

DENR Statutes and Rules Relating to Aquatic Weed Control

34A-2-1. Legislative findings and policy.

Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for water supplies, for the propagation of wildlife, fish, and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate uses; to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new and existing water pollution; and to cooperate with other agencies of the state, agencies of other states, and the federal government in carrying out these objectives.

34A-2-2. Definition of terms. Terms used in this chapter mean:

- (1) "Board," the Water Management Board;
- (2) "Disposal system," a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, septic tanks, and other systems;
- (3) "Person," the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, limited liability company, association, federal agency, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or limited liability company;
- (4) "Point source," any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;
- (5) "Pollutant," any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt or any industrial, municipal or agricultural waste discharged into waters of the state. This term does not mean sewage from water craft; or water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state after it is determined that such injection or disposal will not result in the degradation of ground or surface water resources;
- (6) "**Pollution**," such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state as exceeds that permitted by state

effluent or water quality standards, including but not limited to change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;

(7) "Publicly owned treatment works," any device or system used in a treatment, including recycling and reclamation, of municipal sewage or industrial waste of a liquid nature which is owned by a state or municipality. This term includes sewers, pipes or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment;

(8) "Secretary," the secretary of the Department of Environment and Natural Resources;

(9) "Sewerage system," pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment disposal;

(10) "Treatment works," any plant or other works, used for the purpose of treating, stabilizing or holding wastes;

(11) "Wastes," 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;

(12) "**Waters of the state**," all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state; and

74:51:01:58. Water resource enhancement or restoration projects -- Use of toxic pollutants. Toxic pollutants established under §§ 74:51:01:32 and 74:51:01:44 to 74:51:01:55, inclusive, may be present in surface waters of the state for the purpose of water resource enhancement or restoration if the overall goals of the project justify the short-term detriment.

Source: 18 SDR 128, effective February 11, 1992; 19 SDR 111, effective January 31, 1993; requirements for use of EPA-registered pesticides transferred to § 74:03:02:47.01.01, 21 SDR 214, effective June 21, 1995; transferred from § 74:03:02:47.01, July 1, 1996.

General Authority: SDCL [34A-2-11](#), [34A-2-93](#).

Law Implemented: SDCL [34A-2-10](#), [34A-2-11](#).

74:51:01:59. Water resource enhancement or restoration projects -- Use of EPA-registered pesticides. The use of EPA-registered pesticides in accordance with the individual label requirements specifying handling and application to aquatic sites is presumed not to cause long-term damage to the environment. The application of all registered pesticides must comply with SDCL chapter [38-21](#), [7](#) U.S.C.A. § 136 et seq. (October 25, 1988), and §§ 74:51:01:60 and 74:51:01:61. This section does not exempt

any person from the penalty provisions of SDCL 34A-2-75 if misapplication results in impairment of a designated beneficial use.

Source: Transferred from § 74:03:02:47.01, 21 SDR 214, effective June 21, 1995; transferred from § 74:03:02:47.01.01, July 1, 1996; 31 SDR 29, effective September 13, 2004.

General Authority: SDCL [34A-2-11](#), [34A-2-93](#).

Law Implemented: SDCL [34A-2-10](#), [34A-2-11](#).

74:51:01:60. Water resource enhancement or restoration projects -- Department approval required. Projects designed to enhance or restore overall water quality or beneficial uses may include application of registered pesticides for elimination of nuisance aquatic life, including algae, weeds, and undesirable fish life; furtherance of fish and wildlife research projects; and removal of accumulated sediment. The secretary may allow these projects after review and approval of a written project plan and after opportunity for public review and comment if this is required pursuant to § 74:51:01:61. The project plan shall be submitted on a form provided by the department and shall contain the following information:

- (1) Name and address of responsible party;
- (2) Project goals and purpose;
- (3) Project description;
- (4) Legal location of project;
- (5) Bodies of water affected;
- (6) Estimated date and duration of project;
- (7) Methods implemented to minimize pollution;
- (8) Other alternatives available and reasons for rejection;
- (9) Name and label of product to be used;
- (10) Application rates;
- (11) Application methods; and
- (12) Surfactant toxicity information, if available.

If applicable, the applicant shall provide the department proof of application to or authorization from the South Dakota Department of Game, Fish and Parks under the provisions of SDCL [41-13-1](#) and [41-13-2](#) and of 41-12-13. The applicant shall provide the department proof of notification to the local emergency planning committee for projects that include the use of a registered pesticide.

Source: 18 SDR 128, effective February 11, 1992; 19 SDR 111, effective January 31, 1993; 21 SDR 214, effective June 21, 1995; transferred from § 74:03:02:47.02, July 1, 1996; 24 SDR 10, effective July 20, 1997.

General Authority: SDCL [34A-2-11](#), [34A-2-93](#).

Law Implemented: SDCL [34A-2-10](#), [34A-2-11](#).

74:51:01:61. Publication of notice of application for water resource enhancement or restoration projects -- Exception for registered pesticides. The applicant shall publish notice of application for approval of the proposed water resource enhancement or restoration project in one newspaper which serves the affected area. The secretary shall provide the notice and shall approve or select the official newspaper. The notice shall be published at least 10 days before the start of the proposed project. The notice shall include a summary of the proposed activity and the secretary's recommendation. If no comments are received within the 10-day notice period, the secretary shall approve or deny the plan in accordance with the secretary's recommendation as published in the notice. The cost of publication is the responsibility of the applicant.

A water restoration or enhancement project that includes the application of a registered pesticide only is not subject to the notice requirements of this section if all of the following criteria are met:

- (1) The registered pesticide will not be applied within one-half mile of a well or surface intake used as a public water supply source;
- (2) The registered pesticide will be applied only to surface waters of the state that are not designated for the beneficial use of immersion recreation and limited contact recreation; and
- (3) The project will not affect more than 70 percent of the aquatic vegetation existing before the first application as approved by the secretary.

Source: 18 SDR 128, effective February 11, 1992; 21 SDR 214, effective June 21, 1996; transferred from § 74:03:02:47.03, July 1, 1996; 24 SDR 10, effective July 20, 1997.

General Authority: SDCL [34A-2-11](#), [34A-2-93](#).

Law Implemented: SDCL [34A-2-10](#), [34A-2-11](#).

Cross-Reference: Legal newspapers and publication of notice, SDCL chapter [17-2](#).

74:51:01:62. Hearing procedure for water resource enhancement or restoration projects. If any water resource enhancement or restoration project that requires public notice is contested in writing, the board shall hold a hearing pursuant to chapter 74:50:02. Based on the record of the hearing, the board shall approve the project if the board determines the overall goals of the project justify any short-term detriments and it is in the public interest.

Source: 18 SDR 128, effective February 11, 1992; 21 SDR 214, effective June 21, 1995; transferred from § 74:03:02:47.04, July 1, 1996.

General Authority: SDCL [34A-2-11](#), [34A-2-93](#).

Law Implemented: SDCL [34A-2-10](#), [34A-2-11](#).

Game, Fish and Parks Statutes Relating to Aquatic Weed Control

41-13-1. Dumping of refuse or chemicals into game fish waters as misdemeanor-- Liability for restoration.

It is a Class 1 misdemeanor for any person to empty or allow to be emptied, to place or allow to be placed, any sawdust, manure, refuse matter, sedimentary materials, pollutants, or chemicals of any kind in the waters of this 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 provided in this chapter. Any person who knowingly or willfully empties, places, or discharges pollutants or chemicals into state waters is liable to the Department of Game, Fish and Parks for an amount, to be deposited in the game, fish and parks fund, which will compensate for restoration of losses.

Source: SDC 1939, § 25.0609 as enacted by SL 1961, ch 120, § 2; SL 1977, ch 190, § 587; SL 1988, ch 338, § 1.

41-13-2. Commission authority required to use plant control chemicals in game fish waters-- Violation as misdemeanor--Rules and regulations.

It is a Class 2 misdemeanor to place chemicals in the public waters of this state containing game fish for the purpose of controlling plants, unless explicit authorization to do so is obtained from the Department of Game, Fish and Parks. The department may prescribe such rules and regulations which in its discretion, are deemed necessary or desirable to safeguard game fish and other animals from the effects of such chemicals.

Source: SDC 1939, § 25.0611 as enacted by SL 1961, ch 120, § 2; SL 1977, ch 190, § 588.