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Minutes of the  
Board of Minerals and Environment Meeting

July 20, 2017  
10:00 a.m. CDT

Held via the Digital Dakota Network

Brookings  
South Dakota State University

Pierre  
Capitol Building

Rapid City  
University Center

Sioux Falls  
University Center

Spearfish  
Black Hills State University

Vermillion  
University of South Dakota

Watertown  
Department of Environment and Natural Resources

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

Chairman Hagg appointed Gregg Greenfield as secretary pro tem.

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

BOARD MEMBER ABSENT: Linda Hilde.

OTHERS PRESENT: See attached attendance sheets.

APPROVAL OF MINUTES FROM MAY 18, 2017, MEETING: Motion by Blumhardt, seconded by Bullene, to approve the minutes from the May 18, 2017, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:28, HAZARDOUS WASTE RULES: Chairman Hagg opened the hearing at 10:05 a.m. Central Time.

The purpose of the hearing was to consider the adoption and amendment of proposed rules numbered ARSD 74:28:21:01, 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:25:03, 74:28:25:04, 74:28:25:05, 74:28:26:01, 74:28:27:01, 74:28:28:01, 74:28:28:03, 74:28:28:04, 74:28:28:05, 74:28:30:01, and 74:28:33:01

The effect of the rules will be to update the state's existing hazardous waste rules by incorporating updated, codified federal regulations by reference. The state's proposed rules reflect changes made to the federal hazardous waste regulations from July 1, 2012 through June 30, 2016. Once these updates are made, the state's rules will be substantially the same as the federal hazardous waste regulations.

Changes to the rules include establishing procedures for identifying and managing certain hazardous secondary materials destined for recycling; management standards for solvent-contaminated wipes; establishing a framework for the use of electronic manifests; revisions to requirements involving imports and exports of hazardous wastes; and incorporating technical and typographical corrections that were made in the federal regulations.

The reason for updating the state's hazardous waste rules is to continue to ensure that companies generating, transporting, treating, storing or disposing of hazardous waste in South Dakota manage those wastes in a way that is protective of human health and the environment.

The proposed rules offer manufacturers the opportunity to recycle materials that might otherwise be considered wastes requiring disposal. The proposed updates also enable the state to keep pace with changes made in the federal hazardous waste regulations.

Notice of the public hearing was published on June 3, 2017, in the Rapid City Journal, and June 6, 2017, in the Pierre Capital Journal, Sioux Falls Argus Leader, and Watertown Public Opinion. Affidavits of Publication are on file at the Department of Environment and Natural Resources.

Notice of the public hearing was sent to the DENR interest parties mailing list and posted on DENR's website and the state public notices website.

Four requests for clarification of the proposed amendments were received either by telephone or email.

No written comments regarding the proposed amendments were received.

The proposed rules were sent to the Bureau of Finance and Management and to the Legislative Research Council (LRC). LRC reviewed and approved the proposed amendments for form, style, and legality, and LRC's changes were incorporated into the final version of the proposed rules.

Carrie Jacobson, DENR Waste Management Program, provided a PowerPoint presentation discussing the history of the Hazardous Waste Program and providing a summary of the proposed amendments. The proposed rules will:

- Revise the 2008 definition of Solid Waste to encourage legitimate recycling of certain hazardous wastes. Some hazardous wastes are amenable to being used as a substitute for a raw product or as a product supplement in some industrial processes. Although the proposed rules establish strict criteria companies must follow to ensure the wastes are not mismanaged, they are not as onerous as the full hazardous waste permitting requirements.
- Allow most solvent-contaminated paper and cloth wipes to be excepted from the hazardous waste rules as long as the generator follows accumulation, container labeling, and recordkeeping requirements.
- Establish a regulatory framework for the development and use of electronic manifests.
- Revise recordkeeping and notice requirements for imports and exports of hazardous waste.
- Incorporate technical and typographical corrections to errors made in the federal rules.

Following her presentation, Ms. Jacobson answered questions from the board.

Chairman Hagg requested public comments on the proposed amendments. There were no public comments.

Chairman Hagg then requested board action.

Motion by Morris, seconded by Englund, to adopt amendments to Hazardous Waste Rules, ARSD 74:28:21:01, 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:25:03, 74:28:25:04, 74:28:25:05, 74:28:26:01, 74:28:27:01, 74:28:28:01, 74:28:28:03, 74:28:28:04, 74:28:28:05, 74:28:30:01, and 74:28:33:01, as presented. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:36, AIR POLLUTION CONTROL PROGRAM RULES: Chairman Hagg opened the hearing at 10:20 a.m. Central Time.

The purpose of the hearing was to consider adoption and amendment of proposed rules numbered ARSD 74:36:01:01, 74:36:01:05, and 74:36:01:20, 74:36:02:02 through 74:36:02:05,

74:36:03, 74:36:04:04, 74:36:05:04, 74:36:05:06, and 74:36:05:16.01, 74:36:06:07, 74:36:07:01 through 74:36:07:07.01, 74:36:07:09, 74:36:07:10, 74:36:07:12 through 74:36:07:28, 74:36:07:31 through 74:36:07:34, 74:36:07:36, 74:36:07:37, 74:36:07:39 through 74:36:07:93, 74:36:08:01 through 74:36:08:130, 74:36:09:02 and 74:36:09:03, 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07, and 74:36:10:08, 74:36:11:01, 74:36:12:01 and 74:36:12:03, 74:36:13:02 through 74:36:13:04, 74:36:13:06 through 74:36:13:08, 74:36:16:01, 74:36:16:02, 74:36:16:04, and 74:36:16:05, 74:36:18:10, 74:36:20:05, and 74:36:21:02, 74:36:21:04, 74:36:21:05, and 74:36:21:09.

The effect of the proposed amendments will be to adopt revisions to federal regulations, clarify the requirements for air pollution dispersion modeling, revise the permit rescission provision in the federal Prevention of Significant Deterioration regulations, and correct a reference to a section that was repealed in 2012. By adopting the proposed amendments, the South Dakota air pollution control program rules will continue to comply with the federal regulations, and South Dakota will maintain approval of its air quality program.

In March 2017, which was prior to public notice, the proposed amendments and additions were sent to several entities including industry, environmental groups, the Environmental Protection Agency, and other interested parties for review and comment. No comments were received during that initial outreach.

Notice of the public hearing was published on June 14, 2017, in the Aberdeen American News, Brookings Register, Huron Plainsman, Madison Daily Leader, Mitchell Daily Republic, Pierre Capital Journal, Sioux Falls Argus Leader, Black Hills Pioneer, Watertown Public Opinion, and Yankton Daily Press & Dakotan, and on June 15, 2017, in the Rapid City Journal. Affidavits of Publication are on file at the Department of Environment and Natural Resources.

Notice of the public hearing was posted on DENR's website and the Open SD public notice website. The notice was also sent to the department's interested parties mailing list, which includes environmental groups, industry and other interested parties. No comments were received.

The proposed rules were sent to the Bureau of Finance and Management (BFM) and to the Legislative Research Council (LRC). BFM reviewed and concurred with DENR's assumptions and fiscal impact calculations. LRC reviewed and approved the proposed amendments for form, style, and legality.

Marlys Heidt, DENR Air Quality Program, provided an overview of the proposed amendments.

Following Ms. Heidt's presentation, Chairman Hagg requested public comments. No one from the public offered comments.

Mr. Rombough answered questions from the board regarding the proposed amendment to 74:36:20:05. He stated that there is not a rule that specifies when modeling would be required.

The intent of the change to this chapter is to clarify that modeling is not a requirement; it is an option and discretionary item.

Chairman Hagg asked that staff check to see that the statute is consistent with the rule.

Motion by Karpen, seconded by Landguth, to adopt amendments to ARSD 74:36:01:01, 74:36:01:05, and 74:36:01:20, 74:36:02:02 through 74:36:02:05, 74:36:03, 74:36:04:04, 74:36:05:04, 74:36:05:06, and 74:36:05:16.01, 74:36:06:07, 74:36:07:01 through 74:36:07:07.01, 74:36:07:09, 74:36:07:10, 74:36:07:12 through 74:36:07:28, 74:36:07:31 through 74:36:07:34, 74:36:07:36, 74:36:07:37, 74:36:07:39 through 74:36:07:93, 74:36:08:01 through 74:36:08:130, 74:36:09:02 and 74:36:09:03, 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07, and 74:36:10:08, 74:36:11:01, 74:36:12:01 and 74:36:12:03, 74:36:13:02 through 74:36:13:04, 74:36:13:06 through 74:36:13:08, 74:36:16:01, 74:36:16:02, 74:36:16:04, and 74:36:16:05, 74:36:18:10, 74:36:20:05, and 74:36:21:02, 74:36:21:04, 74:36:21:05, and 74:36:21:09, as presented. A roll call vote was taken, and the motion carried unanimously.

(Note: There was a technical issue with the microphones at the DDN sites at the time of the roll call vote and Daryl Englund's vote could not be heard at the DDN sites. After the hearing, staff contacted Mr. Englund to confirm that he cast a vote and if he voted against or for to adopt the amendments. He sent an email confirming that he had voted aye during the roll call vote.)

### MINING ISSUES

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

Tom Cline, DENR Minerals and Mining Program, answered questions from the board.

Motion by Bullene, seconded by Karpen, to accept the department recommendations for release of surety, release of liability and surety, transfer of liability and release of surety, transfer of liability, and releases of liability as listed on the table. A roll call vote was taken, and the motion carried unanimously.

(Note: There was a technical issue with the microphones at the DDN sites so Daryl Englund's vote could not be heard at the DDN sites. After the meeting, staff contacted Mr. Englund to confirm that he voted and what his vote was. He sent an email confirming that he had voted aye during the roll call vote.)

FINANCIAL ASSURANCE INCREASE FOR WHARF RESOURCES (USA), INC.: Eric Holm presented an adjustment of the financial assurance amount for Wharf Resources. This financial assurance, also known as the cyanide spill bond, is required under SDCL 45-6B-20.1 and covers costs to the state for responding to and remediating accidental releases of cyanide and

other leaching agents at the Wharf site. The financial assurance is in addition to Wharf Resources' \$37.4 million reclamation bond and \$26.8 million post-closure bond.

The department adjusted the financial assurance for inflation and calculated a revised amount of \$649,700, which is an increase of \$18,900 from the 2016 update. To cover the increase, Wharf submitted a rider to their surety bond that currently serves as financial assurance, increasing the amount to of the bond to \$649,700.

The department recommended the board accept the rider to Bond No. SU27832, Aspen American Insurance Company increasing the financial assurance bond to \$649,700.

(Note: The issue with the microphones at the DDN sites was corrected before the following motion was made, and all roll call votes were heard at the DDN sites from this point forward.)

Motion by Blumhardt, seconded by Morris, to accept the rider to Bond No. SU27832, Aspen American Insurance Company increasing the financial assurance bond to \$649,700. A roll call vote was taken, and the motion carried unanimously.

REQUEST FOR APPROVAL OF DR. MICHAEL K. MADDEN AS AMERICAN COLLOID COMPANY'S SOCIO-ECONOMIC CONTRACTOR FOR A LARGE-SCALE BENTONITE MINE PERMIT: Eric Holm reported that American Colloid requested board approval of Dr. Michael Madden as its socioeconomic contractor.

American Colloid is applying for a large-scale mine permit for its proposed Stateline bentonite mining project located 12 miles northwest of Belle Fourche along the South Dakota/Wyoming border.

Under the mining statutes, an applicant for a large scale mine is required to do a socioeconomic impact study and include it in its mine permit application. The law requires the applicant to get board approval for the contractor to conduct the study.

As part of its decision-making process on a mine permit application, the board can consider the socioeconomic impacts of a mining operation. The board can deny a mine permit application if it finds the adverse socioeconomic impacts of the proposed mining operation outweigh the benefits of the operation.

A copy of Dr. Madden's resume was sent to the board prior to the meeting.

Lyndon Bucher of American Colloid was available at the Spearfish DDN site to answer any questions. There were no questions for Mr. Bucher.

Motion by Englund, seconded by Landguth, to approve Dr. Michael Madden as the socioeconomic contractor for American Colloid Company. A roll call vote was taken, and the motion carried unanimously.

ANNUAL UPDATE OF PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS: Mr. Holm reported that under ARSD 74:29:10:19, the board is required to annually hold a hearing to consider any nominating petitions to place areas on the Preliminary List of Special, Exceptional, Critical or Unique Lands.

In accordance with ARSD 74:29:10:17(4), DENR publishes an annual notice to solicit petitions to add areas to the preliminary list. The notice was published in the Capitol Journal, Sioux Falls Argus Leader, Black Hills Pioneer, and Rapid City Journal on January 20, 2017. Affidavits of publication were received from all four newspapers

The deadline for submittal of petitions to nominate areas to the preliminary list was May 1, 2017, and no nominating petitions were submitted.

NEXT MEETING: Chairman Hagg stated that the next meeting is tentatively scheduled for August 17, 2017.

ELECTION OF OFFICERS: Motion by Morris, seconded by Englund, to nominate Rex Hagg as chairman, Glenn Blumhardt as vice chairman, and Gregg Greenfield as secretary, to cease nominations, and to cast a unanimous ballot for the nominated slate of officers. A roll call vote was taken, and the motion carried unanimously.

Chairman Hagg stated that Linda Hilde had been the secretary for many years, but due to health reasons it has been difficult for her to attend the meetings.

ADJOURN: Motion by Landguth, seconded by Greenfield, that the meeting be adjourned. A roll call vote was taken, and the motion carried unanimously.

  
Secretary \_\_\_\_\_  
9/21/17  
Date

  
Witness \_\_\_\_\_  
9/21/17  
Date







ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

VIA THE DIGITAL DAKOTA NETWORK

JULY 20, 2017

UNIVERSITY CENTER  
RAPID CITY

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Rex Hagg

1721 W. Blvd, RC

RME

Dennis Landguth

613 ALTA VISTA

BME

Clint Beck

9911 CANYON PLACE

PETE LIEN & SONS, INC.

Jenny Hagg

DENR

Kurt Christensen

DENR

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

VIA THE DIGITAL DAKOTA NETWORK

JULY 20, 2017

UNIVERSITY CENTER  
SIOUX FALLS

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Jeff Greenfield

2501 S. Poplar Dr.

SDBM 3E

Jill Riedel

Brandon/Sioux Falls

SDDENR

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ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

VIA THE DIGITAL DAKOTA NETWORK

JULY 20, 2017

BLACK HILLS STATE UNIVERSITY  
SPEARFISH

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Jon Epp

2050 W. Main R.C.

DENR

Lyndon Bucher

P.O. Box 2010 Belle Fourche

American Colloid

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ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

VIA THE DIGITAL DAKOTA NETWORK

JULY 20, 2017

~~LAKE AREA TECHNICAL INSTITUTE~~  
WATERTOWN

SD DENR *ef*

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

*Peter Billow*

*Watertown SD*

*BME*

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

						<i>July 20, 2017</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>
<b><u>Release of Surety:</u></b>						
Dick Wilde, Jr. Lake Preston, SD	83-208		\$500	1537004350	Wells Fargo Bank, Watertown	Release \$500.
<b><u>Release of Liability and Surety:</u></b>						
Black Hills Environmental Partner, LLC Dripping Springs, TX	13-949		\$4,000	1022395	Lexon Insurance Company	Release liability and \$4,000.
		<b>949001</b>	W1/2 Section 32; T3N-R9E, Meade County			
<b><u>Transfer of Liability and Release of Surety:</u></b>						
Schleusner Dairy Inc. Watertown, SD	16-1002		\$1,000	234733	Reliabank Dakota, Watertown	Transfer liability and release \$1,000.
		<b>1002001</b>	SW1/4 Section 8 & NE1/4 Section 18; T116N-R51W, Codington County			
Transfer to:						
Kranzburg Township Watertown, SD	17-1016		EXEMPT	NA	NA	

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<b><u>Transfer of Liability:</u></b>						
Mehlhoff Construction Tripp, SD	83-218		\$4,000	57284	The Farmers & Merchants State Bank, Scotland	Transfer liability.
		<b>218020</b>	NW1/4 Section 31; T100N-R57W, Hutchinson County			
Transfer to:						
Hutchinson County Highway Department Olivet, SD	83-133		EXEMPT	NA	NA	
<b><u>Releases of Liability:</u></b>						
Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	HGMW-10-206- 0065	Hudson Insurance Company	Release liability.
		<b>164026</b>	Section 30; T104N-R62W, Davison County			
		<b>164038</b>	NW1/4 Section 20; T108N-R50W, Moody County			
TF Luke & Sons, Inc. Kimball, SD	83-11		\$20,000	92911763	Western Surety Company	Release liability.
		<b>11025</b>	S1/2 Section 30; T104N-R62W, Davison County			

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<b><u>Releases of Liability:</u></b>						
Kory Standy Platte, SD	12-933		\$1,500 \$1,000	607096 607412	First Fidelity Bank, Platte	Release liability.
		<b>933002</b>	S1/2 SE1/4 Section 26; T98N-R69W, Charles Mix County			
Vanderpol Dragline, Inc. Mitchell, SD	83-59		\$25,000	0350 08 069675	Wausau Underwriters Insurance Company	Release liability.
		<b>59018</b>	NW1/4 Section 32; T100N-R64W, Douglas County			
Harvey Wall Freeman, SD	99-687		\$1,000 \$2,000 \$1,033	375011767353 375012040214 375012069064	US Bank, Mitchell	Release liability.
		<b>687002</b>	SE1/4 Section 4; T99N-R57W, Hutchinson County			
City of Huron Huron, SD	83-128		EXEMPT	NA	NA	Release liability.
		<b>128001</b>	NE1/4 SE1/4 Section 24; T112N-R63W, Beadle County			



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<b><u>Releases of Liability:</u></b>						
Day County Highway Department Webster, SD	83-34		EXEMPT	NA	NA	Release liability.
		<b>34006</b>	NE1/4 NW1/4 Section 3; T122N-R53W, Day County			
		<b>34007</b>	E1/2 NE1/4 N1/2 Lot 3; Section 11; T121N-R56W, Day County			
		<b>34008</b>	SE1/4 Section 2; T121N-R56W, Day County			
Grant County Highway Department Milbank, SD	83-183		EXEMPT	NA	NA	Release liability.
		<b>183002</b>	W1/2 NW1/4 Section 20; T121N-R47W, Grant County			
Lyman County Highway Department Kennebec, SD	83-215		EXEMPT	NA	NA	Release liability.
		<b>215003</b>	N1/2 Section 4; T109N-R77W, Stanley County			
		<b>215016</b>	N1/2 Section 34; T103N-R77W, Tripp County			

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<b><u>Releases of Liability:</u></b>						
McCook County Highway Department Salem, SD	83-157		EXEMPT	NA	NA	Release liability.
		<b>157012</b>	N1/2 NE1/4 Section 25; T102N-R55W, McCook County			
		<b>157014</b>	S1/2 SW1/4 Section 17; T104N-R54W, McCook County			
		<b>157016</b>	NW1/4 NW1/4 Section 22; T103N-R55W, McCook County			
Miner County Highway Department Howard, SD	83-177		EXEMPT	NA	NA	Release liability.
		<b>177030</b>	SE1/4 Section 3; T107N-R56W, Miner County			