

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

660C0775

## HOUSE BILL NO. 1263

Introduced by: Representatives Jaspers and Diedrich (Larry) and Senators Drake and Hainje

1 FOR AN ACT ENTITLED, An Act to establish the agricultural chemical response and  
2 remediation account.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Agricultural chemical," pesticide, commercial fertilizer, plant amendments, or soil  
6 amendments, but does not include nitrate and related nitrogen or phosphate from a  
7 natural source or wood preservative treatments;

8 (2) "Board," the agricultural chemical remediation account board;

9 (3) "Eligible person," a person who meets the eligibility established in section 2 of this  
10 Act;

11 (4) "Fund," the agricultural chemical remediation account fund;

12 (5) "Responsible party," a person who at the time of an agricultural chemical incident or  
13 accident has care, custody, or control of, or responsibility for an agricultural chemical,  
14 its container, or residues from such chemicals or containers;

15 (6) "Secretary," the South Dakota secretary of agriculture;

16 (7) "Single site," all land and water areas, including air space, and all plants, animals,  
17 structures, buildings, contrivances, and machinery whether fixed or mobile, including

1 anything used for transportation within a one-half mile radius of a discovered or  
2 reported incident where agricultural chemical handling, storage, disposal, and  
3 distribution activities have occurred or are now occurring;

4 (8) "Site assessment," the evaluation of the environmental characteristics of a particular  
5 facility or location where an incident or accident involving agricultural chemicals has  
6 occurred, including hydro geology, soil characteristics, topographical features,  
7 nearness to sources of drinking water, environmental indicators and safeguards,  
8 proximity to sensitive human populations, and available, scientifically valid soil or  
9 water monitoring results. Site assessment may also include the use of predictive  
10 procedures for determining the need for and extent of corrective action;

11 (9) "Source drinking water," a current or potential source of water either from the ground  
12 or surface for human consumption;

13 (10) "Unreasonable adverse effects on humans and the environment," any unreasonable  
14 risk to humans or the environment, taking into account the economic, social, and  
15 environmental costs and benefits to the use of an agricultural chemical; and

16 (11) "Water quality standard," the numerical value expressing the concentration of an  
17 agricultural chemical in sources of drinking water established by the State of South  
18 Dakota, and may include the maximum contaminate level as established under the  
19 Safe Drinking Water Act, as amended to January 1, 1999.

20 Section 2. For the purposes of this Act, an eligible person includes:

21 (1) A responsible party or an owner of real property or a conservation district, but not the  
22 state, a state agency, a political subdivision of the state, the federal government, or  
23 an agency of the federal government;

24 (2) A person involved in a transaction relating to real property who is not a responsible  
25 party or owner of the real property, and who voluntarily takes corrective action on

1 the request or order for corrective action from the Department of Environmental and  
2 Natural Resources; and

3 (3) A farmer who voluntarily complies with §§ 38-21-15.1 and 38-19-36.2.

4 Section 3. There is hereby established in the state treasury the agricultural chemical  
5 remediation account fund for the purpose of reimbursing the costs to eligible persons for  
6 voluntary response to, and voluntary remediation of, agricultural chemical incidents, accidents,  
7 or historical contamination. Expenditures of this fund shall be made in accordance with the  
8 provisions of chapter 4-7.

9 Section 4. Notwithstanding the fees imposed by § 38-21-17, the secretary shall impose a  
10 surcharge of twenty dollars per year on a biennial basis for a commercial applicator's license. The  
11 proceeds from the surcharge shall be deposited into the fund.

12 Section 5. Notwithstanding the fees imposed by § 38-21-33.5, the secretary shall impose a  
13 surcharge of seventy-five dollars per year on a biennial basis for a pesticide dealer license. The  
14 proceeds from the surcharge shall be deposited into the fund.

15 Section 6. Notwithstanding the fees imposed by § 38-19-2.1, the secretary shall impose a  
16 surcharge of seventy-five dollars per year on a biennial basis for a commercial fertilizer  
17 distribution license. The proceeds from the surcharge shall be deposited into the fund.

18 Section 7. Notwithstanding the fees imposed by § 38-19-10, the secretary shall impose a  
19 surcharge of no more than twenty-eight cents per ton of fertilizer for the inspection fee. The  
20 proceeds from the surcharge shall be deposited into the fund.

21 Section 8. Notwithstanding the fees imposed by § 38-20A-59, the secretary shall impose a  
22 surcharge on the registration application fee for agricultural pesticides that is no more than two-  
23 tenths of one percent of annual sales on the pesticide in the state, except the surcharge may not  
24 be imposed on nonagricultural pesticides. The proceeds from the surcharge shall be deposited  
25 into the fund.

1 Section 9. Money in the agricultural chemical remediation account fund may be only used:

2 (1) By the board to reimburse the secretary for staff and the administrator for  
3 administrative costs up to seventy-five thousand dollars; and

4 (2) To reimburse and pay corrective action costs under section 10 of this Act.

5 Section 10. The board shall notify the secretary to collect the fees authorized by sections 4  
6 to 8, inclusive, of this Act. The secretary shall collect the fee beginning July 1, 1999, until the  
7 fund reaches five million dollars or more, at which time the fees shall be reduced. The board shall  
8 notify the secretary if the asset value of the fund falls below five hundred thousand dollars, and  
9 the secretary shall increase the fees established in sections 7 and 8 of this Act. Reasonable  
10 forecasts of future expenses and income may be used in reducing or increasing the fees.

11 Section 11. The fund is attached to the Department of Agriculture for budgeting. All  
12 necessary costs of the Department of Agriculture for these services, not to exceed actual costs,  
13 shall be reimbursed from the revenue of this Act.

14 Section 12. The board shall promulgate rules, pursuant to chapter 1-26, to specify the form  
15 and procedure for applications for compensation from the fund, procedures and criteria for  
16 determining the amount and type of costs that are eligible for reimbursement from the fund,  
17 procedures for acceptable methods of payment from the fund, procedures for persons to perform  
18 services for the fund, the method and forms necessary for the collection of the fees, and other  
19 rules and procedures necessary for carrying out the provision of this Act. In addition, the board  
20 may promulgate rules to:

21 (1) Contract and cooperate with any person or with any governmental department or  
22 agency;

23 (2) Expend the funds pursuant to sections 14 to 17, inclusive, of this Act appropriate for  
24 its administration;

25 (3) Appoint, discharge, fix compensation for, and prescribe the duties of the personnel

1 as necessary; and

2 (4) Accept donations of fund property, service, or other assistance from public or private  
3 service sources for the purpose of furthering the objective of the board.

4 Section 13. Revenue from the following sources shall be deposited in the state treasury and  
5 credited to the agricultural response and remediation account fund:

6 (1) Any fees imposed by this Act;

7 (2) Any interest attributable to investment of money in the fund;

8 (3) Any money received by the secretary of agriculture in the form of gifts, grants, or  
9 appropriations from any source intended to be used for the purposes of the fund.

10 Section 14. The board shall reimburse an eligible person for the agricultural chemical  
11 response and reimbursement fund for the reasonable and necessary costs incurred by the eligible  
12 person in taking voluntary action as provided in this Act if the board determines:

13 (1) The eligible person takes all reasonable action necessary to minimize and abate an  
14 incident, and the action is subsequently approved by the Department of Environment  
15 and Natural Resources;

16 (2) The eligible person complies with any reasonable request for corrective action issued  
17 to the eligible person by the Department fo Environment and Natural Resources; and

18 (3) The incident is reported as required pursuant to titles 34, 34A, and 38.

19 Section 15. On request by an eligible person, the board may pay the eligible person for the  
20 reasonable and necessary cash disbursements for corrective action costs incurred by the eligible  
21 person as provided in this Act if the board determines:

22 (1) The eligible person pays the first one thousand dollars of the corrective action costs;

23 (2) The eligible person provides the board with a sworn affidavit and other convincing  
24 evidence that the eligible person is unable to pay additional corrective action costs;

25 and

1 (3) The eligible person continues to assume responsibility for carrying out the  
2 requirements of a corrective action.

3 Section 16. No eligible person may receive payment for, or reimbursement from the fund,  
4 and the person shall refund amounts paid or reimbursed by the board, if false statements or  
5 misrepresentations are made in the affidavit or other evidence submitted to the secretary upon  
6 showing an inability to pay corrective action costs.

7 Section 17. The board may pay an eligible person monies from the agricultural chemical  
8 remediation account fund for:

9 (1) Ninety percent of the total reasonable and necessary corrective action costs greater  
10 than one thousand dollars and less than or equal to one hundred thousand dollars;

11 (2) Eighty percent of the total reasonable and necessary corrective action costs greater  
12 than one hundred thousand dollars and less than or equal to two hundred thousand  
13 dollars.

14 Section 18. The agricultural chemical remediation account board is created and shall consist  
15 of the secretary of agriculture, the secretary of the Department of Environment and Natural  
16 Resources, one representative of agricultural chemical manufacturers and wholesalers, one  
17 representative of farmers, and one representative of dealers of retail agricultural chemicals.  
18 Private industry representatives shall be appointed by the secretary who shall consider  
19 recommendations for such appointments by the Ag Unity Group.

20 Section 19. The term of the members of the board is four years, except that the initial  
21 appointments are for staggered terms. Vacancies are appointed under the same conditions as the  
22 term vacated.

23 Section 20. The Board shall annually elect a chair and a vice chair. The chair and vice chair  
24 shall be members of the board and may not be the secretary of agriculture or environment and  
25 natural resources. The chair shall preside at regular and special meetings, or the vice chair in the

1 absence of the chair. A quorum consists of three board members. At least six regular meetings  
2 of the board shall be scheduled a year. A scheduled meeting may be canceled if there is  
3 insufficient business. Special meetings of the board may be called by the chair or by written  
4 request of three board members.

5 Section 21. Compensation for the board shall be paid pursuant to § 4-7-10.4 from the  
6 surcharges collected pursuant to this Act.

7 Section 22. This chapter does not abrogate or limit in any way the rights, powers, duties, and  
8 functions of the Department of Agriculture, Department of Environment and Natural Resources,  
9 or any agency of the state.