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SOUTH DAKOTA STATE DEPARTMENT OF HEALTH  
DIVISION OF SANITARY ENGINEERING  
AND ENVIRONMENTAL PROTECTION  
Reprint of South Dakota Compiled Laws

AIR POLLUTION CONTROL  
Chapter 34-16A SDCL 1967

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34-16A-1. Policy of state--Purpose of chapter.--It is hereby declared to be the public policy of the state to achieve and maintain reasonable levels of air quality which will protect human health and safety, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the state. It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality. To these ends it is the purpose of this chapter to provide for a co-ordinated statewide program of air pollution prevention, abatement and control, for an appropriate distribution of responsibilities among the state and local units of government, and to facilitate co-operation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions, and to provide a framework within which all values may be balanced in the public interest.

34-16A-2. Definition of terms.--As used in this chapter, unless the context otherwise requires:

- (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.
- (2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be unreasonably injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.
- (3) "Emission" means a release into the outdoor atmosphere of air contaminants.
- (4) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.
- (5) "Agency" shall mean the South Dakota state department of health.
- (6) "Director" shall mean the state health officer.
- (7) "Commission" shall mean air pollution control commission.

34-16A-3. Air pollution control commission created--Composition--Substitutes for ex officio members.--There is hereby created, the air pollution control commission hereinafter referred to as the commission. The commission shall consist of seven members as follows: the state health officer of the department of health, who shall be ex officio chairman; the director of the industrial development and expansion agency; the director of the department of game, fish and parks; and four other members to be appointed by the Governor, one of whom shall be a representative of industrial management; one of whom shall be a representative of local governing bodies; and two of whom shall be

representatives of the general public. The head of the department of health, game, fish and parks, or industrial development and expansion agency may designate a principal deputy or assistant to act in his place and stead on the commission.

34-16A-4. Terms of office of appointive members of commission--Filling vacancies.--The term of office for the appointed members of the commission shall be four years, except the first appointments for which the term of the representative of industrial management shall be two years; the term of the representative of local governing bodies shall be three years; and the terms of the representatives of the general public shall be four years. Whenever a vacancy occurs, the Governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy.

34-16A-5. Meetings of commission--Quorum.--The commission shall hold such meetings as the chairman deems desirable, at a place and time to be fixed by the chairman. Special meetings shall be called by the chairman upon the written requests of any four commission members. Four members shall constitute a quorum.

34-16A-6. Secretary and executive officer of commission.--The director of the division of sanitary engineering of the agency shall be the secretary and the executive officer of the commission.

34-16A-7. Acceptance and administration of grants and donations--Deposit in treasury.--In addition to any other powers conferred on it by law the commission shall have power to accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of this chapter. Such funds received by the commission pursuant to this section shall be deposited in the state treasury to the account of the state department of health.

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-9. Employment of attorneys by commission.--In addition to any other powers conferred on it by law the commission shall have power to employ, with the advice and consent of the attorney general, attorneys to provide legal counsel and to enforce this chapter and any regulations passed by the commission in compliance with this chapter.

34-16A-10. Per diem and expenses of commission members.--The members of the commission appointed by the Governor shall receive twenty dollars per day and actual and necessary travel, meal and lodging expenses incident to the performance of official business under this chapter in accord with regulations of the state board of finance and paid from funds of the agency. Members of the commission who were not appointed by the Governor to serve on the commission shall be allowed actual and necessary salary and travel expenses in the performance of official business under this chapter in accord with regulations of the state board of finance and paid from the funds of their respective agencies.

34-16A-11. Enforcement of chapter.--The authority for the 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 verified petition of the governing body of any municipality or any city or county board of health or any fifteen electors 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-13. Functions of state health officer--Investigations and reports.--The state health officer, hereinafter referred to as the "director," shall perform and carry out all functions, and duties given to the agency under this chapter, and shall direct the director of the division of sanitary engineering of the agency to carry on such investigations as deemed necessary and the secretary of the commission shall present the reports of such findings to the commission.

34-16A-14. Employment of personnel by agency.--In accordance with the laws of the state, the agency may employ, compensate, and prescribe the powers and duties of such persons as may be necessary to carry out the provisions of this chapter.

34-16A-15. Delegation of functions by director.--The director may delegate to officers and employees of the agency such functions, duties, and authority as are vested in the agency by this chapter.

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:

- (1) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control.
- (2) Determine by means of field studies and sampling the degree of air pollution in the state and the several parts thereof.
- (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.
- (4) Collect and disseminate information and conduct educational and training programs relating to air pollution.

34-16A-17. Co-operation by commission with other agencies.--In addition to any other powers conferred on it by law the commission shall have power to:

- (1) Advise, consult and co-operate with agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.
- (2) Assist and provide consultation to the state planning agency for that agency's development of a comprehensive plan or plans for the prevention, abatement and control of air pollution in this state.
- (3) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a co-operative basis, and to provide technical and consultative assistance therefor.
- (4) Encourage voluntary co-operation by persons, or affected groups to achieve the purposes of this chapter.
- (5) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, rules and regulations in force pursuant thereto, or any other provisions of law.

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-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-23. Contamination within plant excluded from jurisdiction.--Nothing in this chapter shall be construed to grant to the commission any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops.

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.

34-16A-25. Local pollution control programs--Standards required.--Local government air pollution control programs for emission control and open burning requirements shall be no less stringent than the most restrictive requirements fixed by the commission in an area for which it has fixed an applicable requirement relating to the same type of emission unless these local requirements have received prior review and approval by the commission.

34-16A-26. Recommendation of methods and devices for emission control.--Whenever the commission finds that there are methods, machines, devices or construction features which are reasonably feasible that will prevent or significantly reduce the emission of air resulting in pollution and that the public interest will be served thereby, it may recommend the use of such methods and the installation of such features, machines, or devices.

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.

34-16A-28. Particular manufacturer not to be favored by requirements.--Nothing in § 34-16A-26 or § 34-16A-27 shall be construed to authorize the commission to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

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.

34-16A-30. Application for variance from rules or regulations.--Any person who owns or is in control of any plant, building structure, process or equipment may apply to the commission for a variance from rules or regulations governing the quality, nature, duration or extent of emissions. The application shall be accompanied by such information and data as the commission may require.

34-16A-31. Interests considered in granting variance.--No variance shall be granted pursuant to §§ 34-16A-30 to 34-16A-40, inclusive, until the commission has considered the relative interests of the applicant, the owners of property likely to be affected by the discharges, and the general public.

34-16A-32. Pre-existing uses considered in ruling on variance.--In determining whether or not a variance shall be granted by the commission it shall take into consideration whether or not the facility was in existence on July 1, 1970, and if such facility was constructed after July 1, 1970, whether or not such facility was in compliance at the time of its construction.

34-16A-33. Findings required for grant of variance.--The agency may grant a variance from rules or regulations governing the quality, nature, duration or extent of emissions, but only after public hearing on due notice, if it finds that:

- (1) The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety; and

- (2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

34-16A-34. Variance or renewal discretionary.--A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the commission.

34-16A-35. Conditions required in grant of variance for renewal.--Any variance or renewal thereof shall be granted within the requirements of § 34-16A-33 and for time periods and under conditions consistent with the reasons therefor, and within the limitations set forth in §§ 34-16A-36 to 34-16A-38, inclusive.

34-16A-36. Limitation when variance granted because no abatement method available.--If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternate measures that the commission may prescribe.

34-16A-37. Limitation when variance based on time required for abatement measures.--If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the commission is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

34-16A-38. Variances limited to one year.--If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in §§ 34-16A-36 and 34-16A-37, it shall be for not more than one year.

34-16A-39. Renewal of variances--Application and hearing required.--Any variance granted pursuant to §§ 34-16A-30 to 34-16A-40, inclusive, may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the commission on account of the variance, no renewal shall be granted, unless following a public hearing on the complaint on due notice, the commission finds the renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made prior to the expiration of the variance.

34-16A-40. Emergency provisions unimpaired by variance provisions.--Nothing in §§ 34-16A-30 to 34-16A-39, inclusive, and no variance or renewal granted pursuant thereto shall be construed to prevent or limit the application of the emergency provisions and procedures of §§ 34-16A-50 to 34-16A-52, inclusive, to any person or his property.

34-16A-41. Municipal and county programs approved by commission.--Each municipality and each county may with the approval of the commission establish and thereafter administer programs within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and regulations issued thereunder.

34-16A-42. Municipal and county co-operation with other agencies.--Any municipality or county may administer all or part of its air pollution control program in co-operation with one or more municipalities or counties of this state or of other states provided that the requirements of other statutes relating to co-operative agreements are met.

34-16A-43. Control of air contaminant sources beyond capability of local authority.--If the commission finds that the control of a particular class of air contaminant source is beyond the reasonable capability of the local or county air pollution control authorities, it may assume and retain jurisdiction over that class of air contaminant source.

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

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.

34-16A-47. Report of inspection furnished to owner or operator.--If requested, the owner or operator of the premises inspected pursuant to § 34-16A-45 or § 34-16A-46 shall receive a report setting forth all the facts found which relate to compliance status.

34-16A-48. Hearings by commission--Compelling attendance and production of evidence.--In addition to any other powers conferred on it by law the commission shall have power to hold hearings relating to any aspect of or matter

in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence.

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-51. Hearing requested on emergency order--Action by commission.--Upon the request for a hearing by any person or persons named in an order served pursuant to § 34-16A-50, the director shall fix a place and time for a hearing to be held as soon as possible thereafter. Following the completion of such hearing, the commission shall affirm, modify or set aside the order of the director.

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-54. Hearing requested on order for corrective action--Time allowed.--Any order issued pursuant to § 34-16A-53 shall become final unless, no later than fifteen days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the commission. Upon such request, the commission shall hold a hearing.

34-16A-55. Appearance before commission in lieu of order--Action for penalty.--In lieu of an order, the commission may require that the alleged violator or violators appear before the commission for a hearing at a time and

place specified by the director in the notice and answer the charges complained of, or the commission may initiate appropriate action for recovery of a penalty pursuant to § 34-16A-44.

34-16A-56. Subpoenas for hearings--Witness fees and expenses.--In connection with any hearing held pursuant to § 34-16A-54 or § 34-16A-55, subpoenas may be issued as provided by § 15-6-45. Fees and expenses of the witnesses shall be the same as allowed in circuit court.

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.

34-16A-60. Judicial review of administrative decisions.--A person who has exhausted all administrative remedies available within this agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under chapter 1-26.

Within 20 days after its final action on any verified petition, the commission shall file a decision with its secretary, which decision shall set forth the action which was taken by the commission on such petition as well as a concise and explicit statement of the underlying facts supporting the action taken. The commission may file a decision without any investigation of the allegations of the petition if it believes that no investigation is necessary to support the decision. This decision shall constitute a final decision entitling the petitioner to judicial review under chapters 1-26 and 21-33.

34-16A-61. Voluntary compliance effort not precluded.--Nothing in this chapter shall prevent the commission from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

34-16A-62. Private remedies unimpaired.--Nothing in this chapter shall be construed to abridge, limit or otherwise impair the right of any person to

damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings therefor.

34-16A-63. Severability of provisions and applications.--If a part of this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this chapter is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

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