



## States' Biofuels Statutes

### STATE OF SOUTH DAKOTA

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).*

*Current through the 2014 Legislative Session of the South Dakota State Legislature.*

#### **§ 34A-1-1. Policy of state--Purpose of chapter**

It is hereby declared to be the public policy of the state to achieve and maintain reasonable levels of air quality which will protect human health and safety, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the state. It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality. To these ends it is the purpose of this chapter to provide for a coordinated state-wide program of air pollution prevention, abatement and control, for an appropriate distribution of responsibilities among the state and local units of government, and to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions, and to provide a framework within which all values may be balanced in the public interest.

#### **§ 34A-1-2. Definition of terms**

Terms used in this chapter mean:

- (1) "Air contaminant," dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, radioactive materials as defined in chapter 34-21, or any combination thereof;
- (2) "Air pollution," the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tend to be injurious to human health or welfare, animals or plant life, or property, or would interfere with the enjoyment of life or property;
- (3) "Board," the Board of Minerals and Environment;
- (4) "Department," the Department of Environment and Natural Resources;
- (5) "Emission," a release into the outdoor atmosphere of air contaminants;
- (6) "Person," any individual, partnership, limited liability company, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity;
- (7) "Secretary," the secretary of environment and natural resources.

#### **§ 34A-1-3. Repealed by SL 1993, ch 256, § 1**

#### **§ 34A-1-4. Technical and operational services secured by secretary**

The secretary may secure necessary scientific, technical, administrative, and operational services, including laboratory facilities by contract or otherwise.

**§ 34A-1-5. Administration of chapter--Board functions--Enforcement as to radioactive substances**

The administration of this chapter is the responsibility of the secretary except that the Board of Minerals and Environment shall perform any quasi-judicial, quasi-legislative, advisory, and special budgetary functions set out in this chapter. The board, with the concurrence of the secretary may enforce those regulations promulgated pursuant to chapter 34-21 which pertain to the release of radioactive substances into the atmosphere.

**§ 34A-1-6. Promulgation of rules--Purpose—Violation**

The Board of Minerals and Environment may promulgate rules pursuant to chapter 1-26:

- (1) To establish ambient air quality standards;
- (2) To specify kind and composition of fuel sold, stored, or used;
- (3) To establish requirements for open burning;
- (4) To require records and maintenance of records, reports, install, use, and maintain monitoring equipment;
- (5) To establish methods including sampling of emissions for air pollution sources;
- (6) To establish requirements for methods and installation of machines or devices to prevent or significantly reduce air emissions;
- (7) To establish procedures for attainment and maintenance of ambient air quality standards;
- (8) To monitor ambient air quality;
- (9) To establish procedures for variances and renewal of variances; and
- (10) To establish air quality standards, requirements and procedures related to incinerators for municipal solid waste.

A violation of the rules promulgated pursuant to this section is subject to § 34A-1-39.

**§ 34A-1-6.1. Rules relating to incinerators for municipal solid waste--Requirements--Inapplicable as to medical waste incineration--Violation**

34A-1-6.1 to 34A-1-8. Repealed by SL 2013, ch 166, §§ 1 to 3

**§ 34A-1-7. Employment of personnel by department**

34A-1-6.1 to 34A-1-8. Repealed by SL 2013, ch 166, §§ 1 to 3

**§ 34A-1-8. Delegation of functions by secretary**

34A-1-6.1 to 34A-1-8. Repealed by SL 2013, ch 166, §§ 1 to 3

### **§ 34A-1-9. Studies, investigations and educational activities of department**

The department may:

- (1) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement, and control;
- (2) Determine by means of field studies and sampling the degree of air pollution in the state;
- (3) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to such effects; and
- (4) Collect and disseminate information and conduct educational and training programs relating to air pollution.

### **§ 34A-1-10. Cooperation by department with other agencies**

The department may:

- (1) Advise, consult, and cooperate with agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups;
- (2) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and provide them with technical and consultative assistance;
- (3) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter; and
- (4) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control of the source, device, or system, concerning the efficacy of the device or system, or the air pollution problem that may be related to the source, device, or system. Nothing in any such consultation relieves any person from compliance with this chapter, any rules in force pursuant to this chapter, or any other provisions of law.

### **§ 34A-1-11. Classification of air contaminant sources--Reporting requirements**

The Board of Minerals and Environment, by rules promulgated pursuant to chapter 1-26, may classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

**§ 34A-1-12. Records and reports required on air contaminant sources--Monitoring and sampling methods--Other information--Violation**

The department or board may require the owner or operator of any air contaminant source to establish and maintain such records; make such reports; install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures as the department or board shall prescribe; and provide such other information relative to compliance with this chapter and rules and regulations in force pursuant thereto as the department or board may require, including the location, size of and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions. Any violator of this section is subject to § 34A-1-39.

**§ 34A-1-13. Access to records relating to air pollution emissions**

The board may require access to records relating to emissions which cause or contribute to air pollution.

**§ 34A-1-14. Records and information available to public--Exception to protect trade secrets--Authorized use--Violation as misdemeanor**

Any records, reports, or information obtained by the department or board from owners or operators of an air contaminant source or sources shall be available to the public, except that upon a showing satisfactory to the board by the owners or operators of an air contaminant source that the records, reports, or information obtained by the department or board regarding processes or production technique are sufficiently unique to affect adversely the competitive position of the owner or operator by revealing trade secrets, the department and board shall consider the record, report, or information or particular portion thereof confidential in the administration of this chapter. Nothing in this section prevents the disclosure of otherwise confidential records or information by the department or board, or any department, agency, or officer of state government if necessary for the prosecution of violations of the chapter or rules promulgated pursuant to this chapter. Nothing in this section prevents the use of such records or information by the department, or any department, agency, or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify, directly or indirectly, any owner or operator or reveal any information otherwise confidential under this section. Notwithstanding the provisions of this section, all data relating to air pollution emissions as defined in § 34A-1-2, are public records, and subject to public disclosure as provided in § 1-40-31.

A violation of this section is a Class 2 misdemeanor.

**§ 34A-1-15. Establishment of ambient air quality standards--Violation**

The Board of Minerals and Environment shall promulgate rules pursuant to chapter 1-26 to establish ambient air quality standards for the state as a whole or for any part of the state. Any person who violates these standards is subject to § 34A-1-39.

**§ 34A-1-16. Specification of fuels permitted in state--Violation**

The Board of Minerals and Environment may promulgate rules pursuant to chapter 1-26 that specify the kind or composition of fuels permitted to be sold, stored or used within the state if it is deemed by the board to be necessary for the achievement of ambient air quality standards. Any person who violates these rules is subject to § 34A-1-39.

**§ 34A-1-17. Contamination within plant excluded from jurisdiction**

Nothing in this chapter shall be construed to grant to the department or board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops.

**§ 34A-1-18. Emission control and open burning requirements--Local control--Nonconformance as violation**

The Board of Minerals and Environment, for the purpose of controlling pollution, shall by rules promulgated pursuant to chapter 1-26 establish emission control requirements and reasonable requirements for open burning. The requirements may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and in order to take necessary or desirable account of varying local conditions. Any general prohibition against all open burning shall be determined by each municipality or by each county for areas outside the boundaries of the municipalities. The board may not adopt any rule generally prohibiting all open burning, but any board rule regulating open burning shall be only as is necessary to address a specific problem. Any person who allows an emission which does not conform to a requirement in force pursuant to this section is subject to § 34A-1-39.

**§ 34A-1-19. Emission control methods and devices required--Permission to use alternative methods—Violation**

If the board finds that there are methods, machines, devices, or construction features which are reasonably feasible that will prevent or significantly reduce the emission of air resulting in pollution and that the public interest will be served by preventing or reducing the emission, it may require the use of such methods and the installation of such features, machines, or devices. However, the owner or operator of an air contaminant source may use any methods, construction features, machines, or devices which are as effective as those required by the board. The owner or operator of an air contaminant source may apply to the board for permission to use alternative methods, construction features, machines, or devices upon a showing by the owner or operator that the alternative methods, construction features, machines, or devices are as effective as those required by the board. Any person who violates this section is subject to § 34A-1-39.

**§ 34A-1-20. Maintenance of motor vehicle emission control devices--Violation**

The Board of Minerals and Environment may promulgate rules pursuant to chapter 1-26 to control emissions from motor vehicles by the proper maintenance of all emission control equipment with which the vehicle was equipped at the time of original purchase. Any violation of these rules is subject to § 34A-1-39.

**§ 34A-1-21. Permits required for air pollutant equipment and control devices--Applications--Rules--Recommendations by secretary--Hearings--Violation--Actions taken without a permit or in violation of permit conditions as misdemeanors**

The board may prohibit, by rules promulgated pursuant to chapter 1-26, the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from the board or the secretary. Any person in violation of these rules is subject to § 34A-1-39.

The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as the board deems necessary.

The board, by rules promulgated pursuant to chapter 1-26, shall provide for the issuance, suspension, revocation, and renewal of any permits which it may reasonably require pursuant to this section. Procedures shall provide for a recommendation on such a permit matter by the secretary with an opportunity for a contested case hearing by the board on its own motion or upon protest by the

applicant or an adversely affected person. If the recommendation of the secretary is not contested, that recommendation shall become a final determination on the application. If an uncontested recommendation is for approval or conditional approval of the application, the permit shall be issued by the secretary consistent with his recommendation.

A violation of a condition of a permit issued pursuant to this section is subject to § 34A-1-39.

Any person who, without a permit, commits an action for which a permit is required is guilty of a Class 1 misdemeanor. Any violation of a permit condition is a Class 2 misdemeanor and is subject to § 34A-1-39.

**§ 34A-1-22. Prevention of stationary pollution sources not in compliance**

The department may enjoin the construction, modification, or operation of any stationary source of air pollution at any location where the emissions from such sources will prevent the attainment and maintenance of compliance with rules and regulations adopted by the board.

**§ 34A-1-23. Particular manufacturer not to be favored by requirements**

Nothing in § 34A-1-19 or 34A-1-21 authorizes the board to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices, or equipment otherwise available.

**§ 34A-1-24. Application for variance from rules**

34A-1-24 to 34A-1-27. Repealed by SL 2013, ch 166, §§ 4 to 7

**§ 34A-1-25. Interests considered in granting variance**

34A-1-24 to 34A-1-27. Repealed by SL 2013, ch 166, §§ 4 to 7

**§ 34A-1-26. Pre-existing uses considered in ruling on variance**

34A-1-24 to 34A-1-27. Repealed by SL 2013, ch 166, §§ 4 to 7

**§ 34A-1-27. Findings required for grant of variance**

34A-1-24 to 34A-1-27. Repealed by SL 2013, ch 166, §§ 4 to 7

**§ 34A-1-28. Repealed by SL 1986, ch 295, § 7**

**§ 34A-1-29. Variance or renewal discretionary**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-30. Conditions required in grant of variance or renewal--Violation**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-31. Limitation when variance granted because no abatement method available**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-32. Limitation when variance based on time required for abatement measures**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-33. Variances limited to three years**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-34. Renewal of variances--Application and hearing required**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-35. Emergency provisions unimpaired by variance provisions**

34A-1-29 to 34A-1-35. Repealed by SL 2013, ch 166, §§ 8 to 14

**§ 34A-1-36. Municipal and county programs approved by board--Application to state facilities**

Each municipality and each county may, with the approval of the Board of Minerals and Environment, establish and thereafter administer within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and rules issued under this chapter, or, upon prior review and approval by the board, less restrictive requirements. The air pollution control jurisdiction authorized pursuant to this section applies to state facilities located within the boundaries of the municipality or county if the municipality or county has been found to be in violation of National Ambient Air Quality Standards.

**§ 34A-1-37. Municipal and county cooperation with other agencies**

Any municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states provided that the requirements of other statutes relating to cooperative agreements are met.

**§ 34A-1-38. Control of air contaminant sources beyond capability of local authority**

If the board finds that the control of a particular class of air contaminant source is beyond the reasonable capability of the local or county air pollution control authorities, the department may assume and retain jurisdiction over that class of air contaminant source.

**§ 34A-1-39. Civil action for violation of requirements--Penalty--Liability for damages to environment--Jury trial**

Any person subject to this section, as provided in this chapter, is liable for a civil penalty not to exceed ten thousand dollars per day of violation or for damages to the environment of the state, or both. An action for the recovery of a civil penalty shall, upon demand, be tried to a jury.

**§ 34A-1-40. Investigations on board's own initiative--Petition by local board or electors**

The board may upon its own initiative cause to be investigated the alleged pollution of the air or any other violation of this chapter including the violation of any regulations issued pursuant to this chapter, or such investigation shall be made upon the verified petition of the governing body of any municipality or any municipal or county board of health or any fifteen electors of the state.

**§ 34A-1-41. Entry for inspection to determine compliance--Refusal of access prohibited**

Any duly authorized officer, employee, or representative of the department may enter and inspect that part of any property, premise, or place in which the officer, employee, or representative has reasonable grounds to believe is the source of air pollution at any reasonable time for the purpose of

investigating the air pollution or of ascertaining the state of compliance with this chapter and rules promulgated pursuant to this chapter. No person may refuse entry or access to any authorized representative of the department who requests entry for the purpose of investigation, and who presents appropriate credentials; nor may any person obstruct, hamper, or interfere with any such investigation.

**§ 34A-1-42. Report of inspection furnished to owner or operator**

If requested, the owner or operator of the premises inspected pursuant to § 34A-1-41 shall receive a report setting forth all the facts found which relate to compliance status.

**§ 34A-1-43. Hearings by board--Procedural powers**

In addition to any other powers conferred on it by law the board may hold hearings relating to any aspect of or matter in the administration of this chapter, and in connection with the hearings, exercise the powers granted by chapter 1-26.

**§ 34A-1-44. Issuance and enforcement of orders**

In addition to any other powers conferred on it by law the board may issue orders necessary to effectuate the purposes of this chapter and enforce the provisions of this chapter by all appropriate administrative and judicial proceedings.

**§ 34A-1-45. Emergency order for immediate reduction or discontinuance of emissions**

If the secretary finds that any person is causing or contributing to air pollution and that such pollution creates an emergency by causing imminent danger to human health or safety and requires immediate action to protect human health or safety, the secretary shall order the person to reduce or discontinue immediately the emission of air contaminants. The emergency order is effective immediately on service upon the person responsible for the emission, and any person to whom such an order is directed shall comply with the order immediately.

**§ 34A-1-46. Hearing requested on emergency order--Action by board**

Upon the request for a hearing by any person or persons named in an order served pursuant to § 34A-1-45, the secretary shall proceed under chapter 1-26. Following the completion of such proceedings, the board shall affirm, modify or set aside the order of the secretary.

**§ 34A-1-47. Notice of violation--Order for corrective action included--Violator subject to civil penalty**

If the secretary has reason to believe that a violation of any provision of this chapter or rule promulgated pursuant to this chapter has occurred, the secretary may cause written notice to be served upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, and the facts alleged to constitute a violation of this chapter, and may include an order that necessary corrective action be taken within a reasonable time. Any person who violates an order pursuant to this section is subject to a civil penalty not to exceed ten thousand dollars per day of violation, or for damages to the environment, or both.

**§ 34A-1-48. Hearing requested on order for corrective action--Time allowed**

Any order issued pursuant to § 34A-1-47 becomes final unless, no later than twenty days after the date the notice and order are served, the person named in the order requests in writing a hearing before the board. Upon such request, the board shall proceed in compliance with chapter 1-26.

**§ 34A-1-49. Contested case proceeding in lieu of order--Consent agreement**



In lieu of an order, the board chair may schedule a contested case under chapter 1-26 before the board. Nothing in this chapter prevents the department from notifying an alleged violator of violations and negotiating a consent agreement instead of initiating proceedings under § 34A-1-47. Any consent agreement shall be approved by the board.

#### **§ 34A-1-50. Board orders after hearing**

If, after proceedings held pursuant to § 34A-1-48 or 34A-1-49, the board finds that a violation or violations have occurred, it shall affirm or modify any order previously issued under § 34A-1-47 by the board chairman, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions or air pollution involved. If, after proceedings on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order.

#### **§ 34A-1-51. Time allowed for corrective action in board order**

Any order issued as part of a notice or after proceedings under chapter 1-26 shall prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions of air pollution.

#### **§ 34A-1-52. Enforcement remedies not barred by actions for penalties**

Action pursuant to § 34A-1-39 or the second paragraph of § 34A-1-14 is not a bar to enforcement of this chapter or rules in force pursuant to this chapter, and orders made pursuant to this chapter by injunction or other appropriate remedy.

#### **§ 34A-1-53. Voluntary compliance effort not precluded**

Nothing in this chapter prevents the department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

#### **§ 34A-1-54. Private remedies unimpaired**

Nothing in this chapter abridges, limits, or otherwise impairs the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings for damages or other relief.

#### **§ 34A-1-55. Severability of provisions and applications**

34A-1-55. Repealed by SL 2011, ch 165, § 32

#### **§ 34A-1-56. General permits for categories of air pollution sources--Terms and conditions--Modification, suspension or revocation—Violation**

Upon the recommendation of the secretary and after public notice in at least three newspapers of general circulation in this state and notice to all municipalities, counties, and tribal governments and opportunity for public hearing, the board may issue general permits for categories of air pollution sources. However, a general permit may only be issued to sources that are required by federal law to be permitted and may be no more stringent than any federal law, rule, or regulation that is applicable to the source being permitted. Air pollution control activities conducted in conformity with a general permit do not require a permit issued under § 34A-1-21.

A general permit remains in effect until suspended, revoked, or modified by the board. A general permit may be modified after public notice and opportunity for public hearing. A general permit may be suspended or revoked after publication of notice and order of suspension and revocation in at least three newspapers of general circulation in this state. If an affected facility or interested party wishes to

contest the order, a request for hearing shall be filed with the department within twenty days. A hearing on the matter shall be held as soon thereafter as practicable. Notice of hearing shall be published in at least three newspapers of general circulation in this state. Any facility operating under a general permit pursuant to this section, upon the filing of a complaint to the board, and upon action by the board in accordance with the contested case provisions of chapter 1-26, may be removed from the jurisdiction of the general permit and required to obtain an individual permit.

A violation of a condition of a permit issued pursuant to this section, or the operation of a source covered by this section without a permit is subject to § 34A-1-39.

#### **§ 34A-1-57. State administration of air pollution control program--Imposition of fees**

In order to enhance economic development, provide increased customer service, protect the public health, safety, welfare, and the environment of this state, the state shall retain state administration of the air pollution control program as provided under Title V of the Federal Clean Air Act as amended to January 1, 1992. In order to retain state administration of this program, as provided in the Clean Air Act, fees shall be imposed upon certain air pollution point sources as provided in § 34A-1-58. Proceeds from the fees shall be used to defray the costs of administering the state's air quality permitting program.

#### **§ 34A-1-58. Annual fee--Calculation--Annual adjustment of fee--Use of proceeds--Existing sources of pollution--Written notice from department**

Concurrent with the submittal of a permit application pursuant to this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee not to exceed twenty-five dollars per ton of each regulated pollutant as determined by the provisions of Title V of the Federal Clean Air Act, 42 U.S.C. 7401 et seq. as amended to January 1, 2011, or a lesser amount as set by the secretary by rules promulgated pursuant to chapter 1-26. The secretary may exclude any amount of regulated pollutant emitted by any source in excess of four thousand tons per year in determining the amount of fee required for any operating source. The secretary shall develop a fee structure which equitably assesses an annual fee for administration costs and an annual fee based on emissions, the sum of which covers the estimated total costs of administering a delegated state air quality program. The secretary shall, by rules promulgated pursuant to chapter 1-26, annually adjust the fee, if necessary, in accordance with the consumer price index for that calendar year. The fee shall be used to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

- (1) Reviewing and acting on any application for a permit or permit revision;
- (2) Implementing and enforcing the terms and conditions of the permit if the permit is issued. This amount does not include any court costs or other costs associated with any enforcement action;
- (3) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;
- (4) Preparing generally applicable regulations or guidance;
- (5) Modeling, analysis, or demonstrations;
- (6) Preparing inventories and tracking emissions; and
- (7) Providing support to sources under the small business stationary source technical and environmental compliance assistance program.

For any existing source of air contaminants that is subject to Title V of the Federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended to January 1, 2011, and that is not required to hold an air quality permit from the department as of January 1, 1992, the board may, as a condition of continued operation, require by rules promulgated pursuant to chapter 1-26 that the owner or operator of the source pay the annual fee provided for in this section. Nothing in this section allows the department to charge any one source of air contaminants more than one annual fee that is designed to cover the costs identified in this section. The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment under this section to the owner or operator of the air contaminant source. The fee levied in this section is in addition to all other fees and taxes levied by law.

**§ 34A-1-58.1. Ethanol production plants--Application and annual fees**

Ethanol production plants are exempt from the fees established in § 34A-1-58, and, in lieu thereof, are subject to the fees established by this section. Concurrent with the submittal of a permit application pursuant to this chapter, the applicant for an air quality permit for an ethanol production plant shall submit to the department an application fee of one thousand dollars. In addition, the owner or operator of an ethanol production plant shall submit to the department an annual fee for the duration of the air quality permit. The annual fee shall consist of an administrative fee of one thousand dollars and an emissions fee in the amount of forty dollars per ton of total suspended particulate matter, sulfur dioxide, nitrogen oxide, volatile organic compounds, and hazardous air pollutants emitted to the air by the ethanol production plant during the previous calendar year. The department shall give written notice of the amount of the fee to be assessed and the basis for the assessment under this section to the owner or operator of the ethanol production plant by June first of each calendar year. The annual fee shall accrue on July first of the year after the permit is issued and annually thereafter. The annual fee is due and payable by July thirty-first and shall be remitted to the Department of Revenue along with such forms as may be prescribed by the secretary of revenue in rules promulgated pursuant to chapter 1-26. The fees shall be administered and used by the department in the same manner as prescribed for other fees established in this chapter.

**§ 34A-1-59. Establishment of air quality subfund--Source of subfund--Administration--Expenditures--Unexpended funds**

There is hereby established in the environmental fee fund created in § 1-40-30, the air quality subfund. This subfund shall consist of moneys from public and private sources including legislative appropriations, federal grants, gifts, and fees received pursuant to § 34A-1-58. The subfund shall be maintained separately and be administered by the department in order to defray the expenses of all activities associated with administering the air quality permit program. Expenditures from the subfund shall be appropriated through the normal budget process. Unexpended funds and interest shall remain in the subfund until appropriated by the Legislature.

**§ 34A-1-60. Obligation to pay fee imposed on regular air contaminant--Date due**

The obligation to pay the annual fee imposed by § 34A-1-58 is upon the owner or operator of a regulated air contaminant source and shall accrue on July first for all facilities. The fee is due and payable by July thirty-first and shall be remitted to the Department of Revenue along with such forms as may be prescribed by the secretary of revenue in rules promulgated pursuant to chapter 1-26.

**§ 34A-1-61. Permit revocation, modification, or suspension--Fees**

Any permit issued pursuant to this chapter may be revoked, modified, or suspended, in whole or in part, during its term for cause, including the following:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted emissions.

**§ 34A-1-62. Additional penalty for knowingly violating provisions of this chapter**

In addition to any other civil or criminal penalty imposed by this chapter, any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement of this chapter, or who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required

monitoring device or method is guilty of a Class 1 misdemeanor and, notwithstanding the maximum penalties provided by § 22-6-2, is subject to a criminal fine in a maximum amount of ten thousand dollars per day per violation.