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

August 18, 2016
10:00 a.m. Central Time

CALL TO ORDER: 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.

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

BOARD MEMBER ABSENT: Linda Hilde.

OTHERS PRESENT: See attached attendance sheet.

ELECTION OF OFFICERS: Chairman Hagg called for election of officers.

Motion by Landguth, seconded by Englund, to elect Rex Hagg as chairman of the board. A roll call vote was taken, and the motion carried unanimously.

Motion by Morris, seconded by Bullene, to elect Glenn Blumhardt as vice chairman of the board. A roll call vote was taken, and the motion carried unanimously.

Motion by Morris, seconded by Landguth, to elect Linda Hilde as secretary of the board. A roll call vote was taken, and the motion carried unanimously.

APPROVAL OF MINUTES FROM JUNE 16, 2016, MEETING: Motion by Karpen, seconded by Blumhardt, to approve the minutes of the June 16, 2016, Board of Minerals and Environment meeting. Motion carried unanimously.

STATE BOARDS AND COMMISSIONS CONFLICT OF INTEREST NOTIFICATION: At the June meeting, Charlie McGuigan, Chief Deputy Attorney General, provided a summary of the conflict of interest legislation (disclosure law), and he distributed copies of the state board disclosure and waiver decision matrix and the waiver instructions and form.

Mr. McGuigan explained that the new disclosure law, which became effective July 1, 2016, (SDCL 3-23) states that if a current or certain former member has a contract specifically with DENR, or if someone the board member comingles assets with or is employed by has a contract with DENR, the board member is required to disclose the contract to the board, and the board is required to make a decision as to whether a conflict exists.

Mr. McGuigan stated that the disclosure and waiver decision matrix and the waiver instructions were developed to assist the board members in determining whether a prohibited conflict exists or might exist. The instructions state that if a board member is in doubt about whether a conflict exists, the board member should disclose the contract. Mr. McGuigan stated that contracts with the state are public records and the request for waiver is a public document that will be open to public inspection. He distributed copies of Chapter 3-23, Conflicts of Interest, and a list of the contracts DENR has with outside entities. The list of contracts can be found on the Open SD website. The statute also applies to local government contracts a board member may have, specifically, if a board member has a contract with a local governmental entity or derives a direct benefit from any contract or political subdivision if that political subdivision executes similar subject matter programs.

Mr. McGuigan reiterated that if a board member has any doubt as to whether they have a conflict of interest, they should request a waiver. The waiver request discussion will appear in the board meeting minutes and the waiver form will be submitted to the Auditor General and will be included in a report to the Government Operations and Audit Committee.

Chairman Hagg stated that this matter should be placed on the next couple of board meeting agendas, but he doesn't believe it needs to be on the agenda permanently.

Discussion took place with Mr. McGuigan answering questions from board members.

MINING ISSUES

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

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

ACCEPTANCE OF FINANCIAL ASSURANCE FOR WHARF RESOURCES: Eric Holm presented an adjustment of the financial assurance amount for Wharf Resources. The 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. This financial assurance is in addition to Wharf Resources' \$37.4 million reclamation bond and \$26.8 million post closure bond.

Mr. Holm noted that the department adjusted the financial assurance for inflation and calculated a revised amount of \$630,800, which is an increase of \$18,400 from the 2015 calculation. To cover the increase, Wharf submitted a rider, which increased the current financial assurance amount to \$630,800.

The department recommended the board accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond to \$630,800.

Motion by Morris, seconded by Blumhardt, to accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond to \$630,800 for Wharf Resources (USA), Inc., Lead, SD, Mine Permit Nos. 356, 464, and 476. A roll call vote was taken, and the motion carried unanimously.

RELEASE OF PACER RECLAMATION SURETY: Mr. Holm reported that on May 2, 2016, Custer Holdings Inc. informed the department that it purchased Pacer Corporation from Rotherwood Investments, LLC.

After consulting with the Attorney General's office, it was determined there was not a substantial change in Pacer's corporate structure that required a mine permit transfer. However, the letter of credit, which served as Pacer's reclamation bond, was listed in the name of Charles Osgood on behalf of Pacer. Since Mr. Osgood was an officer with Rotherwood Investments, a new letter of credit was necessary.

Custer Holdings Inc. submitted a replacement letter of credit in the name of Pacer Corporation from Bank of America, Scranton, PA, in the amount of \$348,000.

The department recommended the board release Irrevocable Letter of Credit NZS627474, Wells Fargo Bank, San Francisco, CA, in the amount of \$348,000 and accept Pacer Corporation's replacement Irrevocable Letter of Credit 68127108, Bank of America, Scranton, PA, in the amount of \$348,000.

Board discussion took place with Mr. Holm answering questions.

Motion by Morris, seconded by Karpen, to release Irrevocable Letter of Credit NZS627474, Wells Fargo Bank, San Francisco, CA, in the amount of \$348,000 and accept Pacer Corporation's replacement Irrevocable Letter of Credit 68127108, Bank of America, Scranton, PA, in the amount of \$348,000. A roll call vote was taken, and the motion carried unanimously.

UPDATE ON THE QUARTZ NORTHERN POINTS WELL: Mr. Lees reported that at the May 19, 2016, meeting he presented an update to the board on the status of Quartz Operations, LLC's Northern Points 1 well site near Wasta, SD. The surface restoration was complete, but the well was improperly plugged. The lower portion of the well, which penetrated the Madison, Minnelusa, Minnekahta, and Inyan Kara formations, was not plugged due to a stuck segment of drill pipe lodged in the bore hole. The department holds a \$130,000 plugging and performance bond for the well, but the estimated cost to properly plug the well vastly exceeds the bond amount.

At the June 16, 2016, board meeting, Mr. Lees provided another update and Ellie Bailey, Assistant Attorney General, briefed the board on the statutory authority in terms of why certain things were required from the outset, what options the board has moving forward, and the basis in statute of those various options.

At that meeting, the board passed a motion directing the department to issue a formal Notice of Violation to Quartz Operations, LLC, for failure to plug the well in accordance with the permit conditions and requesting a response from Quartz Operations, LLC, to the department within the minimum statutory notice requirements.

On July 1, 2016, DENR issued the Notice of Violation to Quartz Operations, LLC, which includes the following:

- 1) Quartz has 30 days to contest the facts alleged within the Notice of Violation.
- 2) Quartz is required to submit a plugging plan for the Northern Points 1 well to the department by September 1, 2016.
- 3) Quartz is required to plug the Northern Points 1 well in accordance with Condition 4.k.(3)(a) of the application for permit to drill number 2026 and ARSD 74:12:03:02(4)(a)(i) by October 31, 2016.

Mr. Lees noted that Quartz did not contest the facts alleged in the Notice of Violation within 30 days.

The Notice of Violation states that if Quartz fails to meet either the planning deadline or the plugging deadline, the Board of Minerals and Environment will hold a contested case hearing on November 17, 2016, to consider action in regard to the Northern Points 1 well, including but not limited to acting upon the plugging and performance bond, permit revocation, and pursuit of civil penalties.

Mr. Lees stated that on August 11, 2016, the department received a letter from Mark Ekse, attorney for Quartz Operations, LLC, requesting clarification regarding the plugging plan requirements and indicating that Quartz intends to submit a plugging plan.

Mr. Lees answered questions from the board.

Chairman Hagg requested that staff provide an update regarding this matter at the September 15, 2016, board meeting.

CONTESTED CASE HEARING IN THE MATTER OF RING NECK ENERGY & FEED, LLC AIR QUALITY CONSTRUCTION PERMIT: Pete Bullene recused himself from participating due to a potential conflict of interest.

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Dennis Landguth, who had previously been appointed hearing chair, opened the hearing at 10:45 a.m. CDT.

Craig Smith, attorney from Gettysburg, represented Ring Neck Energy & Feed, LLC.

Steven Blair, Assistant Attorney General, represented the Department of Environment and Natural Resources (DENR).

The intervenors, Clark Guthmiller and Kathy Hyde, appeared pro se.

The purpose of the hearing was to consider the application for an Air Quality Construction Permit for Ring Neck Energy & Feed, LLC, Onida, SD.

The parties presented opening statements.

Witnesses administered the oath and testifying on behalf of Ring Neck Energy & Feed, LLC:

William VonSee, PE, Merjent, Inc., Minneapolis, MN

Walter Wendland, Secretary/Treasurer, Ring Neck Energy & Feed, LLC, Onida, SD

David Howard Gebhart, Environmental Compliance, Air Resources Specialists, Ft. Collins, CO

Exhibits offered and admitted into the record for Ring Neck Energy & Feed, LLC:

Exhibit A – Site map

Exhibit B – Google Earth location map

Exhibit B1 – Google Earth location map with location of proposed ethanol facility, Hyde, and Guthmiller residences marked

Exhibit C – Other ethanol plants near cities/towns

Exhibit D – Dry mill production process

Exhibit E – September 29, 2015, letter and air permit application

Exhibit F – December 8, 2015, letter with supplemental data

Exhibit G – DENR statement of basis (construction permit)

Exhibit H – DENR air quality construction permit (draft) 28.0505-59-01C

Exhibit J – D Howard Gebhart, E.C. Section Manager, Air Resources Specialists, resume

Exhibit K – William VonSee, PE, Merjent, Inc., resume

Witnesses administered the oath and testifying on behalf of DENR:

Ashley Brakke, Engineer II, DENR

Kyrik Rombough, Engineer Manager I, DENR

Exhibits offered and admitted into the record for DENR:

Exhibit 1 – Agency file for Ring Neck Energy & Feed, LLC

Exhibit 2 – Copy of Kyrik Rombough's PowerPoint presentation

Exhibit 3 – Copy of Ashley Brakke's PowerPoint presentation

Exhibit 4 – Statement of Basis, Prevention of Significant Deterioration Permit, VeraSun Aurora Corporation

Exhibit 5 – Statement of Basis, construction deadline extension request for the Prevention of Significant Deterioration Permit #28.0701-PSD, Hyperion Energy Center near Elk Point, SD

Exhibit 6 – Excerpt of Statement of Basis, Prevention of Significant Deterioration Permit, Hyperion Energy Center near Elk Point, SD

Intervenor, Clark Guthmiller, was admitted the oath and testified pro se.

Exhibits offered by Mr. Guthmiller and admitted into the record:

Attachment A – Environmental Laws Guide for Ethanol Plants (page 1)

Attachment B – Aerial photo showing site location of the plant and the homes/residences within one mile of the plant

Attachment C – Data demonstrating the prevalence of south easterly winds in the area which is demonstrated to be prevailing wind direction 34% of the time

Attachment D – Quarterly Excess Emissions Report – covering July 1 – September 30, 2014 of the Redfield Energy, LLC ethanol plant

Attachment E – Document from the Redfield ethanol plant’s website showing gallons produced

Attachment F – Page i of the Draft Construction Permit for Ring Neck Energy & Feed, LLC

Attachment G – Redfield ethanol plant aerial showing plant located 2.5 miles to the north and east of Redfield

Attachment H – Page 7 of the Statement of Basis report for Ring Neck Energy & Feed, LLC used in making the determination for issuing the air quality permit, the ethanol production rate and emission rate of ethanol plant

Attachment I – Page 13 of the Statement of Basis report for Ring Neck Energy & Feed, LLC

Attachment J – Copy of the entire Statement of Basis report for Ring Neck Energy & Feed, LLC

Attachment K – Excerpt of DENR’s response to comments

Attachment L – Page 562 of 40 CFR Ch. 1

Attachment M – Pages 583 and 584 of 40CFR

Attachment N – Page 585 of 40CFR

Attachment O – Page 586 of 40 CFR Ch. 1

Attachment P – Page 601 of 40 CFR

Attachment Q – Page 1-9 of Environmental Laws Applicable to Construction and Operation of Ethanol Plants, U.S. Environmental Protection Agency Region 7

The parties offered closing arguments.

Following board discussion, Hearing Chair Landguth requested board action.

Motion by Morris, seconded by Englund, to approve the Air Quality Construction Permit for Ring Neck Energy & Feed, LLC, with the conditions set forth in the permit.

Board discussion took place regarding whether or not air dispersion modeling should be required.

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Substitute motion by Hagg to defer a decision on the permit and to direct each of the parties to submit a legal brief, within 20 days, regarding whether ARSD 74:36:20:05 requires air pollution dispersion modeling. The motion died for lack of a second.

Motion by Morris, seconded by Greenfield, to call the question. A roll call vote was taken and the motion carried unanimously.

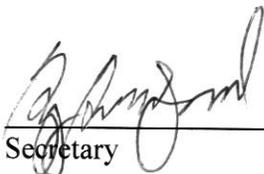
A roll call vote was taken on the original motion and the motion carried with Karpen, Englund, Greenfield, Morris, Blumhardt, and Landguth voting aye, and Hagg voting no.

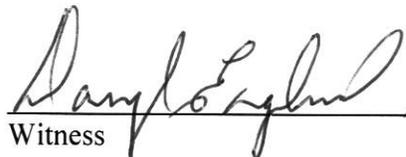
Mr. Landguth asked that Mr. Smith prepare the proposed Findings of Fact, Conclusions of Law, and Order by August 23, 2016. Objections are to be submitted by September 8, 2016. The board will consider the Findings of Fact, Conclusion of Law and Order on September 15, 2016.

Mr. Landguth closed the hearing at 6:05 p.m. and turned the gavel back over to Chairman Hagg.

NEXT MEETING: The next meeting is September 15, 2016, in Pierre.

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


Secretary _____ Date 9/15/16


Witness _____ Date 9/15/16

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center
Pierre, SD

Date Aug. 18, 2016

NAME (PLEASE PRINT)	ADDRESS	REPRESENTING
Janet Wendland	806 S Main Onida SD	Ringneck Energy
Walt Wendland	806 S Main Onida SD	Ringneck Energy
Craig E Smith	PO Box 2056 Gettysburg SD	Ringneck Energy
Billy Versie	800 Washington Ave Minneapolis MN	Ringneck Energy
HOWARD GRESHAM	1901 Sharp Point Drive Fountain, CO	Ringneck Energy
Clark Guthmiller	800 Redwood Ave. Onida, SD 57564	
Kathy Hyde	1850 Hyde Pl Onida SD 57564	
Steve Hyde	" "	" "
Ashley Braicke	523 East Capitol Pierre SD	SD DENR
Kyrrik Rombough	Pierre SD	SD DENR
Thomas Clive	523 East Capitol Pierre	SD DENR - M+M program
Eric Holm	Pierre	SD DENR
Mike Cepak	"	"
Patty McOray	"	"
Jeff Kleener	"	"
Lucy Dani	"	"
Dan Leonard	P.O. Box 954 ONIDA	
Mike Lees	523 E. Capitol	DENR
Bob Mercer	Pierre	Newspapers
Brian Gustaf	" "	SD DENR
Bob Townsend	"	"

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

						<i>August 18, 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 Liability and Surety:</u>						
Fischer Construction Goodwin, SD	94-525	525001	\$500	400001489	First Premier Bank, Kranzburg	Release liability and \$500.
					NE1/4 SE1/4 Section 9; T117N-R50W, Deuel County	
Warren Lewis Tulare, SD	13-957	957001	\$1,000	5573838	Dacotah Bank, Aberdeen	Release liability and \$1,000.
					NE1/4 Section 29; T115N-R65W, Spink County	
Pacer Corporation Custer, SD	88-370	370034	\$20,000	12 03 35	Union Insurance Company	Release liability and \$20,000.
					N1/2 & S1/2 SE1/4 Section 35; T4S-R4E, Custer County	
		370055			NW1/4 Section 19; T5S-R5E, Custer County	

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<u>Releases of Liability and Surety:</u>						
Zacharias Construction Hartford, SD	84-279		\$2,500	5002470	Home Federal Savings Bank, Sioux Falls	Release liability and \$3,500.
			\$500	43210000265	Great Western Bank, Sioux Falls	
			\$500	144177268	Great Western Bank, Sioux Falls	
		279001	2500 Hartford Twsp., Pt NW1/4 S of RY-ExH3NExStockwell track 1125, S (NW1/4 Section 25); T102N-R51W, Minnehaha County			
		279002	SE1/4 Section 13; T102N-R51W, Minnehaha County			
<u>Transfers of Liability:</u>						
Aggregate Construction, Inc. Minot, ND	89-382		\$20,000	5301306	Ohio Farmers Insurance Company	Transfer liability.
		382010	Section 4 & 5; T4S-R1E, Custer County			
Transfer to:						
Western Construction Inc. Rapid City, SD	09-880		\$20,000	105126710	Travelers Casualty & Surety Company of America	

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<u>Transfers of Liability:</u>						
Aggregate Construction, Inc. Minot, ND	89-382		\$20,000	5301306	Ohio Farmers Insurance Company	Transfer liability.
		382035	NE1/4 Section 14; T125N-R76W, Campbell County			
Transfer to:						
Campbell County Highway Department Mound City, SD	83-237		Exempt	NA	NA	
Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	HGMW-10-206-0065	Hudson Insurance Company	Transfer liability.
		164009	SE1/4 Section 34; T109N-R63W, Beadle County			
Transfer to:						
Darwin Ochsner Alpena, SD	15-992		\$20,000	RC-0028	Sun Surety Insurance Company	

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<u>Transfers of Liability:</u>						
Morris Inc. Pierre, SD	83-2		\$20,000	037 S 103597878	Travelers Casualty & Surety Company of America	Transfer liability.
		2047	Section 16; T97N-R68W, Gregory County			
Transfer to:						
Mulehead Gravel LLC Fairfax, SD	16-1001		\$20,000	RC-0027	Sun Surety Insurance Company	
Van Zee Gravel & Construction Platte, SD	83-223		\$8,000	939861191	Bank of the West, Platte	Transfer liability.
		223010	S1/2 SE1/4 Section 26; T98N-R69W, Charles Mix County			
Transfer to:						
Kory Standy Platte, SD	12-933		\$1,500	607096	First Fidelity Bank, Platte	
<u>Releases of Liability:</u>						
Aggregate Construction, Inc. Minot, ND	83-382		\$20,000	5301306	Ohio Farmers Insurance Company	Release liability.
		382021	E1/2 SE1/4 Section 9; T121N-R74W, Walworth County			
		382036	NW1/4 Section 5; T127N-R76W, Campbell County			

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<u>Releases of Liability:</u>						
Fisher Sand & Gravel Company Dickinson, ND	83-54	54061	\$20,000	190-002-030	Liberty Mutual Insurance Company	Release liability.
					S1/2 Section 30; T104N-R62W, Davison County	
Hagen Grading Sioux Falls, SD	84-253	253006	\$20,000		United Fire & Casualty Company	Release liability.
					NW1/4 Section 5; T98N-R49W, Lincoln County	
Morris Inc. Pierre, SD	83-2	2039	\$20,000	037 S 103597878	Travelers Casualty & Surety Company of America	Release liability.
					SE1/4 Section 34; T8N-R11E, Meade County	
Rogers Construction, Inc. Whitewood, SD	15-988	988001	\$20,000	55-212920	United Fire & Casualty Company	Release liability.
					S1/2 NE1/4, SE1/4 NW1/4, E1/2 SW1/4 & SE1/4 Section 6 and N1/2 NE1/4 & NE1/4 NW1/4 Section 7; T6N-R6E, Meade County	

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<u>Releases of Liability:</u>						
Turtle Creek Construction LLC Redfield, SD	09-877	877001	\$20,000	1116795	Lexon Insurance Company	Release liability.
			NW1/4 Section 35; T115N-R68W, Hand County			
Van Zee Gravel & Construction Platte, SD	83-223	223008	\$8,000	939861191	Bank of the West, Platte	Release liability.
			40 Acres in the SE1/4 Section 35; T98N-R63W, Douglas County			
Johanna Wendelboe Dimock, SD	83-136	136001	\$-0-	NA	NA	Release liability.
			W1/2 NE1/4 & NW1/4 Section 17; T101N-R60W, Davison County			
Western Construction Inc. Rapid City, SD	09-880	880007	\$20,000	105126710	Travelers Casualty & Surety Company of America	Release liability.
			Section 34; T8N-R11E, Meade County			
		880013	S1/2 NE1/4 Section 9; T1N-R23E, Haakon County			

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<u>Releases of Liability:</u>						
Dick Wilde, Jr. Lake Preston, SD	83-208	208005	\$500	1537004350	Wells Fargo Bank, Watertown, SD Kingsbury County	Release liability.
Hamlin County Highway Department Hayti, SD	83-56	56012	Exempt	NA	NA Hamlin County	Release liability.
Jerauld County Highway Department Wessington Springs, SD	83-80	80002	Exempt	NA	NA Jerauld County	Release liability.

Board of Minerals and Environment

August 18, 2016

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Acceptance of Financial Assurance Increase for Wharf Resources (USA), Inc.:</u>					
Wharf Resources (USA), Inc. Lead, SD	356, 464, & 476	\$612,400	SU27832	Aspen American Insurance Company	Accept rider to Bond No. SU27832, Aspen American Insurance Company, increasing the bond by \$18,400 to the new amount of \$630,800.
<u>Release of Reclamation Surety:</u>					
Pacer Corporation Custer, SD	467	\$348,000	ILOC No. NZS627474	Wells Fargo Bank San Francisco, CA	Release \$348,000.