

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

400T0346

HOUSE BILL NO. 1013

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 repeal certain obsolete statutes regarding the Department
2 of Environment and Natural Resources.

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

4 Section 1. That § 46-3A-1 be repealed.

5 ~~— 46-3A-1. As used in this chapter:~~

6 ~~— (1) The term, weather modification, means performing any activity with the intention of~~
7 ~~producing artificial changes in the composition, behavior, or dynamics of the~~
8 ~~atmosphere;~~

9 ~~— (2) The terms, experimentation, and, research and development, mean theoretical~~
10 ~~exploration and experimentation and the extension of investigative findings and~~
11 ~~theories of a scientific or technical nature in the practical application for experimental~~
12 ~~and demonstrative purposes, including the experimental producing and testing of~~
13 ~~model devices, equipment, materials, and processes;~~

14 ~~— (3) The term, person, means any person, firm, association, organization, partnership,~~
15 ~~company, corporation, private or public, county, first or second class municipality,~~



1 trust, or other public agencies;

2 ~~(4) The term, operation, means the performance of weather modification activities~~
3 ~~entered into for the purpose of producing, or attempting to produce, a certain~~
4 ~~modifying effect within one geographical area over one continuing time interval not~~
5 ~~exceeding one year.~~

6 Section 2. That § 46-3A-2 be repealed.

7 ~~46-3A-2. It is hereby declared that the State of South Dakota claims its sovereign right to~~
8 ~~the use for the best interests of its residents of the moisture contained in the clouds and~~
9 ~~atmosphere within its sovereign state boundaries.~~

10 Section 3. That § 46-3A-3 be repealed.

11 ~~46-3A-3. It is hereby declared that weather modification techniques for precipitation~~
12 ~~management should be used to augment precipitation and decrease hailfall damage in South~~
13 ~~Dakota. The application of weather modification techniques shall be carried out under proper~~
14 ~~safeguards to supply sufficient data and accurate information in order to provide a net economic~~
15 ~~benefit and enhance knowledge concerning weather modification and to protect life, property,~~
16 ~~and the public interest.~~

17 Section 4. That § 46-3A-4.1 be repealed.

18 ~~46-3A-4.1. The Weather Modification Commission is abolished. All functions exercised by~~
19 ~~the former Weather Modification Commission are transferred to the Water Management Board.~~

20 Section 5. That § 46-3A-5 be repealed.

21 ~~46-3A-5. The weather modification activities of the Water Management Board shall be~~
22 ~~administered under the direction and supervision of the Department of Environment and Natural~~
23 ~~Resources and the secretary thereof, but the board shall retain the quasi-judicial, quasi-~~
24 ~~legislative, advisory, other nonadministrative and special budgetary functions (as defined in § 1-~~

1 ~~32-1) otherwise vested in it and shall exercise those functions independently of the secretary of~~
2 ~~water and natural resources. The board shall have the function of setting the terms of and~~
3 ~~approving the contracts with other units of government for the sharing of the costs of weather~~
4 ~~modification operations.~~

5 Section 6. That § 46-3A-8 be repealed.

6 ~~—46-3A-8. The Department of Environment and Natural Resources, in order to carry into~~
7 ~~effect the provisions of this chapter, is authorized and empowered to appoint a qualified~~
8 ~~individual, organization, or institution to evaluate and publish the effects of all operations~~
9 ~~conducted in the state, and employ such clerical help as necessary; and to employ a director and~~
10 ~~such other staff members for the Water Management Board as are needed to carry out the intent~~
11 ~~of the chapter.~~

12 Section 7. That § 46-3A-9 be repealed.

13 ~~—46-3A-9. The Water Management Board shall carry on operations and research on a~~
14 ~~statewide basis, by its own staff, or by contract with approved cloud seeding organizations or~~
15 ~~in cooperation with other agencies as provided by law.~~

16 Section 8. That § 46-3A-10 be repealed.

17 ~~—46-3A-10. The Department of Water and Natural Resources shall cooperate with the federal~~
18 ~~government and its agents and contractors, and with other states, in the conduct of artificial~~
19 ~~weather modification operations.~~

20 Section 9. That § 46-3A-11 be repealed.

21 ~~—46-3A-11. In carrying out the purposes of this chapter, the Department of Water and Natural~~
22 ~~Resources shall utilize to the extent possible the facilities and technical resources of the public~~
23 ~~and private educational institutions of the state.~~

24 Section 10. That § 46-3A-12 be repealed.

1 ~~—46-3A-12. The Department of Environment and Natural Resources, in order to carry into~~
2 ~~effect the provisions of this chapter, may enter into any contracts or memoranda of agreement~~
3 ~~as are necessary and may accept funds from the state Legislature and from private and public~~
4 ~~sources.~~

5 Section 11. That § 46-3A-13 be repealed.

6 ~~—46-3A-13. The Department of Environment and Natural Resources may, at its discretion,~~
7 ~~cooperate with county programs of weather modification in carrying out the purposes of this~~
8 ~~chapter, and in addition to the powers of counties specified in § 10-12-18, counties may~~
9 ~~contribute to and participate in any weather modification program carried out by the state.~~

10 Section 12. That § 46-3A-14 be repealed.

11 ~~—46-3A-14. The board of county commissioners, before contributing to or participating in any~~
12 ~~weather modification program pursuant to § 46-3A-13, may submit the question of whether the~~
13 ~~county should participate in any operational weather modification program to the voters of the~~
14 ~~county at any primary, general, or special election in accordance with all other election laws of~~
15 ~~this state.~~

16 Section 13. That § 46-3A-15 be repealed.

17 ~~—46-3A-15. It is a Class 2 misdemeanor for any person to engage in activities for weather~~
18 ~~modification without a weather modification license and a weather modification permit issued~~
19 ~~by the Water Management Board or in violation of any term or condition of the license or the~~
20 ~~permit except as the Water Management Board shall provide by rules promulgated pursuant to~~
21 ~~chapter 1-26 and § 46-3A-16.~~

22 Section 14. That § 46-3A-16 be repealed.

23 ~~—46-3A-16. The Water Management Board, to the extent it considers exemptions practical,~~
24 ~~shall provide for exempting laboratory research and experiments and activities of an emergency~~

1 nature against fire, frost, sleet, or fog from the license and permit requirements of this chapter.

2 Section 15. That § 46-3A-17 be repealed.

3 ~~—46-3A-17. The Water Management Board, in accordance with its regulations, shall issue a~~
4 ~~weather modification license to each applicant who pays the license fee and who demonstrates,~~
5 ~~to the satisfaction of the Water Management Board, competence in the field of meteorology~~
6 ~~which is reasonably necessary to engage in weather modification activities. If the applicant is~~
7 ~~an organization, the competence must be demonstrated by the individual or individuals who are~~
8 ~~to be in control and in charge of the operation for the applicant. Each application shall be~~
9 ~~accompanied by a fee of twenty-five dollars.~~

10 Section 16. That § 46-3A-18 be repealed.

11 ~~—46-3A-18. Any person issued an original license or a renewal license under this chapter shall~~
12 ~~pay a fee of one hundred dollars. The money collected from such fees shall be deposited with~~
13 ~~the state treasurer in the environment and natural resources fee fund established pursuant to § 1-~~
14 ~~40-30.~~

15 Section 17. That § 46-3A-19 be repealed.

16 ~~—46-3A-19. Each original license or renewal license issued under this chapter shall expire on~~
17 ~~December thirty-first of the year for which it was issued.~~

18 Section 18. That § 46-3A-20 be repealed.

19 ~~—46-3A-20. At the expiration of the license period, the Water Management Board shall issue~~
20 ~~a renewal license to each applicant who pays the license fee and who has the qualifications~~
21 ~~necessary for issuance of an original license.~~

22 Section 19. That § 46-3A-21 be repealed.

23 ~~—46-3A-21. The Water Management Board, in accordance with this chapter and its rules, shall~~
24 ~~issue a weather modification permit to each applicant who holds a valid weather modification~~

1 ~~license, pays the permit fee, publishes such notice of intention as the Water Management Board~~
2 ~~shall require by rule and submits proof of publication, and furnishes proof of financial~~
3 ~~responsibility.~~

4 Section 20. That § 46-3A-22 be repealed.

5 ~~—46-3A-22. Proof of financial responsibility is made by showing, to the satisfaction of the~~
6 ~~Water Management Board, that the licensee has the ability to respond in damages for liability~~
7 ~~which might reasonably result from the operation for which the permit is sought.~~

8 Section 21. That § 46-3A-23 be repealed.

9 ~~—46-3A-23. Before a permit may be issued, the Water Management Board shall hold a public~~
10 ~~hearing on the proposed project. The hearing shall be held in a place within a reasonable~~
11 ~~proximity of the area expected to be affected by the proposed operation.~~

12 Section 22. That § 46-3A-24 be repealed.

13 ~~—46-3A-24. No permit may be issued unless the Water Management Board determines, based~~
14 ~~on the information provided in the operational plan and on the testimony provided at the public~~
15 ~~hearing, that the proposed weather modification operation is in the public interest.~~

16 Section 23. That § 46-3A-25 be repealed.

17 ~~—46-3A-25. Any person issued a permit under this chapter shall pay a fee of one hundred~~
18 ~~dollars. The money collected from such fees shall be deposited with the state treasurer in the~~
19 ~~environment and natural resources fee fund established pursuant to § 1-40-30.~~

20 Section 24. That § 46-3A-26 be repealed.

21 ~~—46-3A-26. A separate permit is required for each operation. The Water Management Board~~
22 ~~shall not issue a permit for operations in an area for a period to exceed one year.~~

23 Section 25. That § 46-3A-27 be repealed.

24 ~~—46-3A-27. The Water Management Board may suspend or revoke a license or permit if it~~

1 ~~appears that the licensee no longer has the qualifications necessary for the issuance of an~~
2 ~~original license or permit or has violated any provision of this chapter. The Water Management~~
3 ~~Board may refuse to renew the license of, or to issue another permit to, any applicant who has~~
4 ~~failed to comply with any provision of this chapter.~~

5 Section 26. That § 46-3A-28 be repealed.

6 ~~—46-3A-28. The Water Management Board may modify the terms and conditions of a permit~~
7 ~~if the licensee is first given notice and reasonable opportunity for a hearing on the need for a~~
8 ~~modification and it appears to the Water Management Board that a modification is necessary~~
9 ~~to protect the health or property of any person.~~

10 Section 27. That § 46-3A-29 be repealed.

11 ~~—46-3A-29. The Water Management Board may promulgate rules, pursuant to chapter 1-26,~~
12 ~~governing the weather modification program, including procedures for licensing, acquiring~~
13 ~~permits, renewal of permits, permit waivers, revocation of licenses, conducting hearings, and~~
14 ~~submitting reports and records.~~

15 Section 28. That § 46-3A-30 be repealed.

16 ~~—46-3A-30. The Department of Environment and Natural Resources shall administer and~~
17 ~~enforce the provisions of this chapter. However, the Water Management Board retains the~~
18 ~~authority and policy powers reserved to it by § 46-3A-5.~~

19 Section 29. That § 1-40-42 be repealed.

20 ~~—1-40-42. By January first of each year, the Department of Environment and Natural~~
21 ~~Resources shall submit a report to the Governor and to the Legislature summarizing all of the~~
22 ~~following subjects concerning the source reduction and recycling program under §§ 1-40-40 and~~
23 ~~1-40-41:~~

24 ~~—(1)—Past activities of the program;~~

1 ~~—(2)—~~ Accomplishments of the program; and

2 ~~—(3)—~~ Proposed goals of the program for the state agencies and local governmental units.

3 ~~—~~ By July first of each even-numbered year, each agency and participating local governmental
4 unit shall submit recommendations to the Department of Environment and Natural Resources
5 regarding the operation of the resource recovery and recycling program under §§ 1-40-40 and
6 1-40-41.

7 Section 30. That § 45-6B-77 be repealed.

8 ~~—45-6B-77.~~ The Department of Environment and Natural Resources shall maintain and keep
9 current a master list of all permits, notices, and certificates required by state statutory law or
10 rules adopted by state agencies for each type of mining operation. Such list shall be available
11 to any person upon written request. The first master list shall be prepared not later than January
12 20, 1983. On that date and annually thereafter, the department shall submit a copy to the
13 Legislative Research Council.

14 Section 31. That § 34A-6-1.5 be repealed.

15 ~~—34A-6-1.5.~~ The board shall adopt a statewide comprehensive solid waste management plan.
16 The plan shall be prepared in cooperation with all municipalities and counties in the state and
17 shall be approved pursuant to the rule-making procedure of chapter 1-26. The plan shall cover
18 a fifteen-year time period and shall serve as the basis for the board's decisions on the need for
19 additional facilities to be issued permits under § 34A-6-1.13. The plan shall include an analysis
20 of the volume and composition of solid waste from all sources; projection of changes in volume
21 and composition; an inventory of all existing and planned solid waste facilities and their permit
22 status; an evaluation of the capacity of existing facilities; an assessment of special site or other
23 facility characteristics which may affect the suitability of facilities for continued or future
24 operation; an evaluation of the adequacy of existing capacity to handle the anticipated future

1 volume and composition of waste; an evaluation of the feasibility and desirability of achieving
2 waste stream volume or contaminant reductions through source reductions, recycling, waste type
3 segregation, compaction, incineration, or other technology; an assessment of the need for new
4 facilities on the basis of these analyses; and a facility plan for meeting these needs which shall
5 consider among other things location, site suitability, appropriateness of facility type, and the
6 utility and desirability of shared or regional facilities. The plan shall be updated from time to
7 time as circumstances warrant. A comprehensive updating of the plan shall be undertaken no
8 later than the tenth anniversary of the date on which the plan was approved by the board:

9 — The board shall consider in its comprehensive solid waste management plan 40 CFR parts
10 257 and 258 of the environmental protection agency solid waste disposal facility disposal
11 criteria as proposed August 30, 1988, and as subsequently amended to January 1, 2011. Pending
12 completion of the comprehensive solid waste management plan, the board shall continue to act
13 on pending applications, new permit applications, and renewal applications.

14 Section 32. That § 34A-11-1.1 be repealed.

15 — 34A-11-1.1. Any rule adopted pursuant to this chapter may not be more stringent than those
16 promulgated by the U.S. Environmental Protection Agency under authority of national laws
17 governing the control of hazardous wastes except that the Board of Minerals and Environment
18 shall promulgate rules for the treatment, storage, and disposal of polychlorinated biphenyls:

19 Section 33. That § 34A-7-5 be repealed.

20 — 34A-7-5. No beverage container may be sold or offered for sale in this state, subsequent to
21 July 1, 1978, unless it is reusable, recyclable, or biodegradable. No beverage container may be
22 sold or offered for sale in this state after January 1, 1992, if the beverage container is connected
23 to another beverage container by a device constructed of a material that is not recyclable,
24 biodegradable, or photodegradable.

1 ~~— A violation of this section is a Class 1 misdemeanor.~~

2 Section 34. That § 34A-7-5.1 be repealed.

3 ~~— 34A-7-5.1. No plastic garbage bag or plastic garbage can liner may be offered for sale in this~~
4 ~~state after January 1, 1992, if the bag or can liner is not recyclable, biodegradable,~~
5 ~~photodegradable, or otherwise degradable.~~

6 ~~— The secretary of environment and natural resources may, by rule, establish standards to~~
7 ~~implement the provisions of this section.~~