

STATEMENT OF LEGAL ISSUES

ISSUE 1

THE CIRCUIT COURT ERRED IN FAILING TO DETERMINE THAT DENR HAD A DUTY TO REQUIRE COMPLIANCE WITH ADMINISTRATIVE RULES WHEN APPROVING PLANS AND SPECIFICATIONS FOR BLSD.

The Circuit Court found DENR did not have a duty to require compliance with Administrative Rules when approving plans and specifications.

Affiliated Distillers Brands Corp., 81 S.D 44, 45, 130 N.W.2d 597, 599 (1964)

State v. Guerra, 2009 SD 74, 772 NW2d 907

SDCL 34A-2-20

SDCL 34A-2-21

SDCL 34A-2-93(2)

ARSD 74:53:01:01

ARSD 74:53:01:02

ARSD 74:53:01:03

ARSD 74:53:01:15

ISSUE 2

THE CIRCUIT COURT ERRED IN FAILING TO DETERMINE THAT DENR HAD A DUTY TO REQUIRE BLSD TO OBTAIN A CONSTRUCTION PERMIT TO BE ISSUED BY THE STATE WATER BOARD WHEN APPROVING PLANS AND SPECIFICATIONS.

The Circuit Court found DENR did not have a duty to require BLSD to obtain a construction permit pursuant to SDCL 34A-2-27.

City of Deadwood v. Gustafson Family Trust, 2010 SD 5, 777 NW2d 628

Kirby v. Hoven School District, 2004 SD 100 \$5 866 NW2d 905

Moran v. Rapid City Area School District 51-4, 281 NW2d 595, (SD 1963)

SDCL 34A-2-27

SDCL 34A-2-29

ISSUE 3

THE CIRCUIT COURT ERRED IN FAILING TO DETERMINE THAT DENR HAD A DUTY TO COMPLY WITH SDCL 34A-2-29 WHEN APPROVING PLANS AND SPECIFICATIONS OF BLSD.

The Circuit Court found DENR did not have a duty to comply with SDCL 34A-2-29 when approving plans and specifications of BLSD.

ISSUE 4

THE CIRCUIT COURT ERRED IN FAILING TO DETERMINE THAT DENR HAD A DUTY TO FOLLOW THE RECOMMENDED DESIGN CRITERIA MANUAL WHICH HAS BEEN IN USE BY THE DEPARTMENT SINCE MARCH 1991.

The Circuit Court found DENR did not have a duty to comply with its own manual, entitled Recommended Design Criteria Manual, published March 1991, when approving plans and specifications for the BLSD project.

Hogan v. SD Board of Transportation, 245 NW2d 493, 497 (SD 1976)
Schnabel v. Alcester School District #61-1, 295 NW2d 340 (SD 1980)

ARSD 74:53:01:44

Recommended Design Criteria Manual, March 1991 (select pages)
Recommended Standards for Wastewater Facilities (select pages)

ISSUE 5

THE CIRCUIT COURT ERRED IN FAILING TO DETERMINE THAT DENR HAD A DUTY TO FOLLOW THE RECOMMENDED STANDARDS OF WASTEWATER FACILITIES MANUAL USED BY THE DEPARTMENT.

The Circuit Court found DENR did not have a duty to comply with the Recommended Standards of Wastewater Facilities

Manual, when approving plans and specifications for the BLSD project.