



2024 South Dakota Legislature

House Bill 1030

Introduced by: The Chair of the Committee on Agriculture and Natural Resources at the request of the Department of Agriculture and Natural Resources

1 **An Act to update statutory and regulatory references pertaining to water pollution.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 34A-2-93 be AMENDED:**

4 **34A-2-93.** The board may promulgate rules pursuant to chapter 1-26:

- 5 (1) To establish surface and ground water quality standards;
- 6 (2) To establish design and installation requirements for on-site wastewater systems;
- 7 (3) To establish criteria for water pollution control facilities, to include facilities
- 8 constructed for the protection and monitoring of groundwater;
- 9 (4) To establish the present and future beneficial uses of all waters under this chapter;
- 10 (5) To establish procedures for granting variances from water quality standards;
- 11 (6) To establish procedures for conducting inspections;
- 12 (7) To establish contested case procedures;
- 13 (8) To establish secondary treatment standards for wastewater facilities;
- 14 (9) To establish standards for surface water discharge permits;
- 15 (10) To establish pretreatment standards and requirements for local pretreatment
- 16 programs;
- 17 (11) To establish standards for aboveground and underground storage tanks;
- 18 (12) To establish financial responsibility requirements for owners of underground and
- 19 aboveground storage tanks;
- 20 (13) To establish standards for the remediation and cleanup of contaminated soils. The
- 21 standards relating to cleanup of petroleum contamination ~~shall~~ must be based upon
- 22 risk to human health and safety, as determined by the board. The board may adopt
- 23 standards relating to cleanup of contamination, consistent with the American
- 24 Society for Testing and Materials Standard ~~ES38-94, entitled Emergency E1739-~~
- 25 95R15, Standard Guide for Risk-Based Risk-Based Corrective Action Applied at

- 1 Petroleum Release Sites, as in effect on January 1, ~~2011~~ 2024, or other generally
- 2 accepted risk-based cleanup methods;
- 3 (14) To establish standards for bulk chemical storage facilities;
- 4 (15) To establish requirements for underground injection control;
- 5 (16) To establish a groundwater discharge permit program;
- 6 (17) To establish a delegated national pollutant discharge elimination system program, as
- 7 as provided for under 40-CFR C.F.R. Part 123 ~~as amended to~~ (January 1, ~~2011~~,
- 8 2024) and wastewater pretreatment program, as provided for under 40-CFR C.F.R.
- 9 Part 403 ~~as amended to~~ (January 1, ~~2011~~ 2024);
- 10 (18) To establish a priority listing for projects funded under the construction grant
- 11 program; and
- 12 (19) To establish requirements for approval of plans for water pollution control facilities
- 13 and water supply systems.
- 14 The board shall ~~also~~ hold any hearings necessary for the proper administration of
- 15 this chapter and initiate any action in court for the enforcement of this chapter.

16 **Section 2. That § 34A-2-98 be AMENDED:**

- 17 **34A-2-98.** Terms used in this section and § 34A-2-99 mean:
- 18 (1) "Department," Department of Agriculture and Natural Resources;
 - 19 (2) "Local designated agencies," agencies of subdivisions of state government which
 - 20 are designated by the Governor to carry out specific portions of this section and
 - 21 § 34A-2-99;
 - 22 (3) "Nonoperational storage tank," any underground storage tank in which regulated
 - 23 substances may not be deposited or from which regulated substances may not be
 - 24 dispensed;
 - 25 (4) "Regulated substance," any substance defined in ~~section 101(4) of the Federal~~
 - 26 Comprehensive Environmental Response, Compensation, and Liability Act of 1980,
 - 27 as amended to January 1, 2011, 42 U.S.C. § 9601(14) (January 1, 2024), but not
 - 28 including any substance regulated as a hazardous waste under subtitle (C), and
 - 29 petroleum, including crude oil or any fraction thereof which is liquid at standard
 - 30 conditions of temperature and pressure, 60 degrees ~~fahrenheit~~ Fahrenheit and 14.7
 - 31 pounds per square inch absolute; and
 - 32 (5) "Underground storage tank," any tank or combination of tanks, including connected
 - 33 underground pipes, which contains an accumulation of regulated substances, and

- 1 the volume of which, including the volume of the connected underground pipes, is
 2 ten percent or more beneath the surface of the ground. This term does not include:
- 3 (a) A farm or residential tank with a capacity of one thousand one hundred
 4 gallons or less used for storing motor fuel for noncommercial purposes;
 - 5 (b) A tank used for storing heating oil for consumptive use on the premises
 6 where stored;
 - 7 (c) A septic tank;
 - 8 (d) A pipeline facility, including gathering lines, regulated under the Natural Gas
 9 Pipeline Safety Act of 1968, ~~as amended to January 1, 2011~~ 49 U.S.C. §
 10 60101 et seq. (January 1, 2024), the Hazardous Liquid Pipeline Safety Act
 11 of 1979, ~~as amended to January 1, 2011~~ 49 U.S.C. § 60101 et seq. (January
 12 1, 2024), or a pipeline which is an intrastate pipeline facility regulated under
 13 state laws comparable to the provisions of law referred to above;
 - 14 (e) A surface impoundment, pit, pond or lagoon;
 - 15 (f) A storm water or wastewater collection system;
 - 16 (g) A flow-through process tank;
 - 17 (h) A liquid trap or associated gathering lines directly related to oil or gas
 18 production and gathering operations;
 - 19 (i) A storage tank situated in an underground area such as a basement, cellar,
 20 mineworking, drift, shaft, or tunnel if the storage tank is situated upon or
 21 above the surface of the floor; and
 - 22 (j) Any pipes connected to any tank ~~which is~~ described in subsections (a) to
 23 (i), inclusive, of this subdivision.

24 **Section 3. That § 34A-2-99 be AMENDED:**

25 **34A-2-99.** The board shall promulgate rules, pursuant to chapter 1-26₂ to
 26 develop:

- 27 (1) Requirements for maintaining a leak detection system, an inventory control system
 28 together with tank testing, or a comparable system or method designed to identify
 29 releases in a manner consistent with the protection of human health and the
 30 environment;
- 31 (2) Requirements for maintaining records of any monitoring or leak detection system
 32 or inventory control system or tank testing system;
- 33 (3) Requirements for the reporting of any releases and corrective action taken in
 34 response to a release from an underground storage tank;

- 1 (4) Requirements for taking corrective action in response to a release from an
 2 underground storage tank. The standards relating to cleanup of petroleum
 3 contamination ~~shall~~ must be based upon risk to human health and safety as
 4 determined by the board. The board may adopt standards relating to cleanup of
 5 contamination consistent with the American Society for Testing and Materials
 6 Standard ~~ES38-94, entitled Emergency~~ E1739-95R15, Standard Guide for Risk
 7 Based Risk-Based Corrective Action Applied at Petroleum Release Sites, as in effect
 8 on January 1, ~~2011~~ 2024, or other generally accepted risk-based cleanup methods;
- 9 (5) Requirements for the closure of tanks to prevent future releases of regulated
 10 substances to the environment;
- 11 (6) Requirements for maintaining evidence of financial responsibility for taking
 12 corrective action and compensating third parties for bodily injury and property
 13 damage caused by sudden and nonsudden accidental releases arising from
 14 operating an underground storage tank;
- 15 (7) Standards of performance for new underground storage tanks;
- 16 (8) Requirements for notifying the department or local designated agency of the
 17 existence of any operational or nonoperational underground storage tank;
- 18 (9) Requirements for providing the information required on the form issued pursuant
 19 to ~~section 9002(b)(2) of the Federal Resource Conservation Recovery Act~~
 20 ~~reauthorization of 1984, as amended to January 1, 2011~~ the Regulation of
 21 Underground Storage Tanks, 42 U.S.C. § 6991a(b)(2) (January 1, 2024).
- 22 A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

23 **Section 4. That § 34A-2-100 be AMENDED:**

24 **34A-2-100.** The term, above ground stationary storage tank, as used in this
 25 section and §§ 34A-2-101 and 34A-2-102 means any stationary tank or combination of
 26 stationary tanks above ground, including connected pipes, which stores an accumulation
 27 of regulated substances as defined in § 34A-2-98.

28 This term does not include:

- 29 (1) Any farm or residential tank used for storing motor fuels for noncommercial
 30 purposes;
- 31 (2) Any tank used for storing heating oil or motor fuels for consumptive use on the
 32 premises where stored;
- 33 (3) Any septic tank;

- 1 (4) Any pipeline facility, including gathering lines, regulated under the Natural Gas
 2 Pipeline Safety Act of 1968, ~~as amended to January 1, 2011~~ 49 U.S.C. § 60101 et
 3 seq. (January 1, 2024);
- 4 (5) Any surface impoundment, pit, pond, or lagoon;
- 5 (6) Any storm water or wastewater collection system;
- 6 (7) Any flow-through process tank;
- 7 (8) Any liquid trap or associated gathering lines directly related to oil and gas
 8 production and gathering operations;
- 9 (9) Any storage tank situated in an underground area such as a basement, cellar,
 10 mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above
 11 the surface of the floor;
- 12 (10) Any pipes connected to any tank which is exempted in this subdivision; and
- 13 (11) Any tanks used for storing pesticides regulated under chapter 38-21, except those
 14 regulated pursuant to Subtitle I of the ~~Federal~~ Hazardous and Solid Waste
 15 Amendments of 1984 ~~(Public Law 98-616)~~, ~~as amended to January 1, 2011~~, 42
 16 U.S.C. 6901, et seq. (January 1, 2024).

17 **Section 5. That § 34A-2-101 be AMENDED:**

18 **34A-2-101.** The board shall promulgate rules, pursuant to chapter 1-26, to
 19 develop procedures necessary to safeguard the public health and welfare and prevent
 20 pollution of the waters of the state from the leakage, spillage, release, or discharge of
 21 regulated substances from above ground stationary storage tanks. These rules ~~shall~~ must
 22 be exercised in substantial conformity with the ~~current~~ codes and standards recommended
 23 by the National Fire Protection Association ~~for the storage of flammable and combustible~~
 24 ~~liquids~~, as contained in NFPA30 ~~in effect on January 1, 2011~~, Flammable and Combustible
 25 Liquids Code (January 1, 2024), and NFPA 30A, Code for Motor Fuel Dispensing Facilities
 26 and Repair Garages (January 1, 2024). The rules ~~shall~~ must provide the following:

- 27 (1) Requirements for maintaining a leak detection system, an inventory system, or a
 28 comparable system or method designed to identify releases in a manner consistent
 29 with the protection of human health and the environment;
- 30 (2) Requirements for maintaining records of any monitoring or leak detection system
 31 or inventory control system;
- 32 (3) Requirements for the reporting of any releases and corrective action taken in
 33 response to a release from any above ground stationary storage tank;

- 1 (4) Requirements for taking corrective action in response to a release from any above
 2 ground stationary storage tank;
- 3 (5) Requirements for the closure of tanks to prevent future releases of regulated
 4 substances to the environment;
- 5 (6) Requirements for maintaining evidence of financial responsibility for taking
 6 corrective action and compensating third parties for bodily injury and property
 7 damage caused by sudden and nonsudden accidental releases arising from
 8 operating any above ground stationary storage tank;
- 9 (7) Standards of performance, including design, construction, installation, and
 10 compatibility standards for new above ground stationary storage tanks;
- 11 (8) Requirements for notifying the department or local designated agency of the
 12 existence of any operational or nonoperational above ground stationary storage
 13 tank; and
- 14 (9) Requirements for providing tank information required on the form provided by the
 15 department.
- 16 A violation of these rules is subject to § 34A-2-75.

17 **Section 6. That § 34A-2-103 be AMENDED:**

18 **34A-2-103.** The state_z under various statutes_z has the established authority to
 19 provide for groundwater protection and pollution control. Under this chapter, the state has
 20 initiated a groundwater protection strategy, ~~which that~~ which encompasses all waters below the
 21 surface of the land in a zone of saturation. This strategy consists of a variety of programs,
 22 activities and funds established by this chapter and other related chapters. These functions
 23 include ~~but are not limited to~~ chapters 46A-1, 46A-2, and 46A-3A to 46A-3E, inclusive,
 24 which provide for the state water plan, the state conservancy district and the
 25 establishment of water development districts; chapter 45-2_z which provides for geologic
 26 surveys; chapters 46-2, 46-2A, 46-5, and 46-6_z which provide for the regulation of water
 27 rights, including appropriation of water, collection, preservation, and publication of data
 28 on groundwater, liability for damages to domestic and municipal wells, and regulation of
 29 drilling and construction of drinking water wells; chapter 34A-3A_z which provides for the
 30 regulation of public drinking water systems; chapter 34A-2_z which provides for the
 31 protection and control of pollution to the groundwater, ~~which and~~ which includes groundwater
 32 discharge permits, a groundwater quality classification system, groundwater quality
 33 standards, underground storage tank and aboveground storage tank regulations, the
 34 regulation of wastewater treatment facilities, and the regulation of on-site disposal of

1 wastewater; chapter 1-49_z which provides for laboratory services related to environmental
2 control; chapter 34A-13_z which provides for a petroleum release compensation fund;
3 chapter 34A-12_z which provides for a regulated substance response fund; chapter 34A-6_z
4 which provides for the regulation of solid waste; chapter 38-19_z which provides for the
5 regulation of the use, storage and handling of fertilizers; chapter 38-21_z which provides
6 for the regulation of the use, storage and handling of pesticides; chapter 34A-2A_z which
7 provides for the regulation of chemigation; chapter 34A-11_z which provides for the
8 regulation of hazardous wastes including special provisions for the regulation of
9 polychlorinated ~~biphenols~~ biphenyls; chapter 45-9_z which provides for the regulation of oil
10 and gas development_z including underground injection control permits; chapters 45-6B
11 and 45-6C_z which provide for the regulation of mineral exploration, development, and
12 mine reclamation; chapter 45-6_z which provides for the regulation of sand and gravel
13 operations; and chapter 45-6D_z which provides for the regulation of uranium exploration.
14 These programs, activities_z and funds are all components of the state groundwater
15 protection strategy and are used to maintain and improve the quality of the state's
16 groundwaters.—~~These~~ The agencies, departments_z and programs responsible for
17 administering these and other groundwater related functions shall coordinate their
18 activities to ~~insure~~ ensure that comprehensive groundwater protection and management
19 is being efficiently performed. The secretary, under the supervision of the Governor, shall
20 ~~be responsible for overseeing~~ oversee this coordination effort.