



Board of Minerals and Environment

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AGENDA

Board of Minerals and Environment
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

January 19, 2017
10:00 a.m. CST

Note: Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items or items may be moved up on the agenda.

- 10:00 a.m. Call meeting to order and roll call
- Approval of minutes from November 17, 2016, meeting
- Mining issues: Consent Calendar – Tom Cline
- Sand, gravel, and construction aggregate mining general information – Mike Erickson
- Contested case hearing in the matter of the petition filed by DENR for forfeiture of Western Surety Company (CNA Surety) Bond No. 141551847 issued for State Mine License 88-364 for Weatherton Contracting Co., Inc. – Tom Cline
- Contested case hearing in the matter of the petition filed by DENR for forfeiture of Certificate of Deposit Nos. 65314 and 85362, First National Bank, Pierre, SD, issued for State Mine License 93-507 for James P. Wenande Trucking – Tom Cline
- Contested case hearing in the matter of the petition filed by DENR for forfeiture of Certificate of Deposit Nos. 3761 and 4403, First Interstate Bank, Belle Fourche, SD, issued for State Mine License 86-339 for Dakota Sand and Gravel, Inc. – Tom Cline
- 10:15 a.m. Update on Powertech (USA), Inc. Application for Large Scale Mine Permit No. 480 (Dewey-Burdock Project) – Charles McGuigan
- 10:20 a.m. Contested enforcement hearing in the matter of Quartz Operations, LLC, Northern Points 1 Well; DENR Petition to revoke permit and petition to forfeit surety (O&G Permit No. 2026)
- Next meeting
- Adjourn

Board members are reminded that effective July 1, 2016, members are subject to SDCL 3-23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the Board and seek a waiver where appropriate.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources at least 48 hours before the meeting if you have a disability for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-4216.

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Minutes of the
Board of Minerals and Environment
Telephone Conference Call Meeting

Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

November 17, 2016
10:00 a.m. CST

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Rex Hagg. The roll was called and a quorum was present.

Chairman Hagg appointed Gregg Greenfield as secretary pro tem.

Chairman Hagg noted the reason the meeting was changed to a telephone conference call was that the contested cases scheduled to be heard were all continued to the January 19, 2017, meeting. The Quartz matter had previously been continued due to a scheduling conflict with one of the parties and the bond forfeiture cases were continued to January due to the inclement weather forecast.

BOARD MEMBERS PARTICIPATING: Rex Hagg, Glenn Blumhardt, Doyle Karpen, Bob Morris, Pete Bullene, Dennis Landguth, Gregg Greenfield, and Daryl Englund.

BOARD MEMBER ABSENT: Linda Hilde.

OTHERS PRESENT: Bob Townsend, Mike Cepak, Mike Erickson, Tom Cline, and Patty McQuay, DENR Minerals and Mining Program; Tom Patterson, attorney for Woodford Construction Company LLC.

APPROVAL OF MINUTES FROM SEPTEMBER 15, 2016, MEETING: Motion by Blumhardt, seconded by Bullene, to approve the minutes of the September 15, 2016, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES:

Consent Calendar: Prior to the meeting, the board received a table listing the department recommendations for release of surety, releases of liability and surety, transfers of liability, and releases of liability (see attachment).

Tom Cline requested adding to the consent calendar a transfer of reclamation liability from Weatherton Contracting Co., Inc. to Concrete Materials for Site No. 364047 in Yankton County. Concrete Materials has mined a large portion of the site and intends to take over the reclamation liability of the Weatherton site. Concrete Materials has a \$20,000 statewide surety.

Mr. Morris noted that according to the consent calendar, Site No. 364047 had been listed for release of liability, so this action would be an amendment to the consent calendar.

Mr. Cline stated that the reclamation liability would be transferred to Concrete Materials and Weatherton Contracting would be released of their liability through the transfer.

Chairman Hagg asked Mr. Cline to address the correlation between this matter and the contested case hearing in the matter of forfeiture of Weatherton Contracting Bond No. 141551847, which was continued to the January meeting.

Mr. Cline stated that in order to prepare for the bond forfeiture hearing, staff inspected 25 of Weatherton's sites this year. Staff determined that since 2007, some sites had been reclaimed, some sites had been mined through, and some had naturally revegetated themselves. Those sites were eligible for release of liability. The sites that were not eligible for release of liability would be presented to the board for forfeiture.

Chairman Hagg stated that Weatherton Contracting would be removed from the consent calendar and the board would address Weatherton Contracting separately.

Motion by Morris, seconded by Englund, to accept the department recommendations for release of surety, releases of liability and surety, transfers of liability, and releases of liability as shown on the consent calendar, with the exception of Weatherton Contracting Co., Inc., Beresford, SD, License No. 88-364, Site No. 364047. A roll call vote was taken, and the motion carried unanimously.

Responding to questions from the board, Mr. Cline stated that Weatherton has a \$20,000 statewide surety. At one time Weatherton had licensed 66 sites, and if the sites listed on the consent calendar were released, 27 of Weatherton's sites would still be active. Mr. Cline stated that the six sites listed on the consent calendar are eligible to be released under the standard procedure of being regraded, top soiled, and revegetated. He provided reclamation information on each of the six sites.

Mr. Morris stated that, regarding the releases of liability, it appeared that little or no effort had been made by Weatherton to reclaim the sites as required by law. Mr. Morris said it appeared instead, that Weatherton had become compliant with law by neglect and that over time revegetation had occurred naturally. He asked if the department was satisfied that the status of the property listed on the consent calendar was consistent with the requirements of the law.

Mr. Cline stated that the sites listed on the consent calendar were eligible for release of liability. The sites were regraded, revegetated, and were acceptable by the landowner and DENR standards.

Mr. Karpen stated that the requested change to the consent calendar was not listed on the meeting agenda; therefore, it does not comply with the open meetings law.

Motion by Morris, seconded by Greenfield, to remove Weatherton Site No. 364047 from the consent calendar, and add the transfer of liability request for this site to the January 19, 2017, meeting agenda. A roll call vote was taken, and the motion carried unanimously.

Motion by Englund, seconded by Landguth, to release liability for Site Nos. 364011, 364022, 364034, 364050, and 364059, Weatherton Contracting Co., Inc., Beresford, SD, License No. 88-364. A roll call vote was taken, and the motion carried unanimously.

NEXT MEETING: The next meeting is scheduled for January 19, 2017, in Pierre.

Chairman Hagg noted that he received a thank-you note from the McCahren family for the flowers sent to Lee's funeral the Board of Minerals and Environment.

Statement of Tom Patterson, attorney for Woodford Construction:

"I am here, board members. I got the notice of the hearing for today. I got an email from Steve Blair saying that his view is that I can't participate in a forfeiture proceeding. I wanted to make it known of record that my interpretation of how it was left when I last met with the board and the board issued a ruling on the motion for summary judgement on behalf of Woodford Construction, was that we would continue to receive notice and, I believe, participate in further proceedings as it relates to the Quartz bond release. I understand that we have a difference of opinion on whether or not we can participate in the intervention. I came today for the purpose of seeing what proceedings occurred in respect to that, understanding of what evidence might be presented by any parties that were allowed to participate, and have it made known that I want to preserve the rights of Woodford Construction to make a claim and have a hearing before the board at some appropriate future time. Whether that's after the forfeiture proceeding is completed, I don't care, but I don't want it to appear that on behalf of Woodford Construction that we sat on our rights or didn't wish to continue to pursue our right to have the bond proceeds made available pursuant to a judgement that we've obtained against Quartz many months ago. That's the statement I have for today. I'll work with the staff here to determine when the Quartz hearing will occur and if the board has any questions of me as to the statements I've made today, I'd be glad to try and fill those in for you but that's where I think we are."

Chairman Hagg apologized to Mr. Patterson for not being notified that the hearing was continued. He stated that Mr. Patterson's appearance would be noted. Chairman Hagg said he was not prepared to sort out whether Mr. Patterson would get any air time at the contested case hearing, absent a request to intervene.

ADJOURNMENT: Motion by Morris, seconded by Karpen, that the meeting be adjourned. A roll call vote was taken, and the motion carried unanimously.

Approved this 19th day of January 2017.

Secretary

Date

Witness

Date

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>November 17, 2016</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Release of Surety:</u>						
Loretta D. & Elwin Larson Golden Valley, MN	98-655		\$2,500	5210002	Dacotah Bank, Clark	Release \$2,500.
<u>Releases of Liability and Surety:</u>						
BankWest Inc. Pierre, SD	96-587	587001	\$3,500	60448825	BankWest, Pierre NW1/4 Section 31; T41N-R39W & NE1/4 Section 36; T41N-R40W, Jackson County	Release liability and \$3,500.
Dakota Land Trust Dickinson, ND	14-966	966001	\$1,025	5610557182	Wells Fargo, Dickinson, ND NW1/4 Section 23; T40N-R44W, Oglala Lakota County	Release liability and \$1,025.
Dan's Excavating Castlewood, SD	98-677	677001	\$1,500	1700041402	First Premier Bank, Castlewood SE1/4 NW1/4 Section 1; T114N-R52W, Hamlin County	Release liability and \$1,500.

***South Dakota Board of Minerals & Environment
Consent Calendar***

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<u>Releases of Liability and Surety:</u>						
Mark or Marcia Lermeny Reva, SD	10-908		\$500	43150772	Pioneer Bank & Trust, Buffalo	Release liability and \$1,500.
			\$1,000	23163117	Pioneer Bank & Trust, Spearfish	
		908001	SE1/4 Section 4; T18N-R7E, Harding County			
<u>Transfers of Liability:</u>						
TF Luke & Sons, Inc. Kimball, SD	83-11		\$20,000	929211763	Western Surety Company	Transfer liability.
		11068	E1/2 NE1/4 Section 35; T104N-R61W, Davison County			
Transfer to:						
Harvey Fouberg Letcher, SD	12-937		\$1,000	110029332	CorTrust Bank, Mitchell	
Webster Scale, Inc. Webster, SD	03-766		\$20,000	BDA 7900610694	AMCO Insurance Company	Transfer liability.
		766003	NW1/4 Section 1; T123N-R53W, Day County			
Transfer to:						
R & L Wright Enterprises, Inc. Grenville, SD	15-987		\$1,500	5562422	Dacotah Bank, Webster	

***South Dakota Board of Minerals & Environment
Consent Calendar***

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<u>Releases of Liability:</u>						
TF Luke & Sons, Inc. Kimball, SD	83-11	11069	\$20,000	929211763	Western Surety Company	Release liability.
			SE1/4 Section 3; T104N-R60W, Davison County			
Midland Contracting, Inc. Huron, SD	03-768	768009	\$20,000	929292924	Western Surety	Release liability.
			N1/2 Section 10; T115N-R64W, Spink County			
Rogers Construction, Inc. Whitewood, SD	15-988	988004	\$20,000	55-212920	United Fire & Casualty Company	Release liability.
			E1/2 SW1/4 Section 7; T14N-R20E, Ziebach County			
Wayne Swenson Watertown, SD	01-715	715003	\$500	26352	Deuel County National Bank, Clear Lake	Release liability.
			\$500	60033	Deuel County National Bank, Clear Lake	
			\$500	60221	Deuel County National Bank, Clear Lake	
			\$500	60467	Deuel County National Bank, Clear Lake	
			E1/2 SW1/4 Section 23; T118N-R50W, Grant County			

**South Dakota Board of Minerals & Environment
Consent Calendar**

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<i>November 17, 2016</i> <u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Weatherton Contracting Co, Inc. Beresford, SD	88-364		\$20,000	141551847	Western Surety Company	Release liability.
		364011	NE1/4 Section 11; T126N-R71W, McPherson County			
		364022	SE1/4 Section 34; T121N-R73W, Edmunds County			
		364034	NW1/4 Section 16; T105N-R69W, Brule County			
		364047	E1/2 NW1/4 & NE1/4 Section 12; T94N-R56W, Yankton County			
		364050	SE1/4 SE1/4 SW1/4 Section 14; T116N-R52W, Codington County			
		364059	N1/2 SW1/4 Section 9; T103N-R58W, Hanson County			
Webster Scale Inc. Webster, SD	03-766		\$20,000	BDA 7900610694	AMCO Insurance Company	Release liability.
		766004	SW1/4 NE1/4 Section 22; T122N-R56W, Day County			
Clark County Highway Department Clark, SD	83-150		EXEMPT	NA	NA	Release liability.
		150012	S1/2 Section 31; T117N-R57W, Clark County			

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Consent Calendar***

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<u>Releases of Liability:</u>						
Kranzburg Township Watertown, SD	10-898		EXEMPT	NA	NA	Release liability.
		898001	NE1/4 Section 30; T116N-R51W, Codington County			
Spink County Highway Department Redfield, SD	83-115		EXEMPT	NA	NA	Release liability.
		115017	SE1/4 Section 29; T115N-R65W, Spink County			
Ziebach County Highway Department Dupree, SD	83-246		EXEMPT	NA	NA	Release liability.
		246004	NE1/4 Section 25; T15N-R19E, Ziebach County			
		246021	E1/2 SW1/4 Section 7; T14N-R20E, Ziebach County			

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<u>Release of Surety:</u>						
Mike or Norma Beeson Dante, SD	96-571		\$7,000	48922	Commercial State Bank, Wagner	Release \$7,000.
Russell Olson Murdo, SD	92-469		\$3,000	ILOC No. 2008-01	Dakota Prairie Bank, Draper	Release \$3,000.
<u>Release of Liability and Surety:</u>						
Wheeler Farms Inc. Brookings, SD	95-567		\$6,000	1103514	Boston Indemnity Company	Release liability and \$6,000.
		567001	N1/2 NE1/4 Section 12; T110N-R49W, Brookings County			
<u>Transfer of Liability and Release of Surety:</u>						
North American Mining Co. Custer, SD	11-930		\$1,000	7201000908	First Interstate Bank, Custer	Transfer liability and release \$2,000.
			\$1,000	7201001282	First Interstate Bank, Custer	
		930001	SW1/4 Section 7; T5S-R5E, Custer County			
Transfer to:						
Pacer Corporation Custer, SD	88-370		\$20,000	SUR20000678	Iron Shore Indemnity Inc.	

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<u>Transfer of Liability:</u>						
Duininck Bros. Inc. Prinsburg, MN	06-835		\$20,000	929529702	National Fire Insurance Company of Hartford	Transfer liability.
		835003	SW1/4 Section 12, NW1/4 Section 13, & NE1/4 Section 14; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	190-002-030	Liberty Mutual Insurance Company	Transfer liability.
		54121	NW1/4 Section 13; T126N-R71W, McPherson County			
		54134	NE1/4 Section 11; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	

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<u>Transfer of Liability:</u>						
Jensen Rock & Sand Inc. Mobridge, SD	83-112		\$20,000	41-16-48	New Hampshire Insurance Company	Transfer liability.
		112040	NW1/4 Section 13; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	
McPherson County Highway Department County Leola, SD	83-41		EXEMPT	NA	NA	Transfer liability.
		41029	NW1/4 Section 13; T126N-R71W, McPherson County			
Transfer to:						
Oban Construction LLC Ipswich, SD	83-35		\$20,000	RC-0015	Sun Surety Insurance Company	

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<u>Transfer of Liability:</u>						
Morris Inc. Pierre, SD	83-2		\$20,000	037 S 103597878	Travelers Casualty & Surety Company of America	Transfer liability.
		2043	NW1/4 Section 33; T120N-R74W, Potter County			
Transfer to:						
Potter County Highway Department Gettysburg, SD	83-147		EXEMPT	NA	NA	
Weatherton Contracting Co., Inc. Beresford, SD	88-364		\$20,000	141551847	Western Surety Company	Transfer liability.
		364047	E1/2 NW1/4 & NE1/4 Section 12; T94N-R56W, Yankton County			
Transfer to:						
Concrete Materials Sioux Falls, SD	83-144		\$20,000	55-194372	United Fire & Casualty Company	
<u>Release of Liability:</u>						
Mike Ford Redfield, SD	98-639		\$-0-	NA	NA	Release liability.
		639003	NE1/4 Section 29; T115N-R65W, Spink County			

***South Dakota Board of Minerals & Environment
Consent Calendar***

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<u>Release of Liability:</u>						
Herrick Services Roslyn, SD	98-641	641002	\$-0-	NA	NA	Release liability.
		NE1/4 Section 1; T123N-R53W, Day County				
Weatherston Contracting Co., Inc. Beresford, SD	88-364	364049	\$20,000	141551847	Western Surety Company	Release liability.
		NW1/4 Section 26; T4S-R7E, Custer County				

South Dakota Board of Minerals & Environment

Contested Cases – Surety Forfeitures

January 19, 2017

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Surety Forfeitures:</u>						
James P. Wenande Trucking Alexandria, SD	93-507		\$500 \$500	65314 85362	First National Bank, Pierre	Declare CD Nos. 65314 and 85362, First National Bank, Pierre, forfeited and transfer \$1,000 to the Mined Land Reclamation Fund.
		507001	SE1/4 Section 17; T102N-R58W, Hanson County			
Dakota Sand & Gravel, Inc. Belle Fourche, SD	86-339		\$500 \$500	3761 4403	First Interstate Bank, Belle Fourche First Interstate Bank, Belle Fourche	Declare CD Nos. 3761 and 4403, First Interstate Bank, Belle Fourche, forfeited and transfer \$1,000 to the Mined Land Reclamation Fund.
		339003	E1/2 NW1/4 Section 9; T8N-R5E, Butte County			

South Dakota Board of Minerals & Environment

Contested Cases – Surety Forfeitures

January 19, 2017

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Surety Forfeitures:</u>						
Weatherston Contracting Co., Inc. Beresford, SD	88-364		\$20,000	141551847	Western Surety Company	Declare Surety No. 141551847, Western Surety Company, forfeited and transfer \$20,000 to the Mined Land Reclamation Fund.
		364001			Sections 19 & 20; T101N-R69W, Brule County	
		364002			Sections 10 & 11; T99N-R79W, Tripp County	
		364003			NE1/4 NE1/4 Section 5; T97N-R58W, Hutchinson County	
		364004			W1/2 Section 2; T94N-R58W, Bon Homme County	
		364007			SW1/4 Section 26; T110N-R56W, Kingsbury County	
		364015			N1/2 NE1/4 & NE1/4 NW1/4 Section 28; T1S-R11E, Pennington County	
		364016			SE1/4 Section 20; T120N-R74W, Potter County	
		364018			NE1/4 Section 3; T124N-R75W, Walworth County	
		364020			NE1/4 Section 29; T120N-R74W, Potter County	
		364026			NW1/4 Section 5 & NE1/4 Section 6; T8N-R2E, Butte County	
		364027			Section 27; T122N-R53W, Day County	
		364029			NE1/4 Section 23; T2S-R12E, Pennington County	

South Dakota Board of Minerals & Environment

Contested Cases – Surety Forfeitures

January 19, 2017

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Surety Forfeitures:</u>						
Weatherston (continued)	88-364	364030	N1/2 Section 26 & SW1/4 Section 23; T118N-R67W, Faulk County			
		364031	NW1/4 Section 20; T108N-R68W, Buffalo County			
		364035	NW1/4 Section 12, SW1/4 Section 1, SE1/4 Section 2, & NE1/4 Section 11; T8N-R3E; Butte County			
		364036	Section 12; T6N-R8E, Meade County			
		364039	SE1/4 SW1/4 Section 17 & NW1/4 NE1/4 Section 20; T114N-R50W, Deuel County			
		364041	SE1/4 Section 24; T113N-R61W, Beadle County			
		364042	NW1/4 Section 29; T100N-R74W, Tripp County			
		364044	SW1/4 Section 6; T35N-R41W, Oglala Lakota County			
		364048	Section 3; T108N-R63W, Jerauld County			
		364056	NE1/4 Section 26 (Area North of Hwy 18); T97N-R72W, Gregory County			
		364063	Section 18; T4N-R6E, Meade County			
		364064	SE1/4 Section 24; T96N-R69W, Gregory County			
		364065	SW1/4 SW1/4 Section 21; T106N-R71W, Lyman County			
		364066	NW1/4 Section 26; T122N-R53W, Day County			