

CHAPTER 74:36:09

PREVENTION OF SIGNIFICANT DETERIORATION

Section

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74:36:09:01. Applicability. This chapter applies to all areas of the state which are designated attainment or unclassifiable pursuant to § 107(d)(1)(A)(ii) and (iii) of the Clean Air Act.

Source: 19 SDR 157, effective April 22, 1993; 33 SDR 43, effective September 18, 2006.

General Authority: SDCL 34A-1-6, 34A-1-18.

Law Implemented: SDCL 34A-1-18.

74:36:09:01.01. Prevention of significant deterioration permit required. New major stationary sources or major modifications to existing major stationary sources that locate in an attainment or unclassified area must obtain a prevention of significant deterioration permit prior to beginning actual construction.

Source: 30 SDR 26, effective September 1, 2003; 33 SDR 43, effective September 18, 2006.

General Authority: SDCL 34A-1-6, 34A-1-18.

Law Implemented: SDCL 34A-1-18.

74:36:09:02. Prevention of significant deterioration. For the purposes of this chapter, the state's definitions and requirements for the prevention of significant deterioration are those in 40 C.F.R. § 52.21 (July 1, 2016), except for 40 C.F.R. § 52.21(a)(1), (a)(2)(iv)(e), (b)(2)(iii)(h), (b)(3)(iii)(b), (b)(32), (b)(42), (b)(49)(v), (b)(55), (b)(56), (b)(57), (b)(58), (f), (k)(2), (q), (s), (t), (u), (x), (y), (z), and (cc) (July 1, 2016) with the following differences:

(1) For the purposes of this section, all terms defined in this section have the meaning defined in 40 C.F.R. § 52.21, except for the term "administrator" which means the secretary with the following exceptions:

(a) In 40 C.F.R. §§ 52.21(b)(3)(iii) and 52.21(b)(37)(iii), the term "administrator" means either the secretary or the administrator of EPA, as applicable;

(b) In 40 C.F.R. §§ 52.21(w)(2) to 52.21(w)(4), inclusive, the term "administrator" means either the secretary or the administrator of EPA, as applicable;

(c) In 40 C.F.R. §§ 52.21(b)(17); 52.21(b)(37)(i); 52.21(b)(43); 52.21(b)(48)(ii)(c); 52.21(b)(50)(i); 52.21(g)(1) to 52.21(g)(6), inclusive; 52.21(l)(2); and 52.21(p)(2) the term "administrator" means the administrator of EPA;

(2) For the purposes of this section, the term "Act" means the Clean Air Act;

(3) For the purposes of this section, in 40 C.F.R. § 52.21(c), the Class I areas in South Dakota are Wind Cave National Park and the Badlands National Park;

(4) For the purposes of this section, 40 C.F.R. § 52.21(b)(2)(iii)(a) is incorporated by reference excluding the second sentence which states, "Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section";

(5) For the purposes of this section, 40 C.F.R. § 52.21(v)(1) is incorporated by reference excluding the phrase, "under 40 CFR 124.10";

(6) For the purposes of this section, 40 C.F.R. § 52.21(w)(1) through (w)(3), inclusive, is incorporated by reference as amended and published in 81 Fed. Reg. 78048 (November 7, 2016);

(7) For the purposes of this section, 40 C.F.R. § 52.21(b)(49)(i) is incorporated by reference excluding the phrase, "through (v)";

(8) For the purposes of this section, 40 C.F.R. § 52.21(b)(49)(ii), the term "(b)(49)(iii) through (v)" means "(b)(49)(iii) through (iv)";

(9) For the purposes of this section, 40 C.F.R. § 52.21 (b)(49)(iii) is incorporated by reference excluding the phrase, "through (v)"; and

(10) For the purposes of this section, 40 C.F.R. § 52.21(b)(49)(iv)(b), the term "also will have an emissions increase of a regulated NSR pollutant" means "also will have a major modification of a regulated NSR pollutant that is not GHGs".

The secretary shall transmit to the administrator of the EPA a copy of each permit application subject to this section and shall notify the administrator of the EPA of each significant action the secretary takes on the application.

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; 33 SDR 43, effective September 18, 2006; 33 SDR 217, effective June 13, 2007; 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, 34A-1-18.

Law Implemented: SDCL 34A-1-18.

74:36:09:03. Public participation. For the purposes of this chapter, the state's public participation procedures are those in 40 C.F.R. § 51.166(q) (July 1, 2016), excluding the phrase "The plan shall provide that..." with the following differences:

(1) For the purposes of this section, in 40 C.F.R. § 52.166(q) the phrase "reviewing authority" means the secretary;

(2) For the purposes of this section, in 40 C.F.R. § 51.166(q)(1) the phrase "specified time period" means 60 days;

(3) For the purposes of this section, in 40 C.F.R. § 51.166(q)(2)(iv), the term "administrator" means the administrator of EPA;

(4) For the purposes of this section, in 40 C.F.R. § 51.166(q)(2)(iii), the phrase "Notify the public" shall consist of a public notice once in a legal newspaper in the county where the proposed source would be constructed. The public notice shall include a statement that a person may submit comments or contest the draft permit within 30 days after the publication of the notice. The statement shall also describe the procedures a person must follow to contest the draft permit and request a hearing in accordance with article 74:09;

(5) For the purposes of this section, in 40 C.F.R. § 51.166(q)(2)(v), a public hearing is required if a person contests the draft permit or contests the secretary's final determination and requests a hearing in accordance with article 74:09; and

(6) For the purposes of this section, in 40 C.F.R. § 51.166(q)(2)(viii), if a request for a contested case hearing is not submitted during the public notice period, the secretary shall make a final determination within 30 days of the end of the public comment period on the draft permit.

The secretary shall notify, in writing, the applicant and each person that submitted written comments or requested notice of the final determination. The notice shall include reference to the procedures for contesting the final determination and requesting a hearing in accordance with article 74:09 within 30 days of receiving the secretary's final determination. If no person comments on a draft permit, requests changes, or contests the draft permit during the public notice period, the draft permit automatically becomes the secretary's final determination and is issued at the end of the public notice period.

Source: 33 SDR 43, effective September 18, 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-1-18.

Law Implemented: SDCL 34A-1-18.