

CHAPTER 74:36:04
OPERATING PERMITS FOR MINOR SOURCES

Section
74:36:04:01

Applicability.

74:36:04:02	Minor source operating permit required.
74:36:04:02.01	Minor source operating permit exemption.
74:36:04:03	Emission unit exemptions.
74:36:04:03.01	Repealed.
74:36:04:04	Standard for issuance of a minor source operating permit.
74:36:04:05	Time period for operating permits and renewals.
74:36:04:06	Timely and complete application for operating permit required.
74:36:04:07	Required contents of complete application for operating permit.
74:36:04:08	Applicant required to supplement or correct application.
74:36:04:09	Permit application -- Completeness review.
74:36:04:10	Time period for department's recommendation.
74:36:04:11	Repealed.
74:36:04:12	Public participation in permitting process.
74:36:04:12.01	Public review of department's draft permit.
74:36:04:13	Final permit decision -- Notice to interested persons.
74:36:04:14	Right to petition for contested case hearing.
74:36:04:15	Contents of operating permit.
74:36:04:16	Operating permit expiration.
74:36:04:17	Renewal of operating permit.
74:36:04:18	Operating permit revision.
74:36:04:19	Administrative permit amendment.
74:36:04:20	Procedures for administrative permit amendments.
74:36:04:20.01	Minor permit amendment required.
74:36:04:20.02	Requirements for minor permit amendment.
74:36:04:20.03	Application for minor permit amendment.
74:36:04:20.04	Department deadline to approve minor permit amendment.
74:36:04:21	Permit modifications.
74:36:04:21.01	Alternative permit modification procedure.
74:36:04:22	Source status change -- New permit required.
74:36:04:23	Reopening operating permit for cause.
74:36:04:24	Procedures to reopen operating permit.
74:36:04:25	Repealed.
74:36:04:26	Repealed
74:36:04:27	Operating permit termination, revision, and revocation.
74:36:04:28	Notice of operating noncompliance -- Contents.
74:36:04:29	Petition for contested case on alleged violation.
74:36:04:30	Repealed.
74:36:04:31	Circumvention of emissions not allowed.
74:36:04:32	General permits.
74:36:04:33	Secretary may require an individual permit.

74:36:04:01. Applicability. The requirements of this chapter apply to all minor sources.

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

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

74:36:04:02. Minor source operating permit required. A person may not 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 or minor source operating permit has been issued by the board or the secretary.

Source: 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:03.01, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:08, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:08, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:02.01. Minor source operating permit exemption. The following sources are exempt from obtaining a minor source operating permit:

(1) A source that has the potential to emit 25 tons or less per year of any criteria pollutant, except lead, before the application of control equipment; and

(2) Any other source constructed for domestic purposes and not intended for use by an industry, manufacturer, or business.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:04:03. Emission unit exemptions. The following emission units are exempt from inclusion in a minor source operating 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; and

(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 a minor source.

An emission unit that is exempt from permitting must still meet the visible emission restriction in § 74:36:12:01.

Source: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:16, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:25, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991;

transferred from § 74:26:01:25, 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; 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, 34A-1-21.

Law Implemented: SDCL 34A-1-19, 34A-1-21.

Cross-References: Operating permits for Part 70 sources, ch 74:36:05; Prevention of significant deterioration, ch 74:36:09.

74:36:04:03.01. Minor source operating permit variance. Repealed.

Source: 23 SDR 106, effective December 29, 1996; 31 SDR 101, effective January 2, 2005; 36 SDR 207, effective June 28, 2010; repealed, SL 2013, ch 166, § 15, effective July 1, 2013.

74:36:04:04. Standard for issuance of a minor source operating permit. The minor source operating permit must include reasonable conditions, including adherence to plans and specifications, to assure compliance with the act, the Clean Air Act, and any other conditions justified under SDCL 34A-1-19.

Source: 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:08.02; transferred from § 44:10:01:12, effective July 1, 1981; 10 SDR 68, effective January 5, 1984; 12 SDR 183, effective May 21, 1986; 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 § 74:26:01:12, 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 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, 34A-1-19, 34A-1-21.

Law Implemented: SDCL 34A-1-19, 34A-1-21.

74:36:04:05. Time period for operating permits and renewals. An operating permit for a minor source shall be issued for a period up to five years and all subsequent operating permits shall be for a period of five years.

Source: 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:21.04; transferred from § 44:10:01:32, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:32, 19 SDR 157, effective April 22, 1993; 39 SDR 219, effective June 25, 2013.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:06. Timely and complete application for operating permit required. A person who owns or operates a source required to have a minor source operating permit shall submit a timely and complete application. An application is timely if it meets the time limits specified in this section. An application is complete if it meets the requirements in § 74:36:04:07.

A minor source applying for an initial operating permit shall submit a complete application to the department within 12 months after commencing operation. A minor source applying for a

permit modification shall submit a complete application to the department within 12 months after commencing operation of the emission unit(s) involved with the modification.

A minor source applying for renewal of an operating permit shall submit a complete application 90 days before the date of permit expiration. If an existing source submits a timely and complete application for renewal of an operating permit within this time limit, the source's existing permit does not expire until the renewal permit has been issued or denied. The terms and conditions of the existing permit remain in effect until the renewal permit has been issued or denied.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 30 SDR 26, effective September 1, 2003; 31 SDR 101, effective January 2, 2005; 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.

Note: A minor source applying for an initial operating permit or a permit modification must obtain a construction permit in accordance with chapter 74:36:20 before commencing construction of the source or permit modification.

74:36:04:07. Required contents of complete application for operating permit. An application for an operating permit for a minor source or permit modification must include the following information to be considered a complete application:

- (1) General company information, including the company name and address or the plant name and address if different from the company name, the owner's name and agent, and 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, where 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 emissions units, flow rates, building dimensions, and stack parameters, including height, diameter, and plume temperature, for all pollutants regulated at the source;
- (4) A copy of any prepared plans and the specifications of any equipment or other facilities which may affect the source, including pollution control devices;
- (5) An abatement strategies plan, if required by chapter 74:36:03;
- (6) A signed and notarized certification of applicant form;
- (7) The results of any air dispersion modeling required by the department;
- (8) The results of any stack performance testing required by the department;
- (9) Any other information requested by the department which 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. An application for the renewal of an operating permit may refer to a previously submitted application if there are no operational changes.

Source: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from §§ 34:10:01:04.01, 34:10:01:06, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:09, effective July 1, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:09, 19 SDR 157, effective April 22, 1993; 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.

74:36:04:08. 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 prior to the release of the draft permit.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995.

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

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

74:36:04:09. 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 an initial operating permit, a permit modification, or a renewal of an operating permit for a minor source, 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: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:10. Time period for department's recommendation. The department shall recommend issuance or denial of an operating permit, a permit modification, or a renewal for an operating permit for a minor source within 90 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 and 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: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from §§ 34:10:01:08.01, 34:10:01:11, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:11, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:11, 19 SDR 157, effective April 22, 1993; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:11. Department's recommendation on operating permit. Repealed.

Source: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from §§ 34:10:01:02, 34:10:01:22.02, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:36, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:36, 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; repealed, 36 SDR 207, effective June 28, 2010.

74:36:04:12. Public participation in permitting process. The department shall mail a copy of the draft permit for a minor source 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; the emissions change involved in any permit modification; a statement that a person may submit comments or contest the draft permit within 30 days after the publication of the notice; describe 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: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from §§ 34:10:01:02, 34:10:01:22.03, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:37, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:37, 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; 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.

74:36:04:12.01. 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 will be considered in making a final permit decision on the draft permit as provided in § 74:36:04:13. 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: 25 SDR 123, effective April 4, 1999; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21

74:36:04:13. 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, denying a permit, or terminating a permit.

The final permit will 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 notice 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 notice period.

Source: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from §§ 34:10:01:02, 34:10:01:22.04, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:38, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:38, 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; 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.

74:36:04:14. 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 § 74:36:04:12.

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: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from §§ 34:10:01:02, 34:10:01:22.05, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:39, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; transferred from § 74:26:01:39, 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; 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.

74:36:04:15. Contents of operating permit. An operating permit for a minor source 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 operating permit was granted and on which it will expire;
- (6) A number for administrative reference;
- (7) The name of a designated person or officer responsible for the source's operation;
- (8) A statement granting an operating 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 assure compliance with applicable requirements of the act and the Clean Air Act;
- (10) Monitoring and related record keeping and reporting requirements;
- (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, permit termination, revocation and reissuance, permit revision, or denial of a permit renewal application;
 - (b) The operating permit may be revised, revoked and reissued, reopened, or terminated for cause;
 - (c) The operating permit does not convey any property rights of any sort or any exclusive privilege; and
 - (d) The permittee shall provide any information, including records, requested in writing by the department to determine whether cause exists for revising, revoking and reissuing, reopening, or terminating the permit or to determine compliance.

Source: 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:22.10, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:44, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 17 SDR 170, effective May 13, 1991; transferred from § 74:26:01:44, 19 SDR 157, effective April 22, 1993; 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.

74:36:04:16. Operating permit expiration. Operating permit expiration terminates the source's right to operate under the minor source operating permit unless a timely and complete renewal application has been submitted to the department.

Source: 19 SDR 157, effective April 22, 1993; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:17. Renewal of operating permit. Permits being renewed are subject to the same procedural requirements in §§ 74:36:04:06 to 74:36:04:14, inclusive, as the original minor source operating permit issuance.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:18. Operating permit revision. An operating permit for a minor source may be revised at any time by the submittal of an application. The application must specify whether the requested revision is an administrative permit amendment, minor permit amendment, or a permit modification with supporting documentation. The application must contain the necessary information required for an administrative permit amendment, minor permit amendment, or permit modification.

Source: 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:19. 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 the revision qualifies as an administrative permit amendment.

Source: 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:20. 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 permit modification.

Source: 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:20.01. Minor permit amendment required. A minor permit amendment is an amendment to an existing minor source operating permit and is issued by the secretary. A source may request a minor permit amendment under §§ 74:36:04:20.02 to 74:36:04:20.04, inclusive, for a change that does not constitute a modification and is not prohibited under any applicable requirement under Title I of the Clean Air Act.

Source: 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; 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.

74:36:04:20.02. Requirements for minor permit amendment. A minor permit amendment may be issued by the secretary if the proposed revision meets the following requirements:

- (1) It does not violate any applicable requirement;
- (2) It does not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit;
- (3) It does not require or change 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;
- (4) It does not seek to establish or change a permit term or condition for which there is no 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; and
- (5) It does not constitute a modification under Title I of the Clean Air Act.

Source: 21 SDR 119, effective January 5, 1995.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:20.03. Application for minor permit amendment. An application for a minor permit amendment shall include the following:

- (1) A description of the proposed change, the resulting change in emissions, and any new applicable requirements;
- (2) The source's suggested draft permit; and
- (3) Certification by a responsible official that the proposed revision meets the applicable requirements of a minor permit amendment.

Source: 21 SDR 119, effective January 5, 1995.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:20.04. Department deadline to approve minor permit amendment. The department shall take the following final action on a proposed minor permit amendment within 90 days after receipt of a complete application for the amendment:

- (1) Issue the minor permit amendment as proposed;
- (2) Deny the minor permit amendment application; or
- (3) Determine that the requested minor permit amendment should be processed as a permit modification.

The source may implement a proposed revision that is considered a minor permit amendment seven days after submitting a complete application. The secretary shall issue minor permit amendments without the procedural requirements applicable to obtaining a permit modification.

Source: 21 SDR 119, effective January 5, 1995; 25 SDR 123, effective April 4, 1999; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:21. Permit modifications. Permit modifications are subject to the same procedural requirements in §§ 74:36:04:06 to 74:36:04:14, inclusive, as the original operating permit issuance as long as the source remains a minor source. However, the required review shall cover only the proposed changes rather than the unchanged activities of the permittee.

Source: 19 SDR 157, effective April 22, 1993; 21 SDR 119, effective January 5, 1995.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:21.01. 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 the permit revision:

- (1) Issue the permit revision as proposed;
- (2) Deny the application for a permit revision; or
- (3) Determine the requested permit revision should be processed as a permit modification.

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

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

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

Law Implemented: SDCL 34A-1-21.

74:36:04:22. Source status change -- New permit required. If a minor source becomes a Part 70 source because of a relaxation in a federally enforceable limit on the capacity of the source or modification as defined in § 74:36:01:10, the requirements of chapter 74:36:05 apply to that source as though it were a single new source and the owner or operator shall obtain the applicable permit.

Source: 12 SDR 183, effective May 21, 1986; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:02.02, 19 SDR 157, effective April 22, 1993; 25 SDR 123, effective April 4, 1999.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

74:36:04:23. Reopening operating permit for cause. The department may reopen an operating 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 operating permit or the department determines that the operating permit must be revised to ensure compliance with the applicable requirements of this article and the Clean Air Act.

Source: 19 SDR 157, effective April 22, 1993; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:24. Procedures to reopen operating permit. The department shall notify the source at least 30 days before reopening an operating permit issued to the source. The department may reopen a permit in a shorter time in an emergency. The procedures to reopen an operating permit shall follow the procedural requirements to issue an initial permit and shall affect only those parts of the permit for which cause to reopen exists.

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

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

Law Implemented: SDCL 34A-1-21.

74:36:04:25. General permit. Repealed.

Source: 19 SDR 157, effective April 22, 1993; repealed, 23 SDR 106, effective December 29, 1996.

74:36:04:26. General permit -- Notice of intent. Repealed.

Source: 19 SDR 157, effective April 22, 1993; repealed, 23 SDR 106, effective December 29, 1996.

74:36:04:27. Operating permit termination, revision, and revocation. The board, upon recommendation by the secretary, may terminate, revise, or revoke an operating permit for a violation of this article or nonpayment of any outstanding enforcement penalty.

Source: 19 SDR 157, effective April 22, 1993; 36 SDR 207, effective June 28, 2010.

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

Law Implemented: SDCL 34A-1-21.

74:36:04:28. Notice of operating noncompliance -- Contents. If the department determines that the 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 can not be 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: 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:39, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:47, effective July 1, 1981; 10 SDR 68, effective January 5, 1984; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:47, 19 SDR 157, effective April 22, 1993.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 1-26-20, 34A-1-53.

74:36:04:29. Petition for contested case on alleged violation. In accordance with § 74:36:04:28, the department may file a petition containing the information required in article 74:09 with the chairman to request an order directing corrective action, that an enforcement hearing be scheduled pursuant to the provisions of chapter 74:09:01, or that the permit be suspended or revoked for noncompliance.

Source: 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:40, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:48, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; transferred from § 74:26:01:48, 19 SDR 157, effective April 22, 1993.

General Authority: SDCL 34A-1-6.

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

74:36:04:30. Stack performance tests required. Repealed.

Source: 19 SDR 157, effective April 22, 1993; repealed, 23 SDR 106, effective December 29, 1996.

74:36:04:31. Circumvention of emissions not allowed. A person may not install or cause the installation or use of a device or a means which 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 which 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: SL 1975, ch 16, § 1; 2 SDR 40, effective December 7, 1975; transferred from § 34:10:01:03, 7 SDR 4, effective July 27, 1980; transferred from § 44:10:01:07, effective July 1, 1981; 13 SDR 129, 13 SDR 141, effective July 1, 1987; transferred from § 74:26:01:07, 19 SDR 157, effective April 22, 1993.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-18.

74:36:04:32. General permits. The secretary may issue a general permit to a category of air pollution sources that meets the following:

- (1) Involve the same or substantially similar types of operations;
- (2) Require the same or similar type of air emission limits; and
- (3) Require the same or similar record keeping and monitoring.

If a general permit has been issued by the secretary, all sources covered by the general permit shall apply for permission to operate under the general permit. Such sources may not be constructed or operate until they are granted coverage under the general permit, or until they obtain an individual permit if required by the secretary.

Source: 30 SDR 26, effective September 1, 2003; 36 SDR 207, effective June 28, 2010.

General Authority: SDCL 34A-1-21.

Law Implemented: SDCL 34A-1-56.

Note: The procedural requirements for obtaining a general permit under this chapter are similar to the procedural requirements for a minor source, such as a timely and complete application, completeness review, public participation, and departmental recommendation, as outlined in §§ 74:36:04:06 to 74:36:04:14, inclusive.

74:36:04:33. Secretary may require an individual permit. The secretary may require any source applying for a general permit or operating under a general permit to apply for and obtain an individual air quality permit. Individual air quality permits may be required at the discretion of the secretary, including under the following circumstances;

- (1) The owner or operator is not in compliance with the conditions of its existing individual air permit prior to applying for the general permit; or
- (2) The owner or operator is not in compliance with the conditions of the general permit.

Source: 30 SDR 26, effective September 1, 2003.

General Authority: SDCL 34A-1-21.

Law Implemented: SDCL 34A-1-56.