

LEGAL AUTHORITY

The following shows the Federal requirements for legal authority and the sections of South Dakota Law that fulfill these requirements. A copy of the State Law and the Federal Clean Air Act is included in Appendix A.

§ 420.11 LEGAL AUTHORITY. (FEDERAL REGISTER REQUIREMENTS)

(a) EACH PLAN SHALL SHOW THAT THE STATE HAS LEGAL AUTHORITY TO CARRY OUT THE PLAN, INCLUDING AUTHORITY TO:

(1) ADOPT EMISSIONS STANDARDS AND LIMITATIONS AND ANY OTHER MEASURES NECESSARY FOR ATTAINMENT AND MAINTENANCE OF NATIONAL STANDARDS.

SDCL 1967, Chapter 34-16A

34-16A-11. Enforcement of chapter. -- The authority for enforcement of the provisions of this chapter shall be vested in the commission. The air pollution control commission may upon its own initiative cause to be investigated the alleged pollution of the air or any other violation of this chapter including the violation of any regulations issued pursuant to this chapter, or such investigation shall be made upon the written petition of the governing body of any municipality or any city or county board of health or any one elector of the state.

34-16A-12. Rules and regulations. -- In addition to any other powers conferred on it by law the commission shall have power to adopt, amend and repeal rules and regulations implementing and consistent with this chapter.

34-16A-22. Establishment of ambient air quality standards. -- In addition to any other powers conferred on it by law the commission shall have power to establish ambient air quality standards for the state as a whole or for any part thereof.

34-16A-24. Establishment of emission control and open burning requirements-- Nonconformance as violation. -- The commission may for the purpose of controlling pollution establish emission control requirements, and requirements for open burning including appropriate prohibition thereof. Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement if force pursuant to this section shall constitute a violation of this chapter.

34-16A-29. Particular fuels not to be specified. -- Nothing in this chapter shall be construed to authorize the commission, director, or agency to specify the kind or composition of fuels permitted to be sold, stored or used.

Comments: This chapter contains several generalized powers and duties of the Commission which also could be related to "attainment and maintenance of national

ambient air quality standards." (See 34-16A-7, 8, 9, 14, 16, 17, 18, 19, e'

Proposed amendments to SDCL 1967, Chapter 34-16A:

Suggest repeal of 34-16A-29 and amendment of 34-16A-16 to read as follows:

(((5) Specify the kind or composition of fuels permitted to be sold, stored or used within the state.)))

Suggest amendment of 34-16A-2 (2) to read as follows:

(2) "Air pollution" means the presence in the outdoor air of one or more air contaminants in such quantities and duration as is or tend to be ((unreasonably)) injurious to human health or welfare, animals or plant life or property or would ((unreasonably)) interfere with the enjoyment of life or property.

(2) ENFORCE APPLICABLE LAWS, REGULATIONS, AND STANDARDS, AND SEEK INJUNCTIVE RELIEF. (FEDERAL REGISTER REQUIREMENTS)

SDCL 1967, Chapter 34-16A

34-16A-11. Enforcement of chapter. -- The authority for enforcement of the provisions of this chapter shall be vested in the commission. The air pollution control commission may upon its own initiative cause to be investigated the alleged pollution of the air or any other violation of this chapter including the violation of any regulations issued pursuant to this chapter or such investigation shall be made upon the written petition of the governing body of any municipality or any city or county board of health or any one elector of the state.

34-16A-49. Issuance and enforcement of orders. -- In addition to any other powers conferred on it by law the commission shall have power to issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.

34-16A-50. Emergency order for immediate reduction or discontinuance of emissions. -- Any other provisions of law to the contrary notwithstanding, if the director finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the director shall order such person or persons to reduce or discontinue immediately the emission of air contaminants. Such emergency order shall become effective immediately on service upon person or persons responsible therefor and any person to whom such an order is directed shall comply therewith immediately.

34-16A-52. Other emergency powers unimpaired. -- Nothing in § 34-16A-50 to § 34-16A-51 shall be construed to limit any power which the director or any other officer of the agency may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

34-16A-53. Notice of violation -- Order for corrective action included. -- Whenever the commission has reason to believe that a violation of any provision of this chapter or rule or regulation pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time.

34-16A-57. Commission orders after hearing. -- If, after a hearing held pursuant to § 34-16A-54 or § 34-16A-55, the commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions or air pollution involved. If, after hearing on an order contained in a notice the commission finds that no violation is occurring, it shall rescind the order.

34-16A-58. Time allowed for corrective action in commission order. -- Any order issued as part of a notice or after hearing shall prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the emissions of air pollution.

34-16A-59. Enforcement remedies not barred by actions for penalties. -- Action pursuant to § 34-16A-44 or the second paragraph of § 34-16A-21 shall not be a bar to enforcement of this chapter, rules and regulations in force pursuant thereto, and orders made pursuant to this chapter by injunction or other appropriate remedy, and the commission shall have power to institute and maintain in the name of this state any and all such enforcement proceedings.

Proposed amendments to SDCL 1967, Chapter 34-16A:

Suggest 34-16A-44 be amended to read as follows:

34-16A-44. Any person who violates any provision of this chapter, or any rules or regulation in force pursuant thereto, other than section 34-16A-21, shall be subject to a fine of not to exceed five (~~hundred~~) (~~thousand~~) dollars. Each day of violation shall constitute a separate offense.

- (3) ABATE POLLUTANT EMISSIONS ON AN EMERGENCY BASIS TO PREVENT SUBSTANTIAL ENDANGERMENT TO HEALTH OF PERSONS, I.E., AUTHORITY COMPARABLE TO THAT AVAILABLE TO THE ADMINISTRATOR UNDER SECTION 303 OF THE ACT. (FEDERAL REGISTER REQUIREMENTS)

SDCL 1967, Chapter 34-16A

34-16A-50. Emergency order for immediate reduction or discontinuance of emissions. -- Any other provisions of law to the contrary notwithstanding, if the director finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the director shall order such person or persons to reduce or discontinue immediately the emission of air contaminants. Such emergency order shall become effective immediately on service upon person or persons responsible therefor and any person to whom such an order is directed shall comply therewith immediately.

- (4) PREVENT CONSTRUCTION, MODIFICATION, OR OPERATION OF ANY STATIONARY SOURCE AT ANY LOCATION WHERE EMISSIONS FROM SUCH SOURCE WILL PREVENT THE ATTAINMENT OR MAINTENANCE OF A NATIONAL STANDARD. (FEDERAL REGISTER REQUIREMENTS)

SDCL 1967, Chapter 34-16A

34-16A-18. Classification of air contaminant sources. -- Reporting requirements. -- The commission, by rule or regulation, may classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

34-16A-27. Permits required for air pollutant equipment and control devices -- Applications--Rules and regulations. -- The commission may, by regulation, prohibit the installation, alteration or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from the commission.

The commission may require that applications for such permits shall be accompanied by plans, specifications, and such other information as the commission deems necessary.

The commission, by rules and regulations, shall provide for the issuance, suspension, revocation and renewal of any permits which it may reasonably require pursuant to this section.

Proposed amendments to SDCL 1967, Chapter 34-16A:

Suggest amendment of 34-16A-26 to read as follows:

Whenever the commission finds that there are methods, machines, devices or construction features which are reasonably feasible that will preve

or significantly reduce the emission of air resulting in pollution and that the public interest will be served thereby, it may ((~~recom-~~ ~~mend~~)) ((require)) the use of such methods and the installation of such features, machines, or devices.

Suggest amendment of 34-16A-16 to include new part as follows:

- (((6) Prevent construction, modification or operation of any stationary source of air pollution at any location where the emissions from such sources will prevent the attainment and maintenance of compliance with rules and regulations adopted by the commission.)))
- (5) OBTAIN INFORMATION NECESSARY TO DETERMINE WHETHER AIR POLLUTION SOURCES ARE IN COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, AND STANDARDS, INCLUDING AUTHORITY TO REQUIRE RECORD-KEEPING AND TO MAKE INSPECTIONS AND CONDUCT TESTS OF AIR POLLUTION SOURCES. (FEDERAL REGISTER REQUIREMENTS)

SDCL 1967, Chapter 34-16A

34-16A-18. Classification of air contaminant sources--Reporting requirements.--The commission, by rule or regulation, may classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

34-16A-19. Reports required of operators of air contaminant sources--Contents.--Any person operating or responsible for the operation of air contaminant sources of any class for which the rules and regulations of the commission require reporting shall make reports containing information as may be required by the agency concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or capable of being assembled in the normal course of operations.

34-16A-20. Access to records relating to air pollution emissions. -- In addition to any other powers conferred on it by law the commission shall have power to require access to records relating to emissions which cause or contribute to air pollution.

34-16A-21. Records and information confidential--Authorized use--Fine for violation of confidence. -- Any records or other information furnished to or obtained by the commission concerning one or more air contaminant sources, which records or information relate to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the commission and departments, agencies and officers of the state government,

unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing in this section shall be construed to prevent the disclosure of otherwise confidential records or information by the commission, any department, agency or officer of state government when necessary for the prosecution of violations of the chapter or rules and regulations pursuant thereto. Nothing herein shall be construed to prevent the use of such records or information by the commission, any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: Provided that such analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section.

Any person who violates this section shall be subject to a fine of not to exceed five hundred dollars.

34-16A-27. Permits required for air pollutant equipment and control devices --Applications--Rules and regulation. -- The commission may, by regulation, prohibit the installation, alteration or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from the commission.

The commission may require that applications for such permits shall be accompanied by plans, specifications, and such other information as the commission deems necessary.

The commission, by rules and regulations, shall provide for the issuance, suspension, revocation and renewal of any permits which it may reasonably require pursuant to this section.

34-16A-45. Consent inspections to determine compliance. -- Any duly authorized officer, employee, or representative of the agency may, with the consent of the person or persons in control of an air contaminant source, enter and inspect any property, premise, or place on or at which such an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purposes of ascertaining the state of compliance with this chapter and rules and regulations in force pursuant thereto.

34-16A-46. Warrant for inspection to determine compliance--Refusal of access prohibited. -- A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by a court of competent jurisdiction to any duly authorized officer, employee, or representative of the agency for the purpose of enabling him to make inspection pursuant to § 34-16A-45. No person shall refuse entry or access to any authorized representative of the agency who requests entry for purposes of inspections, and who presents an appropriate warrant.

Proposed amendments to SDCL 1967, Chapter 34-16A:

Suggest 34-16A-46 be repealed and replaced by the following:

((34-16A-46. Inspections. -- Any duly authorized officer, employee, or representative of the commission may enter and inspect any property, premise or place at any reasonable time for the purpose of investigating either an actual or possible source of air pollution or of ascertaining the state of compliance with this Act and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who present appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.)))

Suggest that 34-16A-19 be repealed and re-enacted as follows:

34-16A-19. Reports required of operators of air contaminant sources-- Contents. -- The commission or agency may require the owner or operator of any air contaminant source to establish and maintain such records; make such reports; install, use and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals and procedures as the commission or agency shall prescribe; and provide such other information relative to compliance with this act and rules and regulations in force pursuant thereto as the commission or agency may require, including the location, size of and height of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions.

Suggest that 34-16A-21 be repealed and re-enacted as follows:

34-16A-21. Any records, reports or information obtained by the commission or agency from owners or operators of an air contaminant source or sources shall be available to the public, except that upon a showing satisfactory to the commission by the owners or operators of an air contaminant source that such records, reports, or information obtained by the agency or commission regarding a processes or production technique are sufficiently unique to affect adversely the competitive position of such owner or operator by revealing trade secrets, the commission may consider such record, report, or information or particular portion thereof confidential in the administration of this chapter. Nothing in this section shall be construed to prevent the disclosure of otherwise confidential information by the agency or commission, any department, or officer of state government when necessary for the prosecution of violations of the chapter or rules and regulations pursuant thereto. Nothing herein shall be construed to prevent the use of such records or information by the commission, any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: provided that such analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section.

Any person or agency which violates this section shall be subject to a fine of not to exceed five hundred dollars.

Comments: In the event that the proposed amendments are not adopted, the State will request delegation of authority pursuant to section 114 of the Act.

- (6) REQUIRE OWNERS OR OPERATORS OF STATIONARY SOURCES TO INSTALL, MAINTAIN, AND USE EMISSION MONITORING DEVICES AND TO MAKE PERIODIC REPORTS TO THE STATE ON THE NATURE AND AMOUNTS OF EMISSIONS FROM SUCH STATIONARY SOURCES; ALSO AUTHORITY FOR THE STATE TO MAKE SUCH DATA AVAILABLE TO THE PUBLIC AS REPORTED AND AS CORRELATED WITH ANY APPLICABLE EMISSION STANDARDS OR LIMITATIONS. (FEDERAL REGISTER REQUIREMENTS)

SDCL 1967, Chapter 34-16A

34-16A-19. Reports required of operators of air contaminant sources--Contents. -- Any person operating or responsible for the operation of air contaminant sources of any class for which the rules and regulations of the commission require reporting shall make reports containing information as may be required by the agency concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or capable of being assembled in the normal course of operations.

34-16A-20. Access to records relating to air pollution emissions. ---In addition to any other powers conferred on it by law the commission shall have power to require access to records relating to emissions which cause or contribute to air pollution.

34-16A-21. Records and information confidential--Authorized use--Fine for violation of confidence. -- Any records or other information furnished to or obtained by the commission concerning one or more air contaminant sources, which records or information relate to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the commission and departments, agencies and officers of the state government, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing in this section shall be construed to prevent the disclosure of otherwise confidential records or information by the commission, any department, agency or officer of state government when necessary for the prosecution of violations of the chapter or rules and regulations pursuant thereto. Nothing herein shall be construed to prevent the use of such records or information by the commission, any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: provided that such analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section.

Any person who violates this section shall be subject to a fine of not to exceed five hundred dollars.

Proposed amendments to SDCL 1967, Chapter 34-16A:

Suggest that 34-16A-19 be repealed and re-enacted as follows:

34-16A-19. Reports required of operators of air contaminant sources--
Contents. -- The commission or agency may require the owner or operator of any air contaminant source to establish and maintain such records; make such reports; install, use and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals and procedures as the commission or agency shall prescribe; and provide such other information relative to compliance with this act and rules and regulations in force pursuant thereto as the commission or agency may require, including the location, size of and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions.

Suggest that 34-16A-21 be repealed and re-enacted as follows:

34-16A-21. Any records, reports or information obtained by the commission or agency from owners or operators of an air contaminant source or sources shall be available to the public, except that upon a showing satisfactory to the commission by the owners or operators of an air contaminant source that such records, reports, or information obtained by the agency or commission regarding a processes or production technique are sufficiently unique to affect adversely the competitive position of such owner or operator by revealing trade secrets, the commission may consider such record, report, or information or particular portion thereof confidential in the administration of this chapter. Nothing in this section shall be construed to prevent the disclosure of otherwise confidential information by the agency or commission, any department, or officer of state government when necessary for the prosecution of violations of the chapter or rules and regulations pursuant thereto. Nothing herein shall be construed to prevent the use of such records or information by the commission, any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: provided that such analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section.

Any person or agency which violates this section shall be subject to a fine of not to exceed five hundred dollars.

Comments: In the event that the proposed amendments are not adopted, the State will request delegation of authority pursuant to section 114 of the Act.

- (b) AUTHORITY TO CARRY OUT A PROGRAM OF INSPECTION AND TESTING OF MOTOR VEHICLES TO ENFORCE COMPLIANCE WITH APPLICABLE EMISSION STANDARDS WHEN NECESSARY AND PRACTICABLE, AND OTHER AUTHORITY NECESSARY TO CONTROL TRANSPORTATION. (FEDERAL REGISTER REQUIREMENTS)

SDCL 1967, Chapter 34-16A

34-16A-8. Technical and operational services secured by commission. -- In addition to any other powers conferred on it by law the commission shall have power to secure necessary scientific, technical, administrative and operational services, including laboratory facilities by contract or otherwise.

34-16A-11. Enforcement of chapter. -- The authority for enforcement of the provisions of this chapter shall be vested in the commission. The air pollution control commission may upon its own initiative cause to be investigated the alleged pollution of the air or any other violation of this chapter including the violation of any regulations issued pursuant to this chapter, or such investigation shall be made upon the written petition of the governing body of any municipality or any city or county board of health or any one elector of the state.

34-16A-16. Studies, investigations and educational activities of commission. -- In addition to any other powers conferred on it by law the commission shall have power to:

- (3) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

34-16A-24. Establishment of emission control and open burning requirements. -- Nonconformance as violation. -- The commission may for the purpose of controlling pollution establish emission control requirements, and requirements for open burning including appropriate prohibition thereof. Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement in force pursuant to this section shall constitute a violation of this chapter.

Proposed amendments to SDCL 1967, Chapter 34-16A:

That SDCL 34-16A be amended by adding thereto new sections reading as follows:

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- (a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this Act, the commission may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles.