

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0243

## SENATE BILL NO. 39

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding safe drinking water  
2 to comply with the revised requirements of the federal Safe Drinking Water Act.

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

4 Section 1. That § 34A-3A-2 be amended to read as follows:

5 34A-3A-2. Terms used in this chapter, ~~unless the context otherwise requires,~~ mean:

- 6 (1) "Area of influence," the area surrounding a pumping or recharging well within which  
7 the potentiometric surface or the water table has been changed;
- 8 (2) "Board," the Water Management Board;
- 9 (3) "Cone of depression," the shape of the area of influence in cross section;
- 10 (4) "Critical aquifer protection area," all or part of an area located within an area for  
11 which an application or designation as a sole source aquifer has been submitted and  
12 approved by the administrator of the United States Environmental Protection Agency;
- 13 (5) "Department," the Department of Environment and Natural Resources;
- 14 (6) "Maximum contaminant level," the maximum permissible level of a contaminant in  
15 water which is delivered to ~~the free flowing outlet of the ultimate user of a public~~  
16 ~~water system, except in the case of turbidity where the maximum permissible level is~~

1 ~~measured at the point of entry to the distribution system~~ any user of a public water  
2 system;

3 (7) "Potentiometric surface," an imaginary surface representing the total head of  
4 groundwater in a confined aquifer and defined by the level to which water will rise in  
5 a well;

6 (8) "Public water system," a system for the provision to the public of ~~pip~~ed water for  
7 human consumption through pipes or other constructed conveyances, if such system  
8 has at least fifteen service connections or regularly serves an average of at least  
9 twenty-five individuals daily at least sixty days out of the year and as provided for in  
10 40 CFR sections 141.2 and 142.2 as amended to April 28, 1998;

11 (9) "Recharge area," the area through which water may percolate to the aquifer and  
12 eventually reach the well;

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

14 (11) "Sole source aquifer," an aquifer which provides fifty percent or more of the drinking  
15 water for an area and which if contaminated, would create a significant hazard to  
16 public health;

17 (12) "Supplier of water," any person who owns or operates a public water system;

18 (13) "Water table," that surface of a body of unconfined groundwater at which the pressure  
19 is equal to that of the atmosphere;

20 (14) "Wellhead protection area," the surface and subsurface area surrounding a water well  
21 or wellfield, supplying a public water system, through which contaminants are  
22 reasonably likely to move toward and reach such water well or wellfield.

23 Section 2. That chapter 34A-3A be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 A violation of any provision of this chapter or any rule promulgated pursuant to this chapter

1 is subject to an administrative penalty assessed by the secretary, after notice and opportunity for  
2 hearing, pursuant to chapter 1-26. In the case of a public water system serving a population of  
3 more than ten thousand, the maximum penalty amount may be no more than one thousand  
4 dollars per day per violation. In the case of a public water system serving a population of less  
5 than ten thousand, the penalty may not exceed five hundred dollars per day per violation. The  
6 maximum penalty, assessed by the secretary, may not exceed five thousand dollars per violation.  
7 In determining the amount of the penalty upon finding a violation, or the amount of a settlement,  
8 the secretary shall consider the gravity of the violation, prior violations and compliance history,  
9 damage caused by the violation, the willfulness of the violation, and good faith attempts to  
10 achieve compliance. All penalties collected pursuant to this section shall be deposited in the  
11 regulated substance response fund, established pursuant to § 34A-12-3.

12 Section 3. That chapter 34A-3A be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 A monetary penalty issued under section 2 of this Act shall be assessed against a violator by  
15 an administrative order of the secretary. The order shall state the date and facts of each violation  
16 addressed under the penalty assessed and the citations to the provisions of each law alleged to  
17 be violated. The order shall contain a statement that the violator may request a contested case  
18 hearing on the violation and penalty pursuant to chapter 1-26, by filing a written request with the  
19 secretary no later than twenty days after the receipt of the order. The order shall state that a  
20 request for contested case hearing must state the specific part or parts of the order being  
21 contested along with relevant facts and supporting legal authorities. The secretary shall serve the  
22 order and assessment by certified mail. If not contested within twenty days of receipt, an  
23 administrative order assessing a monetary penalty under this section shall constitute a judgment  
24 and may be executed by delivery of a true and correct copy certified by the secretary in the  
25 manner provided for the execution of money judgments in chapter 15-18.

1        If a hearing is requested, the matter shall be scheduled for a hearing before the secretary or  
2 a designee within thirty days from the receipt of the request. The department shall provide notice  
3 of the hearing consistent with the provisions of § 1-26-17. Hearings shall be conducted pursuant  
4 to chapter 1-26. A final determination by the secretary may be appealed to the circuit and  
5 Supreme Court as provided in chapter 1-26. After a final determination, when the time to take  
6 an appeal has lapsed, the administrative order assessing a monetary penalty under this section  
7 shall constitute a judgment and may be executed by delivery of a true and correct copy certified  
8 by the secretary in the manner provided for the execution of judgments in chapter 15-18.

9        Section 4. That chapter 34A-3A be amended by adding thereto a NEW SECTION to read  
10 as follows:

11        Any violation of this chapter and the rules promulgated thereunder is subject to the  
12 administrative penalty provisions of this Act and enforcement under § 34A-3A-15.