



MEMORANDUM

**INTRODUCING FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT PRACTITIONERS TO
THE SOUTH DAKOTA ENVIRONMENTAL POLICY ACT**

This fact sheet is designed to familiarize Federal [National Environmental Policy Act](#) (NEPA) practitioners with the [South Dakota Environmental Policy Act](#) (SDEPA). When a proposed NEPA action also requires compliance with SDEPA, it is critical that these practitioners familiarize themselves with SDEPA and understand how SDEPA compares to and contrasts with NEPA.

Both statutes are designed to facilitate informed decision-making and environmental review. SDEPA requires that state agencies study the environmental consequences of their actions, including permitting and financial assistance. It also requires them to take all feasible measures to avoid, minimize, and mitigate damage to the environment. This fact sheet compares SDEPA and the resulting [South Dakota Codified Laws \(SDCL\) 34A-09](#) with CEQ's regulations for implementing the procedural provisions of NEPA, [40 CFR Parts 1500-1508](#).

This fact sheet only provides basic information and is intended to serve as a springboard for discussion with South Dakota [Department of Environment and Natural Resources](#) (DENR) staff when proposed projects trigger both Federal and state environmental review requirements. Project proponents are strongly encouraged to contact DENR in the early stages of project planning so that Federal and state environmental review processes, if applicable, can be appropriately aligned.

Introduction

The SDCL requires state agencies to consider the impact of governmental actions on the environment, including on the “land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character”. [SDCL 34A-9-1\(4\)](#). Since 1974, the South Dakota Environmental Policy Act, as codified in SDCL, has mandated the completion of environmental impact statements for all state actions. DENR oversees the SDEPA process as well as a wide variety of environmental permits and has created a 1-Stop Permitting Process. SDEPA applies to all projects initiated, funded, or permitted by state agencies as well as the making of any policies, regulations, and procedures. [SDCL 34A-9-2](#). Some actions are excluded by the statute, including enforcement proceedings, ministerial actions, emergency responses, proposed legislation, and regulatory actions intended to protect the environment. [SDCL 34A-9-3](#). Any agency's actions which are not excluded by the statute must undergo the SDEPA Environmental Impact Statement (EIS) process.

Key Points of Comparison

The table below compares NEPA terms and procedural requirements to SDEPA terms and procedural requirements set forth in SDCL.



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NEPA	SDEPA
Categorical Exclusion, 40 CFR 1508.4 , 40 CFR 1507.3	N/A
Environmental Assessment (EA), 40 CFR 1508.9 , 40 CFR 1501.3	N/A
Finding of No Significant Impact (FONSI), 40 CFR 1508.13	N/A
Notice of Intent, 40 CFR 1508.22	N/A
Draft Environmental Impact Statement (DEIS), 40 CFR 1502 , 40 CFR 1508.11	Draft Environmental Impact Statement, SDCL 34A-9-1(5) , SDCL 34A-9-5 .
Final Environmental Impact Statement (FEIS), 40 CFR 1502 , 40 CFR 1508.11	Final Environmental Impact Statement, SDCL 34A-9-1(5) .
Record of Decision, 40 CFR 1505.2	Finding, SDCL 34A-9-10 .

The bullets below provide a general comparison of processes:

- SDEPA does not have processes similar to categorical exclusions ([40 CFR 1508.4](#), [40 CFR 1507.3](#)) or environmental assessments ([40 CFR 1508.9](#), [40 CFR 1501.3](#)).
- NEPA and SDEPA both require scoping in order to determine what issues a proponent should include in a Draft EIS. Under SDEPA, a public scoping meeting must be held within the county of the proposed project. [SDCL 34A-9-6](#). NEPA also requires a public comment period for scoping, but the occurrence and location of any scoping hearing is based on agency discretion. [40 CFR 1501.7](#).
- Both NEPA and SDEPA require a DEIS to include the action’s description; environmental, social, and historic impacts; considered alternatives; potential mitigation measures; and irreversible commitments of resources. [SDCL 34A-9-6](#); [40 CFR 1502.16](#). Unlike NEPA, however, SDEPA directly emphasizes the importance of considering the “growth-inducing aspects” of a proposed project. [SDCL 34A-9-6](#).
- SDEPA requires that a DEIS be made available to the public, but it does not mandate a specific length of time for this comment period or mention whether to hold a public hearing. [SDCL 34A-9-8](#). NEPA, requires a 45-day public comment period and requires a public hearing if there is significant public interest. [40 CFR 1506.10\(c\)](#).
- State agencies that must comply with NEPA do not need to complete an additional process for SDEPA. If a federal statement has been prepared, the DENR does not mandate additional SDEPA documentation and will accept a NEPA document. [SDCL 34A-9-11](#).



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Figure 1: SDEPA Process

