

AIR POLLUTION CONTROL

three newspapers of general circulation in this state. If an affected facility or interested party wishes to contest the order, a request for hearing shall be filed with the department within twenty days. A hearing on the matter shall be held as soon thereafter as practicable. Notice of hearing shall be published in at least three newspapers of general circulation in this state. Any facility operating under a general permit pursuant to this section, upon the filing of a complaint to the board, and upon action by the board in accordance with the contested case provisions of chapter 1-26, may be removed from the jurisdiction of the general permit and required to obtain an individual permit.

A violation of a condition of a permit issued pursuant to this section, or the operation of a rock crusher, grain elevator or ready mix concrete plant covered by this section without a permit is subject to § 34A-1-39.

34A-1-57. State administration of air pollution control program -- Imposition of fees. In order to enhance economic development, provide increased customer service, protect the public health, safety, welfare and the environment of this state, the state shall retain state administration of the air pollution control program as provided under title V of the Federal Clean Air Act as amended to January 1, 1992. In order to retain state administration of this program, as provided in the Clean Air Act, fees shall be imposed upon certain air pollution point sources as provided in §34A-3A-20. Proceeds from the fees shall be used to defray the costs of administering the state's air quality permitting program.

34A-1-58. (Effective July 1, 1993 Annual fee -- Calculation --) Annual adjustment of fee -- Use of proceeds -- Existing sources of pollution -- Written notice from department. Concurrent with the submittal of a permit application pursuant to this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee not to exceed twenty-five dollars per ton of each regulated pollutant as determined by the provisions of title V of the Federal Clean Air Act, 42 U.S.C. 7401 et seq. as amended to January 1, 1992, or a lesser amount as set by the secretary by rules promulgated pursuant to chapter 1-26. The secretary may exclude any amount of regulated pollutant emitted by any source in excess of four thousand tons per year in determining the amount of fee required for any operating source. The secretary shall develop a fee structure which equitably assesses an annual fee for administration costs and an annual fee based on emissions, the sum of which covers the estimated total costs of administering a delegated state air quality program. The secretary shall, by rules promulgated pursuant to chapter 1-26, annually adjust the fee, if necessary, in accordance with the consumer price index for that calendar year. The fee shall be used to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

- (1) Reviewing and acting on any application for a permit or permit revision;
- (2) Implementing and enforcing the terms and conditions of the permit if the permit is issued. This amount does not include any court costs or other costs associated with any enforcement action;

SOUTH DAKOTA CODIFIED LAWS

- (3) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;
- (4) Preparing generally applicable regulations or guidance;
- (5) Modeling, analysis or demonstrations;
- (6) Preparing inventories and tracking emissions; and
- (7) Providing support to sources under the small business stationary source technical and environmental compliance assistance program.

For any existing source of air contaminants that is subject to title V of the Federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended to January 1, 1992, and that is not required to hold an air quality permit from the department as of January 1, 1992, the board may, as a condition of continued operation, require by rules promulgated pursuant to chapter 1-26 that the owner or operator of the source pay the annual fee provided for in this section. Nothing in this section allows the department to charge any one source of air contaminants more than one annual fee that is designed to cover the costs identified in this section. The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment under this section to the owner or operator of the air contaminant source. The fee levied in this section is in addition to all other fees and taxes levied by law.

34A-1-59. (Effective July 1, 1993 Establishment of air quality) subfund -- Source of subfund -- Administration -- Expenditures -- Unexpended funds. There is hereby established in the environmental fee fund created in § 1-40-30, the air quality subfund. This subfund shall consist of moneys from public and private sources including legislative appropriations, federal grants, gifts and fees received pursuant to § 34A-1-58. The subfund shall be maintained separately and be administered by the department in order to defray the expenses of all activities associated with administering the air quality permit program. Expenditures from the subfund shall be appropriated through the normal budget process. Unexpended funds and interest shall remain in the subfund until appropriated by the Legislature.

34A-1-60. (Effective July 1, 1993 Obligation to pay fee imposed) on regular air contaminant -- Date due. The obligation to pay the annual fee imposed by § 34A-1-58 is upon the owner or operator of a regulated air contaminant source and shall accrue on July first for all privately-owned facilities. The fee is due and payable by July thirty-first and shall be remitted to the department of revenue along with such forms as may be prescribed by the secretary of revenue in rules promulgated pursuant to chapter 1-26.

34A-1-61. Permit revocation, modification or suspension -- Fees. Any permit issued pursuant to this chapter may be revoked, modified or suspended, in whole or in part, during its term for cause, including the following:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or