



**Board of Minerals
and Environment**

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3151 Fax: (605)773-4068

AGENDA

**Board of Minerals and Environment
Telephone Conference Call Meeting**

March 17, 2016
10:00 a.m. CDT

10:00 a.m. Call to order and roll call

Approval of minutes from January 21, 2016, meeting

Mining Issues

- Consent Calendar – Bret Graves
- Annual Update of Homestake Mining Company's Post Closure Bond – Eric Holm
- Acceptance of Reclamation Bond Increase for Wharf Resources (USA), Inc. – Eric Holm

Adjourn

A limited number of phone lines are available for this call. Interested parties who wish to participate in the telephone conference call should contact DENR at (605)773-3886 no later than 3:00 p.m. CDT on Wednesday, March 16, 2016.

Interested parties may also participate at the Department of Environment and Natural Resources, Large Conference Room, 523 East Capitol Avenue, Pierre, SD.

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 arrangements is (605) 773-4216.

The audio recording for this meeting is available at <http://denr.sd.gov/boards/2016/bme0121.mp3>.

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

January 21, 2016
10:00 a.m. CT

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. A quorum was present.

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Dennis Landguth, Doyle Karpen, Gregg Greenfield, Daryl Englund. Linda Hilde and Bob Morris participated via telephone conference call.

BOARD MEMBER ABSENT: Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM NOVEMBER 19, 2015, MEETING: Motion by Blumhardt, seconded by Landguth, to approve the minutes from the November 19, 2015, Board of Minerals and Environment meeting. 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).

Bret Graves, DENR Minerals and Mining Program, was available to answer questions from the board.

Motion by Landguth, seconded by Karpen, to accept the department recommendations for release of surety, releases of liability and surety, transfers of liability, and releases of liability. A roll call vote was taken, and the motion carried unanimously.

SOUTH DAKOTA'S REGIONAL HAZE STATE IMPLEMENTATION PLAN 5-YEAR

PROGRESS REPORT: Rick Boddicker, DENR Air Quality Program, provided a PowerPoint presentation discussing South Dakota's Regional Haze State Implementation Plan 5-Year Progress Report.

The regional haze rule was adopted into the Clean Air Act on July 1, 1999. The rule requires states to make reasonable visibility improvements at each Class I area.

Mandatory federal Class I areas includes national parks with more than 6,000 acres, wilderness areas with more than 5,000 acres, national memorial parks with more than 5,000 acres, and international parks that were in existence as of August 1977.

South Dakota's two Class I areas are Badlands National Park and Wind Cave National Park.

Mr. Boddicker showed a slide of the monitoring site at Badlands National Park. The building houses the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitors, which are operated by the National Park Service.

IMPROVE data identifies the composition of the pollutants impacting the Class I areas. For example, at Badlands National Park, the data shows that approximately 50 percent of the impairment comes from ammonium sulfates. At Wind Cave National Park approximately 40 percent of the impairment comes from particulate organic mass mostly due to the amount of fires that occur in the area.

The samples are analyzed and that data is entered into a calculation, which provides a visibility metric called a deciview. Deciview is a measure of visibility derived from calculated light extinction measurements so that uniform changes in haziness correspond to uniform incremental changes in visual perception across the entire range of conditions, from pristine to highly impaired. Mr. Boddicker discussed a photo taken in the Badlands that demonstrates Deciview 5 compared to Deciview 19.

When the state's Regional Haze Program was developed in 2011, DENR relied on the following control strategies to make improvements at Class I areas.

- BART – Best Available Retrofit Technology (Big Stone Power Plant)
- State Rules(74:36:07 – New Source Performance Standards; 74:36:09 – Prevention of Significant Deterioration; 74:36:10 – New Source Review)
- Federal Rules(Heavy-Duty Highway Diesel Rule, Tier 2 Vehicle and Gasoline Sulfur Program, Non-road Diesel Rule)

Mr. Boddicker discussed the list of recommendations DENR made for BART at Big Stone in 2010. DENR worked closely with OtterTail Power Company throughout the process and OtterTail agreed to these emission rates. The rates were then written into the rules that the Board of Minerals and Environment adopted in 2011.

Another requirement of the Regional Haze Rule is to regularly report on the progress the state's Regional Haze State Implementation Plan is accomplishing towards improving visibility in the Class I areas. The first progress report is due to EPA by February 4, 2016, which is five years after EPA received the state's submittal of its initial Regional Haze State Implementation Plan.

Since it is part of the State Implementation Plan, the department was required to public notice the progress report. The 30-day comment period ended on January 20, 2015, and the department received no comments. DENR did receive a letter from EPA stating that they felt the state met its obligations. In addition, at the end of September 2015, the department submitted the progress report to EPA, the National Parks Service, the US Forest Service, and the US Fish and Wildlife Service for the required 60-day Federal Land Management review. The department received comments from the National Parks Service and the US Forest Service. The comments and the department's response to those comments are included in South Dakota's Regional Haze State Implementation Plan 5-Year Progress Report.

Required Elements of the 5-Year Progress Report include the following:

- Status of control strategies in the state's Regional Haze State Implementation Plan
- Emissions reductions from the state's Regional Haze State Implementation Plan Strategies
- Visibility progress
- Emissions progress
- Assessment of changes impeding visibility progress
- Assessment of current strategy
- Review of visibility monitoring strategy
- Determination of adequacy

Mr. Boddicker discussed control strategies for BART at Big Stone. He provided a slide showing the actual emission rates for SO₂ and NO_x for 2010 through 2014 and the new limits for SO₂ and NO_x. There is a 90% reduction in emissions for SO₂ and 86% for NO_x. The presentation also includes a graph showing similar information in tons per year.

Mr. Boddicker explained a slide showing the improvements that have been made for the Badlands and Wind Cave areas for the 5-year periods since the beginning, which is the baseline period of 2000-2004.

Big Stone had until April 26, 2017, to get controls up and running. Construction was completed in the fall of 2015, testing has been completed, and the facility is now operating at the new rate.

Mr. Boddicker discussed slides showing the baseline and 5 year rolling average for the most current progress period, a graph showing Badlands and Wind Cave deciview – 20 percent most impaired days.

In concluding his report, Mr. Boddicker reported that Big Stone controls are ahead of schedule. There will be more improvements over the next few years as more BART controls take effect. South Dakota is confident it will meet the 2018 goal and South Dakota believes its current plan is adequate.

Mr. Boddicker discussed the department's response to comment letters submitted by the US Forest Service and the National Parks Service. He requested that the board approve South Dakota's Regional Haze State Implementation Plan 5-Year Progress Report.

Chairman Hagg requested comments from the public regarding the report. No one offered comments.

Mr. Boddicker answered questions from the board.

Motion by Englund, seconded by Greenfield, to approve South Dakota's Regional Haze State Implementation Plan 5-Year Progress Report, as presented. Motion carried unanimously.

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER IN THE MATTER OF LAC MINERALS (USA) LLC'S PETITION FOR RELEASE OF RECLAMATION LIABILITY, UPDATED RECLAMATION FINANCIAL ASSURANCE, POST CLOSURE PLAN AND FINANCIAL ASSURANCE, AND REQUEST TO RETAIN WATER MANAGEMENT

FACILITIES AND ACCESS ROADS: A court reporter was present for this matter and a transcript can be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611.

Max Main, attorney from Belle Fourche, appeared on behalf of LAC Minerals (USA), Inc.

Steve Blair, Assistant Attorney General, appeared on behalf of the Department of Environment and Natural Resources.

Harlan Schmidt, attorney from Spearfish, represented the intervenor, Robert Fowler. Neither Mr. Schmidt nor Mr. Fowler appeared.

Bob Morris stated, in accordance ARSD 74:09:01:20, he would recuse himself from participating due to a potential conflict of interest.

Hearing Chairman Greenfield stated that proposed Findings of Fact, Conclusions of Law, and Order had been submitted by Mr. Main on behalf of LAC Minerals, and Mr. Schmidt on behalf of Mr. Fowler. Mr. Main filed an objection to Fowler's proposed Findings of Fact, Conclusions of Law, and Order.

Hearing Chairman Greenfield pointed out changes that had been made to the Findings of Fact, Conclusions of Law and Order submitted by Mr. Main. The first change was on page 1 clarifying that Mr. Morris had recused himself from participating in the hearing pursuant to ARSD 74:09:01:20. The second change was the addition of paragraph 11 in the Order portion, stating that pursuant to SDCL 1-26-25, all of Fowler's proposed findings of fact are refused.

Hearing Chairman Greenfield suggested the following changes to Mr. Main's proposed Findings of Fact, Conclusion of Law and Order:

- Page 5, paragraph 14. – remove the following sentence, “After reclamation is complete, the acreage (in whole or in part) may be released from reclamation liability, if approved by the Board, and may either be placed into post closure monitoring, or be released completely.”
- Page 6, paragraph 18. – add the following after \$19,667,216, “for the 220.65 acres”
- Page 9, paragraph 6 – add the following after (\$61,100), “for the 1.76 acres”

- Page 9, paragraph 9 – add the following after \$19,667,216, “for the 220.65 acres”

Chairman Greenfield recommended the board adopt the Findings of Fact, Conclusions of Law and Order with the changes, as presented.

Mr. Blair noted that he and the department staff had reviewed Mr. Main’s proposed Findings of Fact, Conclusions of Law and Order and the proposed changes, and they had no objection.

Motion by Blumhardt, seconded by Karpen, to adopt the Findings of Fact, Conclusions of Law and Order, as amended, in the matter of the LAC Minerals (USA) LLC’S petition for release of reclamation liability, updated reclamation financial assurance, post closure plan and financial assurance, and request to retain water management facilities and access roads. A roll call vote was taken and the motion carried with Blumhardt, Englund, Greenfield, Hagg, Hilde, Karpen, and Landguth voting aye. Bob Morris abstained.

Mr. Blair noted that No. 11 of the Order states that Mr. Fowler’s and Mr. Schmidt’s Findings of Fact and Conclusions of Law are refused.

Mr. Main stated the DENR Exhibit C, the procedural completeness checklist, which was offered and received during the hearing, incorrectly states that the first notice of recommendation and hearing was mailed on September 24, 2015. The exhibit needs to be changed to the second notice of recommendation and hearing was mailed on September 24, 2015.

Chairman Greenfield noted that Findings of Fact No. 7 correctly states the second notice was mailed on September 24, 2015.

ACCEPTANCE OF RECLAMATION AND POST CLOSURE SURETIES FOR LAC MINERALS (USA), LLC: Eric Holm reported that during the October 15, 2015, hearing on LAC’s release of reclamation liability petition and post closure plan, the board approved replacing LAC’s current \$10.7 million reclamation bond with a \$61,100 surety bond to cover remaining reclamation at the Richmond Hill Mine. The board also approved the \$19,667,216 post closure financial assurance for the mine in the form of a surety bond. The two surety bonds were scheduled to be submitted to the board for approval at the November 2015 meeting, but due to delays in LAC obtaining the surety bonds, the acceptance of the bonds was rescheduled for the January 2016 board meeting.

LAC has submitted a reclamation bond from Fidelity and Deposit Company of Maryland and a post closure financial assurance from Fidelity and Deposit Company of Maryland and Zurich American Insurance Company. The department has completed its evaluation of both companies.

Fidelity and Deposit Company of Maryland is Zurich’s primary writing company for surety bonds; however, its treasury limitation for individual bonds is \$14,666,000, which is less than the required amount for the post closure bond. As a result, both companies are listed on the post closure bond since Zurich American has a treasury limitation for single bonds of \$732,711,000. If the bond was forfeited, the claim would be submitted to Zurich since both companies are part of the same insurance company.

Ratings from AM Best, Standard and Poor's, and Moody's are superior, very strong, and excellent, respectfully. Zurich is also considered a top ten surety company and a top five insurance company in regard to credit ratings. Mr. Holm noted that AM Best has revised its ratings outlook for Zurich from stable to negative, which means it is possible that AM Best may downgrade Zurich's top superior rating due to losses in its general insurance segment. However, even if Zurich's ratings are downgraded, the surety bond should still be considered secure. Mr. Holm also noted that Standard and Poor's and Moody's rating outlooks remain stable. The department will continue to periodically review Zurich's credit ratings.

The department recommended that the board release Irrevocable Letter of Credit #P53190T04092, Royal Bank of Canada, in the amount of \$10,700,000 and accept reclamation surety Bond No. 09177704, Fidelity & Deposit Company of Maryland, in the amount of \$61,100 and post closure surety Bond No. 09177703, Fidelity and Deposit Company of Maryland and Zurich American Insurance Company, in the amount of \$19,667,216.

Mr. Holm answered questions from the board.

Motion by Landguth, seconded by Englund, to release Irrevocable Letter of Credit #P53190T04092, Royal Bank of Canada, in the amount of \$10,700,000 and accept reclamation surety Bond No. 09177704, Fidelity & Deposit Company of Maryland, in the amount of \$61,100 and post closure surety Bond No. 09177703, Fidelity and Deposit Company of Maryland and Zurich American Insurance Company, in the amount of \$19,667,216. A roll call vote was taken and the motion carried with Blumhardt, Englund, Greenfield, Hagg, Hilde, Karpen, and Landguth voting aye. Bob Morris abstained.

NEXT MEETING: The next meeting will be March 17, 2016, in Pierre.

ADJOURN: Motion by Landguth, seconded by Karpen, that the meeting be adjourned. Motion carried unanimously.

Secretary Date

Witness Date

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

						<i>January 21, 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>Releases of Surety:</u>						
Allen S. Abbas dba A & M Trucking Chancellor, SD	02-743		\$1,500 \$1,500 \$1,000	6424194 6433105 6444053	Home Federal Bank, Lennox Home Federal Bank, Lennox Home Federal Bank, Lennox	Release \$4,000.
Steven T. Horning Watertown, SD	98-672		\$6,000	14772	ReliaBank, Watertown	Release \$6,000.
<u>Releases of Liability & Surety:</u>						
Bruce H. Clarke Wessington, SD	02-738		\$1,000	1405	Heartland State Bank, Wessington	Release liability and \$1,000.
		738001	NE1/4 Section 2; T111N-R66W, Hand County			
James F. Davis Castlewood, SD	06-836		\$500	1700064577	First Premier Bank, Sioux Falls	Release liability and \$500.
		836001	SE1/4 NW1/4 Section 1; T114N-R52W, Hamlin County			

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

January 21, 2016

<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>Releases of Liability & Surety:</u>						
Donald W. O'Neill Fulton, SD	01-728		\$500	79290	First National Bank, Pierre	Release liability and \$500.
		728001	SW1/4 Section 17; T103N-R58W, Hanson County			
 <u>Transfer of Liability & Release of Surety:</u>						
Diamond H Service, LLC Bowman, ND	15-991		\$4,000	301446	Dakota Community Bank & Trust, Bowman, ND	Transfer liability and release \$4,000.
		991001	Section 24; T23N-R4E, Harding County			
Transfer to:						
Gary Buckley Bowman, ND	15-993		\$4,000	0120142722	Dakota Western Bank, Bowman, ND	

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<u>Transfers of Liability:</u>							
JH Crushing, Inc. Belle Fourche, SD	10-903		\$4,000.13	8001000885	First Interstate Bank, Belle Fourche	Transfer liability.	
			\$1,000	8001000884	First Interstate Bank, Belle Fourche		
			\$1,000	8001000656	First Interstate Bank, Belle Fourche		
			\$500	8001000896	First Interstate Bank, Belle Fourche		
		903001	S1/2 Section 9; T8N-R3E, Butte County				
Transfer to: Brett Crowser Belle Fourche, SD	15-995		\$5,000	8001000951	First Interstate Bank, Belle Fourche		
Morris Inc. Pierre, SD	83-2		\$20,000	037S103597 878	Travelers Casualty & Surety Company of America	Transfer liability.	
		2003	S1/2 Section 1, S1/2 & NE1/4 Section 2, & S1/2 Section 3; T112N-R80W, Hughes County				
		2004	Section 2; T112N-R76W, Hughes County				
		2005	SW1/4 Section 15; T110N-R77W, Hughes County				
Transfer to: Hughes County Highway Department Pierre, SD	83-31		Exempt	N/A	N/A		

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<u>Releases of Liability:</u>							
Jensen Rock & Sand, Inc. Mobridge, SD	83-112		\$20,000	41-16-48	New Hampshire Insurance Company	Release liability.	
		112028	NW1/4 SE1/4 Section 21; T9N-R25E, Stanley County				
		112033	NE1/4 Section 14; T125N-R76W, Campbell County				
		112038	NE1/4 NW1/4 & NW1/4 NE1/4 Section 29; T9N-R25E, Stanley County				
Twedt Construction Company, Inc. Montrose, SD	96-594		\$2,500	3254	Security State Bank, Montrose	Release liability.	
			\$1,000	95528	Security State Bank, Montrose		
			\$500	75708	First National Bank, Pierre		
		594001	NW1/4 Section 17; T103N-R53W, McCook County				
		594007	NE1/4 Section 33; T104N-R54W, McCook County				
Belle Fourche Irrigation District Belle Fourche, SD	00-696		EXEMPT	NA	NA	Release liability.	
		696002	SE1/4 Section 3; T8N-R5E, Butte County				
		696003	SW1/4 Section 30; T8N-R7E, Butte County				

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<u>Releases of Liability:</u>						
DOT – Rapid City Region Rapid City, SD	83-10		EXEMPT	NA	NA	Release liability.
		10111	SE1/4 Section 2 & NE1/4 Section 11; T6N-R8E, Meade County			
Meade County Highway Department Sturgis, SD	83-113		EXEMPT	NA	NA	Release liability.
		113008	E1/2 Section 18; T4N-R6E, Meade County			

South Dakota Board of Minerals & Environment

January 21, 2016

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Legal</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Acceptance of Reclamation and Post Closure Sureties for LAC Minerals (USA), LLC:</u>						
LAC Minerals (USA), LLC Central City, SD	445 & 460		\$10,700,000	ILOC #P53190 T04092	Royal Bank of Canada, Ontario, Canada	Release Irrevocable Letter of Credit #P53190T04092, Royal Bank of Canada, in the amount of \$10,700,000. Accept reclamation surety Bond No. 09177704, Fidelity & Deposit Company of Maryland, in the amount of \$61,100 and post closure surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, in the amount of \$19,667,216.
Replacement surety bonds:						
		Reclamation:	\$61,100	09177704	Fidelity & Deposit Company of Maryland	
		Post Closure:	\$19,667,216	09177703	Fidelity & Deposit Company of Maryland and Zurich American Insurance Company	

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

March 17, 2016

<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>Transfer of Liability & Release of Surety:</u>						
Ralph Timmerman Tescott, KS	12-932		\$500	105480	American Bank & Trust, Wessington Springs	Transfer liability and release \$500.
		932001	NW1/4 Section 15; T108N-R68W, Buffalo County			
Transfer to:						
Buffalo County Highway Department Gann Valley, SD	83-50		EXEMPT	NA	NA	
<u>Transfer of Liability:</u>						
Concrete Materials Sioux Falls, SD	83-144		\$20,000	55-194372	United Fire & Casualty Company	Transfer liability.
		144002	S1/2 & NW1/4 Section 2 & SE1/4 Section 3 & NE1/4 Section 11; T101N-R49W, Minnehaha County			
Transfer to:						
Sweetman Partners LLP Sioux Falls, SD	16-998		\$20,000	446265	First National Bank, Sioux Falls, SD	

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

March 17, 2016

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<u>Releases of Liability:</u>						
Bob Bak Construction Pierre, SD	83-61		\$4,000	13871	American State Bank, Pierre	Release liability.
			\$3,500	7410	American State Bank, Pierre	
			\$3,000	4981	American State Bank, Pierre	
			\$1,000	64334	First National Bank, Pierre	
			\$500	7305	American State Bank, Pierre	
			\$500	65266	First National Bank, Pierre	
			\$500	13850	American State Bank, Pierre	
			\$500	13751	American State Bank, Pierre	
			\$500	0621959600	Wells Fargo Bank, White River	
				61027	NW1/4 Section 1; T10S-R4E, Fall River County	
		61028	Section 25; T9S-R4E, Fall River County			

South Dakota Board of Minerals & Environment

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<u>Annual Update of Homestake Mining Company's Post Closure Bond:</u>						
Homestake Mining Company Lead, SD	332 & 456		\$40,786,227	8233-63-10	Federal Insurance Company	Accept rider to Bond No. 8233- 63-10, Federal Insurance Company, increasing the bond to \$41,979,523.
<u>Acceptance of Reclamation Bond Increase for Wharf Resources (USA), Inc.:</u>						
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476		\$6,000,000	SUR0032040	Argonaut Insurance Company	Accept rider to Bond No. SUR0032040, Argonaut Insurance Company, increasing the bond to \$7,593,300.