

Appendix I

South Dakota Regulated Substance Response Fund

(Attachment 1)

**REGULATED SUBSTANCE RESPONSE FUND DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**

CONTACTS:
Steve Pirner, Secretary
Tim Tollefsrud, Director

INTENT | USE | PURPOSE:

The money in the Regulated Substance Response Fund is continuously appropriated to provide funding for the clean up of regulated substance discharges. The Secretary of the Department of Environment and Natural Resources may expend funds from the response fund to provide for the costs of investigations, emergency remedial efforts, corrective actions, and managerial or administrative activities associated with such activities.

SUMMARY:

In 1988 SDCL: 34A-12-3 created the Regulated Substance Response Fund. The fund was created through an appropriation from general fund, a one-time contribution from the petroleum release compensation fund, and a temporary pesticide registration fee.

Ongoing deposits into the fund come from; money from civil actions or administrative proceedings for violation of environmental statutes or upon damage to the environment, including actions for administrative expense recoveries, civil penalties, compensatory damages, and money paid pursuant to any agreement, stipulation, or settlement in such actions or proceedings; and interest attributable to investment of the money in the response fund. Before the fund can be used, there must be a discharge of a regulated substance, but then the money is continuously appropriated to provide funds for the clean up of regulated substance discharges. The department may file civil actions or liens on property owned by the responsible person to cost recover.

REQUIREMENTS:

The Secretary of the Department of Environment and Natural Resources may expend funds from the response fund to provide for the costs of investigations, emergency remedial efforts, corrective actions, and managerial or administrative activities associated with discharges of regulated substances. For a substance to be classified as a regulated substance, it must be defined in either statute or rule. SDCL 34A-12-1 exempts sewage and sewage sludge from being classified as a regulated substance.

The secretary's use of the response fund shall be based upon the following:

- (1) In the case of an investigation, when the secretary determines that a discharge requiring an emergency remedial effort may have occurred and that the general operating budget of the department for such purposes is not adequate to cover the costs of the necessary investigatory activities;
- (2) In the case of an emergency remedial effort, when the secretary determines that a discharge has occurred and that corrective actions shall be immediately undertaken to protect an imminent threat to the public health or safety or to contain a discharge which, if not immediately contained, shall in time pose a significantly greater threat to public health or safety or to the environment of this state than if such action is not immediately taken;
- (3) In the case of a discharge not of an emergency nature when the secretary determines that a discharge has occurred, that a responsible party or liability fund capable of performing the corrective actions either cannot be identified or refuses to undertake corrective actions, and that corrective actions shall be undertaken to protect the public health, safety, welfare, or environment of the state.

SDCL 34A-12-12 makes the responsible person strictly liable for any corrective action costs expended from the Regulated Substance Response Fund, and the department may file either civil actions or liens on property owned by responsible persons to cost recover.

STATUTES:

34A-12-3. Regulated substance response fund established - Purpose - Source of funds - Continuous appropriation - Informational budget - Annual legislative review - There is hereby established in the state treasury an operating fund to be known as the regulated substance response fund for the purpose of providing funds for the clean up of regulated substance discharges. In addition to the money from the petroleum release cleanup fund as provided in § 34A-12-2 and the temporary pesticide registration fee increase provided by § 38-20A-9, funds from the following sources shall be deposited into the response fund:

- (1) Direct appropriations to the response fund from the general fund;
- (2) Money, other than criminal fines assessed in criminal actions, recovered by the state in any action or administrative proceeding based upon violation of the state's environmental statutes or upon damage to the environment, including actions for administrative expense recoveries, civil penalties, compensatory damages, and money paid pursuant to any agreement, stipulation, or settlement in such actions or proceedings;
- (3) Interest attributable to investment of the money in the response fund;

- (4) Money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the response fund. All money in the response fund is continuously appropriated for the purposes specified in § 34A-12-4. All money received by the department for the response fund shall be set forth in an informational budget pursuant to § 4-7-7.2 and be annually reviewed by the Legislature.

Source: SL 1988, ch 291, § 4.

34A-12-2. One-time contribution from petroleum release compensation fund to response fund- Annual contribution to groundwater protection fund --

The petroleum release compensation fund established pursuant to § 34A-13-18, shall make a one time contribution of three hundred fifty thousand dollars, to the response fund within one year after March 1, 1988, and shall contribute one hundred thousand dollars annually for five years to the groundwater protection fund to fund the groundwater research and education program established pursuant to § 46A-1-85.

Source: SL 1988, ch 291, § 3; 1989, ch 306, § 55.

34A-12-4. Expenditure of funds by secretary - Grounds for expenditures --

When necessary in the performance of the secretary's duties under §§ 23A-27-25, 34A-1-39, 34A-2-75, 34A-6-1.4, 34A-6-1.3 I, 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-14, 34A-12-1 to 34A-12-15, inclusive, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68 and Title 34A relative to discharges, the secretary may expend funds from the response fund to provide for the costs of investigations, emergency remedial efforts, corrective actions, and managerial or administrative activities associated with such activities. The secretary's use of the response fund shall be based upon the following:

- (1) In the case of an investigation, when the secretary determines that a discharge requiring an emergency remedial effort may have occurred and that the general operating budget of the department for such purposes is not adequate to cover the costs of the necessary investigatory activities;
- (2) In the case of an emergency remedial effort, when the secretary determines that a discharge has occurred and that corrective actions shall be immediately undertaken to protect an imminent threat to the public health or safety or to contain a discharge which, if not immediately contained, shall in time pose a significantly greater threat to public health or safety or to the environment of this state than if such action is not immediately taken;
- (3) In the case of a discharge not of an emergency nature when the secretary determines that a discharge has occurred, that a responsible party or liability fund capable of performing the corrective actions either cannot be identified or refuses to undertake corrective actions, and that corrective actions shall be undertaken to protect the public health, safety,

welfare, or environment of the state. Source: SL 1988, ch 291, § 5; 1992, ch 158, § 55A; 1999, ch 182, § 3.

34A-12-12. Strict liability for costs of corrective action. Any person who has caused a discharge of a regulated substance in violation of § 34A-1 2-8 is strictly liable for the corrective action costs expended by the department pursuant to §§ 23A-27-25. 34A-1-39. 34A-12-1 to 34A-12-15. inclusive, 38-20A-9, 45-6B-70. 45-6C-45. 45-6D-60, and 45-9-68. Source: SL 1988, ch 291, § 13.

CURRENT STATUS

The Department of Environment and Natural Resources currently has six (6) contracts in place with environmental consulting firms to provide response capabilities. These contracts are 4 year contracts with extension provisions. Currently the department has contracts with the following firms: Geotek Engineering & Testing Services (Sioux Falls); Leggette, Brashears & Graham (Sioux Falls); Terracon Consultants (Rapid City and Omaha); West Central Environmental (Morris, Minnesota); BayWest (St. Paul, Minnesota); and American Engineering Testing Services (Pierre and Rapid City).

The balance of the Regulated Substance Response Fund as of 06/30/2008 was \$2,575,500.00.