

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

804A0412

SENATE BILL NO. 243

Introduced by: Senators Flowers, Hunhoff, Hutmacher, Lawler, and Symens and
Representatives Schrempp, Fischer-Clemens, Haley, Koetzle, Monroe, and
Waltman

1 FOR AN ACT ENTITLED, An Act to require financial assurances for certain concentrated
2 animal feeding operations for the remediation of potential environmental damage.

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

4 Section 1. Any person making application to the Water Management Board, the Board of
5 Minerals and Environment, the Department of Environment and Natural Resources, or any other
6 permitting entity of the State of South Dakota for an authorization to operate under a general
7 permit or an extension, amendment, or renewal of an existing authorization which authorizes any
8 activity related to the breeding, farrowing, feeding, or raising of livestock that is not covered by
9 a performance or damage bond or other financial assurance instrument, shall, as a condition of
10 the permit or license and as provided in this Act, provide financial assurance guaranteeing the
11 performance of corrective actions to contain, mitigate and remediate any pollution,
12 contamination, or degradation which may be caused by such activity. The financial assurance,
13 in a reasonable and proper amount for the remediation of any potential damage to the
14 environment that could be caused by the activity, shall be in a form and an amount approved by
15 the permitting entity, and may include insurance, company net worth considerations, a surety

1 bond, escrow account, letter of credit, trust, guarantee, or cash deposit.

2 Section 2. The provisions of section 1 of this Act apply to any concentrated animal feeding
3 operation engaged in the breeding, farrowing, feeding, or raising of livestock in this state that
4 is operating or proposes to operate under a general permit issued by any permitting entity of the
5 State of South Dakota. For any such operation, the permitting entity shall require a financial
6 assurance instrument sufficient to meet the requirements and purposes of this Act. For purposes
7 of this Act, a concentrated animal feeding operation includes an individual, corporation, or
8 cooperative that owns livestock in this state and is engaged, directly or on a contract basis, in
9 the breeding, farrowing, feeding, or raising of livestock in this state.

10 Section 3. All right and title in any bond or other security required by the Water Management
11 Board, the Board of Minerals and Environment, or the Department of Environment and Natural
12 Resources under this Act for the protection of the environment or reclamation of lands or other
13 resources shall be in the state until such time as the permitting entity by order releases the
14 security. The bond or other security may not be released until the livestock are gone and a state
15 inspection shows that no environmental degradation related to the activities described in section
16 1 of this Act remains. The bond or other security does not constitute an asset of the person
17 required to provide it, and may not be canceled, assigned, revoked, disbursed, replaced, or
18 allowed to terminate without permitting entity approval. The bond or other security shall be in
19 a form and a reasonable and proper amount approved by the permitting entity as provided in this
20 Act, and may include surety bond, escrow account, letter of credit, trust, guarantee or cash
21 deposit. The permitting entity may permit the use of financial assurance other than a bond,
22 including company net worth considerations. Interest earned on any bond or deposit made under
23 this Act in excess of the actual increase in the cost of remediation shall be returned to the person
24 required to provide the bond.

25 Section 4. The state, with such board, department, or court approval, if any, as is provided

1 in the permit or security instrument required pursuant to this Act, may use the security as
2 necessary for the cleanup and remediation of environmental problems related to the activity for
3 which the security was provided. When such cleanup and remediation is complete, as certified
4 by the permitting entity, or sufficient funds have been set aside to achieve complete remediation
5 pursuant to a site-specific, permitting entity-approved remedial action plan, the state may
6 proceed against any remaining security for the purpose of collecting any properly recoverable
7 cost incurred by the state in pursuing the cleanup, environmental damages, or penalties. Until the
8 environmental cleanup or remediation is complete, any state cost, environmental damage and
9 penalty judgments have been satisfied, and the security has been released by the board, the
10 security may not be assigned for the benefit of creditors, attached, garnished, levied or executed
11 on, or subject to process issued from any court; except for the purpose of enabling the state to
12 effectuate the environmental cleanup or remediation.

13 Section 5. The Water Management Board and the Board of Minerals and Environment shall
14 establish, by rules promulgated pursuant to chapter 1-26:

- 15 (1) Criteria to determine the amount of security required and other terms as necessary to
16 define the respective obligation of the parties pursuant to this Act;
- 17 (2) The procedure to follow and the circumstances under which the state or applicant may
18 obtain board approval for the release of the security provided for in this Act; and
- 19 (3) Conditions under which the security may be held by the state after the expiration of
20 the permit or license.