed, 31 SDR 101, effective January 2, 2005.

**74:36:01:03. Administrative permit amendment defined.** An administrative permit amendment is an amendment to an existing permit and is issued by the secretary. The secretary may issue an administrative permit amendment if it accomplishes one of the following:

- (1) Corrects typographical errors;
- (2) Changes the name, address, or phone number of any person identified in the permit or provides a similar minor administrative change at the source;
- (3) Requires more frequent monitoring or reporting by the permittee;
- (4) Allows for a change in ownership or operational control of a source if the department determines that no other change in the permit is necessary and a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department. If the change in ownership or operational control changes the designated representative for an acid rain permit, the change is considered a permit modification and the procedures outlined in § 74:36:05:39 apply; or

(5) Any other change that the Administrator of the EPA and the secretary determines to be similar to the requirements in subdivisions (1) to (4), inclusive, of this section.

**Source:** 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:04. Affected states defined.** Affected states are all states whose air quality may be affected by and that are contiguous to the state in which an operating permit, permit modification, or permit renewal for a Part 70 source is being proposed or that are within 50 miles of the permitted source.

**Source:** 19 SDR 157, effective April 22, 1993.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:05. Applicable requirements of the Clean Air Act defined.** Applicable requirements of the Clean Air Act include all of the following as they apply to emissions units in a Part 70 source, unless the context of the Clean Air Act requires otherwise:

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in Part 52 of 40 C.F.R. (July 1, 2016);

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved through rulemaking under Title I, including Parts C or D, of the Clean Air Act;

(3) Any standard or other requirement under § 111 of the Clean Air Act, including § 111(d);

(4) Any standard or other requirement under § 112 of the Clean Air Act, including any requirement concerning accident prevention under § 112(r)(7) of the Clean Air Act;

(5) Any standard or other requirement of the acid rain program under Title IV of the Clean Air Act or the regulations promulgated under it;

(6) Any monitoring, reporting, and certification requirements established pursuant to § 504(b) or 114(a)(3) of the Clean Air Act;

(7) Any standard or other requirement governing solid waste incineration, under § 129 of the Clean Air Act;

(8) Any standard or other requirement for consumer and commercial products, under § 183(e) of the Clean Air Act;

(9) Any standard or other requirement for tank vessels, under § 183(f) of the Clean Air Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under § 328 of the Clean Air Act;



(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the administrator of the EPA has determined that such requirements need not be contained in a Part 70 operating permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Clean Air Act, but only as it would apply to temporary sources permitted pursuant to § 504(e) of the Clean Air Act.

**Source:** 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; 31 SDR 101, effective January 2, 2005; 32 SDR 209, effective June 13, 2006; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:06. Complete application defined.** A complete application is one that the department has determined to contain all the information needed to begin to process the application. A determination that an application is complete continues in effect if the source submits by the date or dates specified by the department any additional information reasonably determined by the department to be necessary for developing and issuing the permit and requested in writing.

**Source:** 19 SDR 157, effective April 22, 1993.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:07. Major modification defined.** Repealed.

**Source:** 8 SDR 71, effective December 21, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:02.01, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; repealed, 31 SDR 101, effective January 2, 2005.

**74:36:01:08. Major source defined.** A major source is any source or any group of sources that is located on one or more contiguous or adjacent properties, that is under control of the same person or of persons under common control, that belongs to a single major industrial grouping, and that is any of the following:

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

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

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

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

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

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

(d) For particulate matter (PM<sub>10</sub>) nonattainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM<sub>10</sub>.

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

**Source:** List of stationary sources transferred from § 74:26:01:03, 17 SDR 170, effective May 13, 1991; transferred from §§ 74:26:01:06.05 and 74:26:01:06.07, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; 37 SDR 182, effective April 20, 2011.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

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

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

**74:36:01:09. Categories of sources defined.** The fugitive emissions of a source shall not be included in determining whether it is a major source for any of the purposes of § 74:36:01:08 unless the source belongs to one of the following categories of sources:

(1) Coal cleaning plants with thermal dryers;

- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil fuel-fired boilers totaling more than 250 million British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal production plants;
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- (27) Any other source category, which as of August 7, 1980, is regulated under § 111 or 112 of the Clean Air Act but only for those air pollutants that have been regulated for that category.

**Source:** Transferred from § 74:26:01:03, 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:06.07, 19 SDR 157, effective April 22, 1993; 31 SDR 101, effective January 2, 2005.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:10. Modification defined.** Modification is a physical change in or change in the method of operation of a source that results in at least one of the following:

- (1) An increase in the amount of an air pollutant emitted by that source or in the emission of an air pollutant not previously emitted, except for an insignificant increase in allowable emissions as specified in § 74:36:01:10.01;
- (2) A significant change to existing monitoring, reporting, or record keeping requirements in the permit;
- (3) The change requires or changes a case-by-case determination of an emission limit or other standard, a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis; or

(4) The change seeks to establish or change a permit term or condition for which there is a corresponding underlying applicable requirement that the source has assumed to avoid an applicable requirement, a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I, or an alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Clean Air Act.

**Source:** SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:01(18), 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:02, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:02, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; 42 SDR 52, effective October 13, 2015.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:10.01. Insignificant increase in allowable emissions.** An insignificant increase in allowable emissions is a physical change or change in the method of operation that results in air emissions less than the following amounts and the change does not trigger § 74:36:01:10(3) and (4):

- (1) 10 tons per year of particulate matter;
- (2) 5 tons per year of PM10;
- (3) 3 tons per year of PM2.5;
- (4) 10 tons per year of sulfur dioxide;
- (5) 10 tons per year of nitrogen oxides;
- (6) 10 tons per year of carbon monoxide;
- (7) 5 tons per year of volatile organic compounds;
- (8) 0.1 tons per year of lead;
- (9) 1 ton per year of fluorides;
- (10) 2 tons per year of sulfuric acid mist;
- (11) 2 tons per year of hydrogen sulfide;
- (12) 2 tons per year of total reduced sulfur;
- (13) 2 tons per year reduced sulfur compounds;
- (14) 2 tons per year of municipal waste combustor emissions; and

(15) 10 tons per year of municipal solid waste landfill emissions (measured as nonmethane organic compounds).

**Source:** 42 SDR 52, effective October 13, 2015.

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

**Law Implemented:** SDCL 34A-1-21.

**74:36:01:11. National ambient air quality standard (NAAQS).** The national primary ambient air quality standards define levels of air quality that are necessary, with a margin of safety, to protect the public health. The national secondary ambient air quality standards define levels of air quality that are necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. These standards are located in chapter 74:36:02.

**Source:** SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:01, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:01, effective July 1, 1981; 8 SDR 71, effective December 21, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 16 SDR 88, effective November 14, 1989; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:01, 19 SDR 157, effective April 22, 1993.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:12. Potential to emit defined.** The potential to emit for sources shall be based on the maximum rated capacity of a source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. Secondary emissions are not included when determining the potential to emit.

**Source:** 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:03, effective July 1, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; list of stationary sources transferred to § 74:26:01:06.07, 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:03, 19 SDR 157, effective April 22, 1993.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:13. Process weight rate defined.** Process weight per hour is the total weight of all raw materials and other materials introduced into any specific process that may cause an emission of a regulated pollutant. Solid fuels charged are considered as part of the process weight, but liquid and gaseous fuels and combustion air are not.

The process weight rate for continuous or long-run steady-state operations is the total process weight for the entire period of continuous operation or for a typical portion divided by the number of hours of the period or portion.

The process weight rate for cyclical or batch operation is the total process weight for a period that covers a complete operation or an integral number of cycles divided by the hours of actual process operation during such a period.

If the nature of a process or operation or the design of equipment permits more than one interpretation of data, the interpretation that results in the minimum value for allowable emissions applies.

**Source:** SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:01(29), 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:04, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:04, 19 SDR 157, effective April 22, 1993.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:14. Reconstruction of sources defined.** Repealed

**Source:** 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:05, effective July 1, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:05, 19 SDR 157, effective April 22, 1993; repealed, 31 SDR 101, effective January 2, 2005.

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

- (1) Nitrogen oxides or any volatile organic compounds;
- (2) Nitrogen dioxide, PM<sub>10</sub>, sulfur dioxide, carbon monoxide, lead, ozone, or any pollutant for which a national ambient air quality standard has been promulgated in the Clean Air Act;
- (3) Any pollutant that is addressed by any standard promulgated under § 111 of the Clean Air Act;
- (4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;
- (5) Any pollutant subject to a standard promulgated under § 112 of the Clean Air Act or other requirements established under §§ 112(g), (j), and (r) of the Clean Air Act, including the following:
  - (a) Any pollutant subject to a standard promulgated under § 112(j) of the Clean Air Act. If the administrator of the EPA fails to promulgate a standard by the date established in § 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on that date; and
  - (b) Any pollutant for which the requirements of § 112(g)(2) of the Clean Air Act have been met, but only for the individual source subject to § 112(g)(2) requirement; or
- (6) Any of the six greenhouse gases designated by EPA as regulated air pollutants: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**Source:** 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 37 SDR 182, effective April 20, 2011.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:16. Responsible official defined.** A responsible official is defined as one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit, and either:

(a) The facility employs more than 250 persons or has gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(b) The delegation of authority to such a representative is approved in advance by the department;

(2) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(3) For a municipal, state, federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this subdivision, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

(4) For affected sources:

(a) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated under it are concerned; or

(b) The designated representative for any other purposes under chapter 74:36:05.

**Source:** 19 SDR 157, effective April 22, 1993; 31 SDR 101, effective January 2, 2005.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.

**74:36:01:17. Significant defined.** Repealed.

**Source:** 8 SDR 71, effective December 21, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:06.04, 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; repealed, 31 SDR 101, effective January 2, 2005.

**74:36:01:18. Municipal solid waste landfill defined.** Municipal solid waste landfill means the entire disposal facility in a contiguous geographical space where household waste, commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, or industrial solid waste is placed in or on land. Portions of the municipal solid waste landfill may be separated by access roads. A municipal solid waste landfill may be publicly or privately owned, a new landfill, an existing landfill, or a lateral expansion.

**Source:** 23 SDR 106, effective December 29, 1996.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6, 34A-1-18.

**74:36:01:19. Existing municipal solid waste landfill defined.** An existing municipal solid waste landfill is a municipal solid waste landfill that commenced construction, reconstruction, or modification before May 30, 1991. An existing municipal solid waste landfill may be active or closed. Physical or operational changes made to an existing municipal solid waste landfill solely to comply with applicable emission limits are not considered a modification or reconstruction.

**Source:** 23 SDR 106, effective December 29, 1996.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6, 34A-1-18.

**74:36:01:20. Physical change in or change in the method of operation defined.** A physical change in or change in the method of operation does not include the following:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material because of an order under §§ 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, as amended and in effect on January 1, 1993, or because of a natural gas curtailment plan pursuant to the Federal Power Act as in effect on January 1, 1993;

(3) Use of an alternative fuel because of an order or rule under § 125 of the Clean Air Act;

(4) Use at a steam generating unit of an alternative fuel that is generated from municipal solid waste;

(5) An increase in the hours of operation or in the production rate, unless the change is prohibited under a federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 C.F.R. § 52.21 (July 1, 2016), or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I, or 40 C.F.R. § 51.166 (July 1, 2016);

(6) Any change of ownership at a source;

(7) The use of an alternative fuel or raw material by a source which the source was capable of accommodating before January 6, 1975, unless the change is prohibited under a federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 C.F.R. § 52.21 (July 1, 2016), or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I, or 40 C.F.R. § 51.166 (July 1, 2016); and

(8) The use of an alternative fuel or raw material which the source is approved to use under a permit issued under 40 C.F.R. § 52.21 (July 1, 2016) or under regulations approved pursuant to 40 C.F.R. § 51.165 (July 1, 2016).

**Source:** 25 SDR 123, effective April 4, 1999; 31 SDR 101, effective January 2, 2005; 32 SDR 209, effective June 13, 2006; 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013; 42 SDR 52, effective October 13, 2015; 44 SDR 43, effective September 13, 2017.

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.



**74:36:01:21. Commenced construction defined.** Commenced construction means the owner or operator has all necessary construction approvals or permits and has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the new source or modification to the existing source; or

(2) Entered into a binding agreement or contractual obligation, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source.

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

**General Authority:** SDCL 34A-1-6.

**Law Implemented:** SDCL 34A-1-6.