

APPENDIX B

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

AND

THE SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

IN REGARD TO COOPERATIVE EFFORTS

FOR ENVIRONMENTAL PROTECTION

WHEREAS, the protection of the environment and natural resources is an important mission of the State of South Dakota, the South Dakota Department of Agriculture and the South Dakota Department of Environment and Natural Resources; and

WHEREAS, the economy of South Dakota is more dependent on agriculture than any other State in the Union; and

WHEREAS, it is in the best interest of all citizens of South Dakota to protect the environment and natural resources of this State; and

WHEREAS, the South Dakota Department of Agriculture and the South Dakota Department of Environment and Natural Resources wish to cooperate to the greatest extent possible for the protection of the environment and natural resources of this state and to provide consistent and efficient administration of rules, procedures, and policies; and

WHEREAS, the South Dakota Department of Agriculture and the South Dakota Department of Environment and Natural Resources recognize that both possess human, technological, informational, and material resources that may be applied to serve the mutual benefit of both agencies insuring that duplication of efforts does not occur; and

NOW THEREFORE, this mutual understanding is hereby reached and entered into between the South Dakota Department of Agriculture and the South Dakota Department of Environment and Natural Resources regarding the protection of the environment and natural resources of this State.

THE FOLLOWING IS MUTUALLY UNDERSTOOD:

PESTICIDE AND FERTILIZER MANAGEMENT

The South Dakota Department of Agriculture (SDDA) is the lead agency for the regulation of pesticides and fertilizers including but not limited to chemical registration and distribution, proper use, applicator certification and licensing, as well as all aspects of use of these chemicals including application restrictions, transporting, storing, disposal and handling, for the purpose of preventing injury to humans, vegetation, crops, livestock, wildlife, soil, beneficial insects, groundwater or surface water as it relates to the Federal, Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA) and state pesticide and fertilizer laws.

The South Dakota Department of Environment and Natural Resources (SDDENR) is the lead agency for response to, planning for and corrective action of regulated substance discharges. SDDA will provide technical assistance in response to, planning for and corrective action of pesticide and fertilizer discharges.

Each agency will immediately notify the other upon receipt of a report of a suspected fertilizer or pesticide discharge and again when information is received that confirms a discharge. Investigation reports are made available to each department.

It is expected that questions regarding proper disposition of pesticides and fertilizers during discharge corrective actions will require mutual decision making between both departments. SDDA will determine if spilled fertilizer or pesticide materials are usable in accordance with fertilizer or pesticide laws. If the material is considered waste, SDDENR will determine the type of waste and will approve of disposal alternatives. Those portions of pesticide or fertilizer discharge corrective action plans that pertain to use of recovered materials will be referred to SDDA for approval based on pesticide and fertilizer laws.

SDDENR will notify SDDA of proposed fertilizer and pesticide corrective actions and will take SDDA comments into consideration before notifying the responsible party of additional monitoring, further corrective action or case closure.

SDDA inspectors will be aware of other SDDENR statutes and report suspected violations to SDDENR. SDDENR staff will be aware of SDDA statutes and report suspected violations to SDDA. On an annual basis, a meeting will be held to discuss each agency's activities, in order to foster this

awareness.

SDDA will inform SDDENR of activities, policies, and potential developments that may affect SDDENR programs and will consider SDDENR comments before actions or policies are put into place.

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WELLHEAD PROTECTION

SDDENR is the lead agency in the development and implementation of the wellhead protection program (WHP), and the support of local government efforts to develop plans and controls for protection of their groundwater resources, subject to SDDENR concurrence. When local WHP programs propose to restrict the management, use and handling of pesticides and fertilizers as a part of managing their wellhead protection areas, SDDA will be notified by SDDENR. SDDENR will notify the entity managing the local WHP program that SDDENR can fully concur with the local WHP program only if restrictions have been adopted by SDDA pursuant to authority under SDCL 39-19 and 39-21 to accomplish the goals of the local WHP program. (This does not apply to the siting of new fertilizer and pesticide facilities.)

RULE DEVELOPMENT

Each agency will invite the other agency's comments during administrative rule development that establishes rules and standards for pesticides and fertilizers in the environment, pesticide and fertilizer storage, and practices affecting non-point or point source pollution control. Each agency recognizes that independent agency comments should be part of administrative hearing processes.

FERTILIZER AND PESTICIDE MANAGEMENT PLANS AND VULNERABILITY MAPPING

In conjunction with SDDA, state universities, and other interested parties, the secretary (of SDDENR) shall annually review new studies and data that relate to the relationships between fertilizer and pesticide use practices and the quality of waters of the State. From this review, the State shall formulate and revise as necessary State management plans for the use of fertilizers and pesticides that are based on protecting

water quality and preventing groundwater pollution. These management plans will be based on use practices within the State as a whole or in specific areas within the State depending on hydrogeological differences, and shall be used by the state in regulating fertilizers and pesticides pursuant to chapters 38-19, 38-20A and 38-21 in developing future contingency plans, and in performing public education. State management plans will be cosigned by the secretaries before implementation.

PESTICIDE OR FERTILIZER SPILL DATABASE, MONITORING NETWORKS, AND INFORMATION EXCHANGE

SDDA and SDDENR jointly recognize that sharing information will allow each agency to more effectively manage their respective programs. Designated staff from each agency will meet regularly to coordinate and develop common computer software systems and equipment to make information access easier. Each Department will annually identify all of their respective data systems that pertain to agriculture and the environment and make them known to the designated staff to work out plans for sharing the data. Such information will at a minimum involve, environmental monitoring network data, regulated facility data, and geographical information systems. SDDA and SDDENR will examine methods to streamline data gathering for input into the data management systems.

Information exchange procedures will be explored for reports or inspections that indicate a pesticide or fertilizer release has occurred or is suspected, reports of non-compliance and reports of potential or pending enforcement actions.

Copies of SDDA pesticide or fertilizer spill reports and reports of analysis of samples taken during investigations are supplied to SDDENR. SDDENR will supply copies of reports by their staff regarding pesticide or fertilizer incidents to the SDDA. Each agency will pay particular attention to the confidentiality of reports given to the other agency.

CHEMIGATION

SDDENR will share with SDDA any information collected concerning chemigation. Data collected by SDDENR which will be available for review by SDDA includes a database of persons who chemigate and the annual chemigation report.

The SDDA will share information received regarding performance standards of chemigation equipment and devices for use by the SDDENR chief engineer and the Water

