SOUTH DAKOTA
Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

The South Dakota water pollution control law prohibits discharges of waste that result in water quality violations, and the placement of wastes in locations where they are likely to cause pollution.

- No person may discharge any wastes into any waters of the state which reduce the quality of such waters below the water quality level existing on March 27, 1973, or place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. "Wastes" are defined as "sewage, industrial wastes, pollutants and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state."

The statute does not limit "discharge" to point sources, but the regulations provide permits only for point source discharges, and expressly exclude from permitting requirements nonpoint discharges from agriculture. This exclusion from permitting does not address the "place or cause to be placed" language of the statute.

The water management board is required to promulgate rules to establish water quality standards and classify water according to its beneficial uses. The standards must protect public health, use of waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes and agricultural, industrial, and other legitimate uses. Discharge of wastes is allowed when it is demonstrated to the water management board, after a hearing, that there may be a discharge that will not result in the violation of applicable water standards and that is justifiable as a result of "necessary economic or social development." The water management board may not allow a discharge if the discharge results in a violation of the existing water standards. The state’s antidegradation policy provides that regulatory requirements are to be achieved for point sources and that nonpoint sources are to be "controlled through cost-effective and reasonable best management practices."

The water management board may issue an order for a violation of the water quality law or any rule or permit issued under it. Violations may be abated as a public nuisance, and the department of water and natural resources also may bring an action for an injunction against the continuation of any threatened or actual violation or any final order of the secretary or the water management board. In addition to or instead of issuing an order, the board or secretary may initiate an appropriate action for recovery of penalties. Any person who violates an order is liable for a civil penalty not to exceed $10,000 or for damages to the environment, or both. Criminal violations are Class 1 misdemeanors subject to a fine not to exceed $10,000 and/or a sentence of up to one year imprisonment.
Other Discharge Limitations

- In addition to the prohibition in the water quality law, no person may dispose of or place solid waste in state waters without authorization.15 “Solid waste” is defined as "any garbage, refuse, sludge from a waste treatment plant and other discarded materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and agricultural operations."16 However, the solid waste statute may not be construed to prohibit a farmer or rancher from disposing of solid waste from normal farming operations or ordinary domestic activities upon his own land, provided such disposal does not create a nuisance or a hazard to public health, does not violate a local ordinance, will not unlawfully pollute ground or surface waters or does not violate the chapter.17

Suspected violations of this chapter may be addressed by notice, proposed corrective action, an administrative hearing, or suit for an injunction.18 A violation is a Class 2 misdemeanor, and the violator is also subject to a civil action for recovery of penalties of not more than $10,000 per day per violation, for damages to compensate the state for impairment of the environment, or both.19 Actions for civil penalties or damages shall, upon demand, be tried by a jury.

- The South Dakota Code defines a nuisance as, among other things, unlawfully doing an act which annoys, injures, or endangers the comfort, repose, health, or safety of others, or in any way renders other persons insecure in life or in the use of property.20 Water pollution has been held to be a nuisance in specific cases.21 Remedies for a nuisance include injunction, damages, abatement and, in cases of public nuisance, indictment or information as prescribed by statute.22 By statute, no agricultural operation may be deemed a nuisance if it has been in operation for more than one year and was not a nuisance at the time that operation began, unless the nuisance results from negligent or improper operation.23 However, this exemption does not apply to actions to recover damages for any injuries sustained as a result of pollution or other change in the quantity or quality of water, or as a result of any overflow of land.24

- In addition, boards of county commissioners have power to enact ordinances to regulate and prevent the placing of ashes, dirt, garbage or any offensive matter in any body or stream of water within the county (as long as it is outside of an incorporated municipality).25 They also have the power to enact ordinances to regulate and compel the cleansing, abatement or removal of any sewer, cesspool, or any "unwholesome or nauseous thing or place."26 Municipalities have similar powers within their jurisdictions.27 If there is a violation or threatened violation of an ordinance, a board of county commissioners may institute an appropriate action to seek an injunction, to be brought by the state’s attorney.28 Counties and municipalities also may use their authority to enforce ordinances with fines not to exceed $200, imprisonment not to exceed 30 days, or both.29

Fish/Fisheries Laws

- The fish and wildlife code makes it a Class 1 misdemeanor to empty or place any sawdust, manure, refuse matter, sedimentary materials, pollutants or chemicals of any kind in the waters of the state containing fish and wildlife, or to deposit the same
within such distance that it may be carried into such waters by natural causes, except as expressly permitted. A knowing or willful violator is liable to compensate the department of game, fish and parks for restoration of losses. However, liability may not be imposed upon an agricultural producer if the fish or wildlife kill occurred as a result of normal farming practices. Enforcement is the responsibility of the department of game, fish and parks, as well as the state’s attorney, sheriff, constables and other peace officers.

OPERATIONAL REQUIREMENTS

Forestry Requirements

State forestry laws do not appear to contain enforceable provisions relating to nonpoint source discharges.

Agriculture Requirements

- Soil conservation districts may be organized upon petition of ten percent of the voters in a territory. Districts may adopt conservation standards for the control of erosion and sediment resulting from land-disturbing activities. "Land-disturbing activity" is defined as "any clearing, tilling, grazing, grading, excavating, transporting and filling of land, and the implementation of silviculture activities resulting in soil erosion from water or wind and the movement of sediments into any and all waters of the state." Districts may also designate "fragile land" areas where the land is so erosive as to cause a public hazard when converted to cropland use.

If conservation standards are adopted, each permit-issuing agency must include those provisions in its permit procedure for activities within the district to ensure compliance with the standards. However, no person engaging in land-disturbing activities is required to prepare a plan, file an application or otherwise report these activities directly to the conservation district, unless the conservation district determines that an activity is violating adopted standards, in which case the land disturber shall be required to prepare an erosion and sediment control plan and have it approved by the district.

Any person adversely affected by land-disturbing activities may file a petition alleging a violation of the chapter with the conservation district or the permit-issuing agency. The "petitioned agency" shall investigate and "take appropriate action and advise the petitioner of its disposition of his petition." Any person who intentionally refuses or fails to comply with the action directed by the petitioned agency may lose eligibility for financial assistance from any state agency or political subdivision involved in natural resources. Either a permit-issuing authority or a soil conservation district may, upon petition or upon its own volition, in the enforcement of its orders, commence an action in circuit court for an injunction or other relief to enforce the provisions of the chapter.

- The pesticide law provides that "no person may transport, store, use, dispose of or handle any pesticide, pesticide container, rinsate or application equipment in such a manner as to endanger or cause injury to humans, vegetation, crops, livestock, wildlife
or beneficial insects or to pollute the groundwater or surface water.\textsuperscript{43} The secretary of agriculture may promulgate rules governing these activities, and commercial pesticide applicators are required to obtain a license.\textsuperscript{44} Violation of the rules or the license requirement is subject to a civil penalty not to exceed $5000 per violation, and applying pesticides without a license is a Class 2 criminal misdemeanor.\textsuperscript{45} The secretary of agriculture also may bring an action to enjoin violation of the chapter.\textsuperscript{46}

- The water management board is required to promulgate rules for chemigation equipment standards, performance standards and installation requirements and for requirements regarding the use and location of antipollution devices.\textsuperscript{47} Failure to comply with the board’s rules is a Class 2 misdemeanor; in addition, a civil fine of not more than $500 may be imposed.\textsuperscript{48}

- Counties and municipalities may adopt ordinances for the purpose of protecting public groundwater supplies from pollution.\textsuperscript{49} The ordinances must be consistent with the voluntary wellhead protection strategies and guidelines established under the federal Safe Drinking Water Act,\textsuperscript{50} and may include ordinances to: 1) establish wellhead protection areas; 2) zone for the purpose of protecting such areas from pollution; 3) monitor and regulate activities and sources of potential or actual pollution within the areas; and 4) provide for the containment and cleanup of pollution or other remedial action.\textsuperscript{51} If there is a violation or threatened violation of an ordinance, a board of county commissioners may institute an appropriate action to seek an injunction, to be brought by the state’s attorney.\textsuperscript{52} County and municipal governments also may use their general authority to enforce ordinances with fines not to exceed $200, imprisonment not to exceed 30 days, or both.\textsuperscript{53}

- A new provision prohibits confined animal feeding operations built after July 1, 1997 from being located over a shallow aquifer unless a groundwater discharge permit has been approved.\textsuperscript{54}

**Development and Other Earth-Disturbing Activities**

Apart from any programs for the control of urban stormwater under the federal Clean Water Act or that may be authorized by general land use regulation such as zoning, state law provides the following authorities.

- As noted above, counties and municipalities may adopt ordinances for the purpose of protecting public groundwater supplies from pollution.\textsuperscript{55} The ordinances must be consistent with the voluntary wellhead protection strategies and guidelines established under the federal Safe Drinking Water Act,\textsuperscript{56} and may include ordinances to: 1) establish wellhead protection areas; 2) zone for the purpose of protecting such areas from pollution; 3) monitor and regulate activities and sources of potential or actual pollution within the areas; and 4) provide for the containment and cleanup of pollution or other remedial action.\textsuperscript{57} If there is a violation or threatened violation of an ordinance, a board of county commissioners may institute an appropriate action to seek an injunction, to be brought by the state’s attorney.\textsuperscript{58} County and municipal governments also may use their general authority to enforce ordinances with fines not to exceed $200, imprisonment not to exceed 30 days, or both.\textsuperscript{59}
Endnotes
4. S.D. Code Reg. 74:03:17:01-03.
5. S.D. Code Reg. 74:03:17:03.01.
15. S.D. Codified Laws Ann. § 34A-6-1.4.
16. S.D. Codified Laws Ann. § 34A-6-1.3.
17. S.D. Codified Laws Ann. § 34A-6-1.4.
18. S.D. Codified Laws Ann. §§ 34A-6-1.22, -1.24, -1.29.
23. S.D. Codified Laws Ann. § 21-10-25.2. "Agricultural operation" is defined as a facility used in the production or processing for commercial purposes of crops, timber, livestock, swine, poultry, livestock products, swine products or poultry products.
34. S.D. Codified Laws Ann. § 38-8-1.
See S.D. Codified Laws Ann. §§ 34A-3A-17, 34A-2-103 et seq. These provisions include a directive that the secretary of environment and natural resources "periodically review and revise the groundwater protection strategy to reflect additional knowledge concerning the extent of groundwater contamination from fertilizers, pesticides, petroleum products, and other pollutants, nonpoint sources of groundwater pollution, any practices or sources which may contribute to contamination of groundwater from both point and nonpoint sources, ...." S.D. Codified Laws Ann. § 34A-2-106.

11 S.D. Codified Laws Ann. § 11-2-34.
15 See S.D. Codified Laws Ann. §§ 34A-3A-17, 34A-2-103 et seq.
17 S.D. Codified Laws Ann. § 11-2-34.