

VIII. OTHER STATE STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of state laws in South Dakota.

A. Farmland Preservation

1. *Planning and Zoning*

Producer Note: Agricultural operations frequently are controlled by local planning or zoning board activities. Since it is not possible to outline each local area's requirements, a producer must check with local boards to determine local planning and zoning regulations which may affect an operation.

Currently, South Dakota counties and municipalities are not specifically empowered to use zoning as a land preservation tool. However, they have the power to adopt zoning regulations in accordance with a comprehensive plan of development, and may regulate uses in those areas in accordance with the plan.⁶² As a result, counties may authorize the creation of agriculturally-zoned areas as part of their zoning function.

2. *Municipal Environmental Powers*

Under the municipal power to promote public health, safety, welfare, and morals and suppress disease, South Dakota municipalities enjoy the power to do whatever is necessary or expedient to accomplish that purpose.⁶³ Municipalities have the power to compel owners of stables and pigsties to clean or abate their activities, or remove them entirely, and may regulate the location of these activities. They may exercise the same powers relative to agriculture-related industries such as packing houses, rendering plants, slaughterhouses, bone and soap factories, or any unwholesome or offensive business, and may prevent their establishment within one mile of the corporate limits.

Municipalities may also prevent pollution of, or injury to, their water supplies, or to public water supplies within one mile of their corporate limits. They may also prohibit disposal of any offensive material in any body of water within their borders.

B. Nuisance and Right-to-Farm

Producer Note: Many producers are confronted with concerns of local residents. These problems may originate from dust or odor generated by the operation or may result from a lack of knowledge of what is involved in an agricultural operation. While not specifically an area where the state or federal authorities may become involved, court actions can be brought against the operation. These actions are usually based on a nuisance theory, and in some cases, a right-to-farm defense may apply.

⁶² S.D. CODIFIED LAWS ANN. § 11-2-1 *et seq.* (1995).

⁶³ S.D. CODIFIED LAWS ANN. § 9-32-1 *et seq.* (1995).

- Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street, or highway; or

⁶⁴ S.D. CODIFIED LAWS ANN. § 21-10-1 *et seq.* (1987).

⁶⁵ S.D. CODIFIED LAWS ANN. § 7-8-33. (1996)., S.D. CODIFIED LAWS ANN. § 8-2-8 (1996).

⁶⁶ S.D. CODIFIED LAWS ANN. § 9-29-13 (1996).

⁶⁷ S.D. CODIFIED LAWS ANN. § 7-8-33. (1996)., S.D. CODIFIED LAWS ANN. § 8-2-8 (1996).

⁶⁸ S.D. CODIFIED LAWS ANN. § 21-10-25.1 *et seq.* (1987 & Supp. 1996).

Protection under the statute, however, is not extended if a nuisance results from negligent or improper operation of the facility, or for damages caused by pollution, reduction in water supply, or drainage onto another's land.

Under a related South Dakota statute, an animal facility is defined as any area where animals are kept. Intentional damage to the facility, obstruction of the facility, or release of the animals is punishable by criminal penalties, and triple damages may be levied against the offender.⁶⁹

C. Land Application of Livestock Waste

Currently, South Dakota allows land application of livestock waste and does not mandate any sort of manure management process. Land application of manure currently does not require a groundwater discharge permit.⁷⁰

Producer Note: Recommendations for land application of waste are covered by NRCS technical guidance materials. These recommendations should be followed in order to preserve the producer's potential defenses in nuisance actions or to aide the producer when defending against alleged permit violations. While these recommendations do not have the force of law that agency regulations have, compliance with them will generally aide the producer.

D. Pest Control

Lands infested with weeds or pests may be declared a public nuisance.⁷¹ The South Dakota Weed and Pest Control Board (Board) has the power to enter on land with reasonable notice to the owner, and may order the owner to abate a weed or pest problem. If the landowner declines to abate the problem or is unable to do so, the Board may order the cost of abatement to be taxed to the land.

Seizure and destruction of contaminated plant material is allowed, and movement of the material contrary to Board rules is prohibited.

⁶⁹ S.D. CODIFIED LAWS ANN. § 40-38-1 *et seq.* (Supp. 1996).

⁷⁰ S.D. ADMIN. R. 74:03:16 (1992).

⁷¹ S.D. CODIFIED LAWS ANN. § 38-22-1 *et seq.* (1996).

⁷²S.D. CODIFIED LAWS ANN. § 38-8-1 (1996).

⁷³ S.D. CODIFIED LAWS ANN. § 38-8-1 *et seq.* (1996).

⁷⁴ S.D. CODIFIED LAWS ANN. § 38-8A-2 *et seq.* (1996).

⁷⁵ S.D. CODIFIED LAWS ANN. § 41-1-7 (1991).

⁷⁶ S.D. CODIFIED LAWS ANN. § 40-35-1 *et seq.* (1991).

G. Dead Animal Disposal

The state addresses the issue of disposal of dead animals in two separate ways. First, the Animal Industry Board may compel disposal of animals that have died of disease in a manner that it prescribes, which may include special handling and cleaning.⁷⁷ After notice has been provided by the Board to the owner, the county sheriff will cause animals which are undisposed of to be burned or buried. Where dead animals are unburied and are offensive or a danger to health, disposal must be done in a manner provided by law, usually burning or burying.⁷⁸

Notice from a member of the township board of supervisors is provided to the landowner that a carcass must be burned or buried. In the event that the land is in an unincorporated area, the notice to burn or bury is given by county, rather than township authorities. Costs of disposal are taxed to the owner of the animal, and the disposal must be in a manner that does not emit odors and is not offensive or a danger to health. Animals may also be disposed of at a licensed renderer's facility.

H. Environmental Audits

Producer Note: Several states have passed environmental audit protection laws which give businesses an immunity from the use of environmental audit findings in administrative, civil, or criminal actions against the business for environmental problems found and corrected. In other words, businesses cannot be prosecuted, civilly or criminally, for environmental problems they found and corrected in a self-audit process. Fewer than half of the states have this type of law. South Dakota has granted this type of protection.

⁷⁷ S.D. CODIFIED LAWS ANN. § 40-5-15 (1991).

⁷⁸ S.D. CODIFIED LAWS ANN. § 34-16-10 *et seq.* (1992).

⁷⁹ S.D. CODIFIED LAWS ANN. § 1-40-33 *et seq.* (Supp. 1996).

