

CHAPTER 74:36:20

CONSTRUCTION PERMITS FOR NEW SOURCES OR MODIFICATIONS

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74:36:20:01. Applicability. The requirements of this chapter apply to the construction of all new sources or modifications to existing sources.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:02. Construction permit required. A person may not construct, install, modify, or operate any source or unit likely to cause the emission of air pollutants into the ambient air or any equipment that prevents or controls the emission of air pollutants into the ambient air until a construction permit has been issued by the board or the secretary, except as specified in § 74:36:20:02.01.

Source: 36 SDR 207, effective June 28, 2010; 37 SDR 182, effective April 20, 2011; 42 SDR 52, effective October 13, 2015.

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

Law Implemented: SDCL 34A-1-21.

74:36:20:02.01. Initiating construction prior to permit issuance. The owner or operator of a new source or modification to an existing source may only install concrete foundations, below-ground plumbing, ductwork, associated infrastructure and excavation work, or any combination of these activities prior to issuance of the construction permit by the department if the owner or operator meets the following requirements:

(1) The owner or operator has submitted a complete application for a construction permit to the department in accordance with § 74:36:20:06 and received a completeness determination from the department in accordance with § 74:36:20:09;

(2) The owner or operator has submitted a notification to the department of its intentions to initiate construction prior to issuance of the construction permit five working days before initiating construction;

(3) The new source or modification to an existing source is not subject to chapter 74:36:09 or 74:36:10. The provisions in chapter 74:36:09 or 74:36:10 remain applicable until the new source or modification to an existing source legally obtains a construction permit with federally enforceable conditions which limit the sources potential to emit below the applicable thresholds in chapter 74:36:09 or 74:36:10;

(4) The new source or modification to an existing source is not subject to § 74:36:08:03.01. The provisions in § 74:36:08:03.01 remain applicable until the new source or modification to an existing source legally obtains a construction permit with federally enforceable conditions which limit the sources potential to emit below the applicable thresholds in § 74:36:08:03.01;

(5) The owner or operator must assume any liability for construction conducted on a source before the permit is issued;

(6) The owner or operator must cease construction if the department's evaluation demonstrates the construction of the new source or modification to the existing source will interfere with the attainment or maintenance of a national ambient air quality standard or increment.

Source: 37 SDR 182, effective April 20, 2011; 42 SDR 52, effective October 13, 2015.

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

Law Implemented: SDCL 34A-1-21.

74:36:20:03. Construction permit exemption. The following new sources or modifications to an existing source are exempt from obtaining a construction permit:

(1) A new source or modification to an existing source meeting the requirements of chapter 74:36:09;

(2) A new source or modification to an existing source meeting the requirements of chapter 74:36:10;

(3) A new source or modification to an existing source authorized under a general permit; or

(4) A source that meets the exemption requirements of §§ 74:36:04:02.01 and 74:36:05:04.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:04. Emission unit exemptions. The following emission units are exempt from inclusion in a construction permit unless the source has requested federally enforceable permit conditions related to the emission unit to avoid needing a Part 70 operating permit, PSD preconstruction permit, or NSR preconstruction permit or the emission unit is applicable to a standard in chapter 74:36:07 or 74:36:08:

(1) One or more incinerators of less than 100 pounds per hour combined burning capacity that combust municipal or household waste;

(2) A mobile internal combustion engine, including those in autos, trucks, tractors, airplanes, locomotives, and boats;

(3) Laboratory equipment used exclusively for chemical or physical analysis;

(4) A unit that has a heat input capability of not more than 3,500,000 Btus per hour, except for units fueled with wood or coal;

(5) An air conditioning or ventilating system not designed to remove air pollutants from equipment;

(6) Routine housekeeping or plant upkeep activities such as painting buildings, retarring roofs, or paving parking lots;

(7) A unit that has the potential to emit two tons or less per year of any criteria pollutant before the application of control equipment. However, the criteria pollutant emissions from the unit must be included in determining whether the source is required to obtain a construction permit; and

(8) A unit that has the potential to emit two tons or less per year of any hazardous air pollutant before the application of control equipment. However, the hazardous air pollutant emissions from the unit must be included in determining whether the source is required to obtain a construction permit.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:05. Standard for issuance of construction permit. A construction permit for a new source or modification to an existing source may be issued only if it has been shown that the operation of the new source or modification to an existing source will not prevent or interfere with the attainment or maintenance of an applicable national ambient air quality standard. If air pollution dispersion modeling is required, the modeling shall be performed in accordance with the air quality modeling guidance in 40 C.F.R. Part 51, Appendix W (July 1, 2016) and is not affected by stack height that exceeds good engineering practice or by any other dispersion technique as defined in 40 C.F.R. § 51.100 (July 1, 2016). Each new source or modification to an existing source must comply with emission limits and other requirements of the act and the Clean Air Act. The construction permit must include reasonable conditions, including adherence to plans and specifications, to ensure compliance with the act, the Clean Air Act, and any other conditions justified under SDCL 34A-1-19.

Source: 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, 34A-1-19, 34A-1-21.

Law Implemented: SDCL 34A-1-21.

74:36:20:05.01. Procedures for an insignificant increase in allowable emissions. The department shall take the following final action on the proposed insignificant increase in allowable emissions within 90 days after receipt of a complete application for an insignificant increase in allowable emissions:

- (1) Issue the construction permit as proposed;
- (2) Deny the application for a construction permit; or
- (3) Determine the application should be processed as a construction permit following the procedural requirements in §§ 74:36:20:06 to 74:36:20:10, inclusive.

The secretary shall issue the construction permit for an insignificant increase in allowable emissions without the procedural requirements applicable to obtaining a construction permit.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:06. Timely and complete application for a construction permit required. A person who constructs a new source or modification to an existing source required to have a construction permit shall submit a complete application to the department at least 180 days before the estimated date of commencing construction of the new source or modification to an existing source. An application is complete if it meets the requirements in § 74:36:20:07.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:07. Required contents of complete application for a construction permit. An application for a construction permit for a new source or modification must include the following information to be considered a complete application:

- (1) The following general company information:
 - (a) The company name and address or the plant name and address if different from the company name;
 - (b) The owner's name and agent; and
 - (c) The plant site manager or contact;
- (2) A description of the plant and its processes and products;
- (3) The following information on emissions:
 - (a) Identification and description of all emission units;
 - (b) Fuels, fuel use, raw materials, and production rates;
 - (c) Identification and description of air pollution control equipment;
 - (d) Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants;
 - (e) Other information required by any applicable requirements, including information related to stack height limits, such as the location of emission units, flow rates, building dimensions, and stack parameters, including height, diameter, and plume temperature, for all pollutants regulated at the source;
- (4) If available, a copy of any prepared plans and the specifications of any equipment or other facilities that may affect the source, including pollution control devices;
- (5) A signed and notarized certification of applicant form;

- (6) The results of any air dispersion modeling required by the department;
- (7) The results of any stack performance testing required by the department; and
- (8) Any other information requested by the department that is relevant to determining compliance with the act or the Clean Air Act.

The application must be signed by the responsible official or designated representative.

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

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

Law Implemented: SDCL 34A-1-12, 34A-1-21.

74:36:20:08. Applicant required to supplement or correct application. If the applicant is aware that the application is incomplete or that any relevant facts or information contained in an application are incorrect, the applicant shall submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable after the application is filed but before the release of the draft permit.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:09. Permit application -- Completeness review. The department shall conduct a completeness review of each permit application received, as follows:

(1) Within 30 days after submission of an application for a construction permit, the department shall notify the applicant in writing whether or not the application is complete or incomplete. If the department does not notify the applicant that the application is incomplete within 30 days after receipt of the application, the application is considered complete. The department may at any time during the processing of the application request, in writing, additional information necessary to evaluate or take final action on the application;

(2) If the application is incomplete or additional information is necessary to evaluate the application, the department shall identify the items required to complete the application. The applicant has 20 working days after receipt of an incomplete notification or request for additional information to submit the information, unless an extension beyond the 20 working days is approved by the department; and

(3) The department shall determine the adequacy of the applicant's response to each incomplete item within 15 days after receipt of the response and shall notify the applicant in writing if the application is or is not complete.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:10. Time period for department's recommendation. The department shall recommend issuance or denial of a construction permit within 180 days after the submission of a complete application and all other additional information necessary for the department to make an informed decision. A recommendation to issue a permit shall include a draft permit with

appropriate conditions to ensure compliance with the act or the Clean Air Act. Failure of the department to act on an application entitles the applicant to petition for and obtain a contested case review of the application without waiting for a department recommendation. The petition must conform to the requirements of article 74:09.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:11. Public participation in permitting process. The department shall mail a copy of the draft permit to the applicant. The department shall publish a public notice of the draft permit once in a legal newspaper in the county where the source is located. The notice must include a brief statement describing the source and where it is located; the department's recommendation and the reasons for it; the activity or activities involved in the permit action; a statement that a person may submit comments or contest the draft permit within 30 days after the publication of the notice; a description of the procedures a person must follow to contest the draft permit and request a hearing in accordance with article 74:09; and a statement describing where copies of the draft permit or other information may be obtained. The department shall provide to the interested parties a 30-day notice of any hearing to contest a draft permit.

Source: 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013.

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

Law Implemented: SDCL 1-26-27, 34A-1-21.

74:36:20:12. Public review of department's draft permit. During the public comment period, any interested person may submit written comments on the draft permit or request a contested case hearing. All comments shall be considered in making a final permit decision on the draft permit as provided in § 74:36:20:13. A request for a contested case hearing must be in writing and prepared and filed in accordance with article 74:09. The department is not required to accept recommendations or comments that are not based on applicable requirements of this article or the requirements of the Clean Air Act.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:13. Final permit decision -- Notice to interested persons. The department shall make its final permit decision within 30 days of the end of the public comment period on a draft permit. The department shall notify, in writing, the applicant and each person that submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for contesting the final permit decision and requesting a hearing in accordance with article 74:09. For the purpose of this section, the final permit decision means proposing a permit or denying a permit.

The final permit shall be issued within 30 days of notifying the applicant and each person that submitted written comments or requested notification of the final permit decision except under the following conditions:

- (1) A later effective date is specified in the final permit decision;
- (2) A contested case hearing is requested; or

(3) No comments or request for changes in the draft permit were received during the public comment period on the draft permit. In this case, the draft permit automatically becomes the final permit decision and the final permit is issued at the end of the public comment period.

Source: 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013.

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

Law Implemented: SDCL 1-26-27, 1-26-29, 34A-1-21.

74:36:20:14. Right to petition for contested case hearing. The applicant or interested person may petition the board and obtain a contested case hearing to dispute the department's draft permit. Any other person may petition to intervene and request a hearing if the person has an interest affected by the department's draft permit. Such petitions must comply with the provisions of article 74:09 and be received by the department within 30 days after publication of the notice required by § 74:36:20:11.

The applicant or an interested person that comments on the draft permit may petition the board for and obtain a contested case hearing to dispute the department's final permit decision. Such petitions must comply with the provisions of article 74:09 and be received by the department within 30 days after receiving the department's final permit decision.

If the draft permit or the final permit decision is contested, the department shall present the draft permit or final permit decision to the board for action in accordance with article 74:09.

Source: 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013.

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

Law Implemented: SDCL 1-26-27, 1-26-29, 34A-1-21.

74:36:20:15. Contents of construction permit. A construction permit shall include the following:

- (1) The signature of either the secretary or the chairman;
- (2) The name of the person, company, political subdivision, agency, or institution granted a permit;
- (3) The type of operation;
- (4) The facility and mailing address;
- (5) The date the construction permit was granted;
- (6) A number for administrative reference;
- (7) The timeline for submitting a timely and complete application for a minor source operating permit or Part 70 source operating permit;
- (8) A statement granting a construction permit by the board or secretary and any conditions that the board or secretary may impose to ensure compliance with the act and the Clean Air Act;
- (9) Emission limits and standards, including operational requirements and limits for all regulated emission units, necessary to ensure compliance with applicable requirements of the act and the Clean Air Act;
- (10) Monitoring, recordkeeping, and reporting requirements necessary to determine compliance with the construction permit;
- (11) A severability clause to ensure the continued validity of the various permit requirements if any portions of the permit are challenged; and
- (12) Provisions stating the following:

- (a) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action;
- (b) The construction permit does not convey any property rights of any sort or any exclusive privilege; and
- (c) The permittee shall provide any information, including records, requested in writing by the department to determine compliance.

Source: 36 SDR 207, effective June 28, 2010; 39 SDR 219, effective June 25, 2013.

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

Law Implemented: SDCL 34A-1-21.

74:36:20:16. Administrative permit amendment. An administrative permit amendment may be issued for a revision to an operating permit meeting the requirements of § 74:36:01:03. An application for an administrative permit amendment shall contain a description of the change and documentation supporting the applicant's claim that the revision qualifies as an administrative permit amendment.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:17. Procedures for administrative permit amendments. The source may implement a proposed revision that is considered an administrative permit amendment immediately upon notifying the department. The department shall determine whether an administrative permit amendment is applicable to the proposed revision within 15 days of receiving a request for a permit revision. The department shall issue administrative permit amendments without the procedural requirements applicable to obtaining a construction permit.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:18. Reopening construction permit for cause. The department may reopen a construction permit for further review if the department determines that the permit contains a material mistake in establishing the emissions standards or limits or other requirements of the construction permit or the department determines that the construction permit must be revised to ensure compliance with the applicable requirements of this article and the Clean Air Act.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:19. Procedures to reopen construction permit. The department shall notify the source at least 30 days before reopening a construction permit. The department may reopen a permit in a shorter time in an emergency. The procedures to reopen a construction permit shall follow the procedural requirements to issue a construction permit and shall affect only those parts of the permit for which cause to reopen exists.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:20. Construction permit does not exempt from other requirements. The issuance of a construction permit for a new source or modification to an existing source does not exempt the new source or modification to an existing source from obtaining the applicable operating permit pursuant to chapter 74:36:04 or 74:36:05 or from the obligation to comply with the applicable emission limitations or requirements of the Clean Air Act.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:21. Expiration of a construction permit. A construction permit expires if the construction of the new source or modification to an existing source has not commenced within 18 months after the effective date of the construction permit, if construction is discontinued for a period of 18 months or more, or if construction is not completed within ten years of the effective date. If a construction permit expires, the applicant's authority to commence construction or complete construction of the new source or modification to an existing source is terminated.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:20:22. Notice of constructing or operating noncompliance -- Contents. If the department determines that the construction or operation of a source is not in compliance with this article, the Clean Air act, or permit conditions, the department may issue a notice of such a finding to the permit holder or operator of the source. The notice must contain citations to the rules, statutes, or permit conditions violated and the alleged facts upon which the determination is based. The secretary, with the concurrence of the alleged violator, may settle an issue of noncompliance by entering into a compliance agreement with the source that specifies the date for final compliance of the source and any penalties under SDCL 34A-1-39. If a compliance agreement is not negotiated, the department may petition the chairman of the board for a contested case hearing or may file a civil penalty or injunctive action in circuit court.

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

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-20, 34A-1-53.

74:36:20:23. Petition for contested case on alleged violation. In accordance with § 74:36:20:22, the department may file a petition containing the information required in article 74:09 with the chairman to request an order directing corrective action, to request that an enforcement hearing be scheduled pursuant to the provisions of chapter 74:09:01, or to request that the construction permit be suspended or revoked for noncompliance.

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

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-47, 34A-1-49.

74:36:20:24. Circumvention of emissions not allowed. A person may not install or cause the installation or use of a device or a means that conceals or dilutes an emission of air pollutants

that would otherwise violate this article or the Clean Air Act. This includes operating a source, unit, or control device that emits pollutants into the ambient air from an opening other than the stack, vent, or equivalent opening from which they were designed to be emitted.

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

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-18.