



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

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

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

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

Election of officers

Approval of minutes from June 16, 2016, meeting

State Boards and Commissions Conflict of Interest Notification – Charlie McGuigan

Mining issues

- Consent Calendar – Tom Cline
- Financial assurance increase for Wharf Resources (USA), Inc. – Eric Holm
- Release of reclamation surety for Pacer Corporation – Eric Holm

Update on the Quartz Northern Points well – Mike Lees

Contested case hearing in the matter of Ring Neck Energy & Feed, LLC air quality construction permit

Next meeting

Adjourn

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 by calling (605) 773-4216 at least 48 hours before the meeting if you have a disability for which special arrangements must be made.

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 meeting  
Aberdeen Energy LLC  
13435 370th Avenue  
Mina, SD

June 16, 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 Bob Morris as secretary pro tem.

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

BOARD MEMBER ABSENT: Gregg Greenfield, Daryl Englund, and Linda Hilde.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM MAY 19, 2016, MEETING: Motion by Morris, seconded by Bullene, to approve the minutes of the May 19, 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 releases of liability, releases of liability and surety, and transfer of liability (see attachment).

Tom Cline, DENR Minerals and Mining Program, discussed the release of liability for the site that C&W Enterprises, Inc. licensed in Meade County and the transfer of liability from C&W Enterprises, Inc. to Jason Pekarek for the site in Hyde County.

In 2007, C&W Enterprises, Inc. forfeited its surety for nine sites that were not reclaimed at that time. Mr. Cline noted that if the board approves the release of liability for the Meade County site and the transfer of liability for the Hyde County site, six sites will remain unreclaimed.

Mr. Cline stated that a different operator has taken over mining of the site in Meade County, and the landowner has taken over reclamation of the Hyde County site.

Staff recommended releasing liability for the site in Meade County and transferring liability for the site in Hyde County. No surety is involved because C&W Enterprises, Inc. has already forfeited the \$20,000 surety to the Board of Minerals and Environment. Mr. Cline noted that only these two sites for C&W Enterprises, Inc. are being recommended for release of liability and transfer of liability. The other six sites are still not reclaimed.

Mr. Cline answered questions from the board.

Motion by Morris, seconded by Landguth, to accept the department recommendations for the releases of liability and surety, releases of liability, and transfer of liability, as listed on the consent calendar.

Chairman Hagg expressed concern as to whether the \$500 surety bond is adequate for reclamation of the site being transferred to Jason Pekarek.

Mr. Cline noted that the site is less than one acre. SDCL 45-6 requires a surety amount of \$500 per acre up to the \$20,000 statewide maximum.

Responding to questions from Mr. Morris, Bob Townsend stated that the \$500 per acre up to a maximum of \$20,000 requirement has been in place since 1983, when the sand and gravel laws took effect. There have been several legislative discussions about increasing the bond amount for sand and gravel, but none of them resulted in a change. One of the concerns has been that increasing the per acre bond amount may put someone out of business. Another concern is the risk issue. There are only two areas in state statute in regards to oil and gas or mining where there is 100 percent bonding; in large scale mining and in uranium exploration. Those are the two areas where, from an environmental standpoint, you see the most risk. For a gravel pit, the risk is if a gravel pit is left open, basically it is the landowner that suffers.

A roll call vote was taken, and the motion carried unanimously.

UPDATE ON THE QUARTZ NORTHERN POINTS WELL: At the last meeting, Mike Lees provided an update with regard to some of the background and history of the Quartz well. At that time, the board requested that the Attorney General's Office look into options the board has regarding the matter and report back to them at the June 16 board meeting.

Assistant Attorney General Ellie Bailey briefed the board on the statutory authority in terms of why certain things were required from the outset and what options the board has moving forward and the basis in statute of those various options.

Following her report, Ms. Bailey and Mr. Lees answered questions from the board.

EXECUTIVE SESSION: Motion by Karpen, seconded by Morris, to enter into executive session pursuant to SDCL 1-25-2 for the purpose of consulting with legal counsel about pending litigation. Motion carried unanimously.

The board went into executive session at 10:30 a.m. Chairman Hagg declared the board out of executive session at 11:15 a.m.

Following executive session, the board took the following action.

Motion by Karpen, seconded by Bullene, to direct the department to begin an investigation into Quartz Operations Northern Points well in accordance with SDCL 45-9-55.

Chairman Hagg asked if there is something that the department issues that deems Quartz in violation of the permit?

Chief Deputy Attorney General Charlie McGuigan stated that the appropriate action would be an official Notice of Violation issued by the Department of Environment and Natural Resources.

Bob Townsend stated that the department has never issued a Notice of Violation to an oil and gas company. Mr. Townsend said there is no specific statutory authority for the department to do that under SDCL 45-9, although SDCL 34A-10 probably gives the department the sufficient statutory authority to issue a Notice of Violation.

Chairman Hagg stated that the application was heard and approved by the board subject to the conditions. According to the information presented to the board, Quartz violated the conditions by not properly plugging the well, therefore they are in violation of the permit.

Mr. Townsend stated that the department does not believe there are any assets or a responsible individual, other than Mr. Somsen, who is unresponsive to the matter. He stated that the department has been delegated authority over drilling permits, but in this particular case, the board has asserted jurisdiction.

Chairman Hagg stated that the Secretary of State has not found the company defunct yet, therefore, the company is an existing LLC.

Mr. McGuigan stated that issuing the Notice of Violation is the trigger to start the process, and at the board's direction and pursuant to Mr. Karpen's motion, the board is basically delegating the board's authority to the department.

Amended motion by Morris, seconded by Landguth, that the department issue a Notice of Violation to Quartz Operations, LLC.

Substitute motion by Morris, seconded by Blumhardt, that the department provide a formal written 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. A roll call vote was taken, and the motion carried unanimously.

Chairman Hagg asked that the department provide an update on this matter at the August board meeting.

NEXT MEETING: The next meeting is August 18, 2016, in Pierre.

Mr. McGuigan provided a summary of the new conflict of interest legislation (disclosure law) for certain boards and commissions. The legislation was approved by the 2016 legislature and becomes effective July 1, 2016. He distributed copies of the statute and the guidance documents regarding the new law, and he answered questions from the board.

Mr. McGuigan requested that the board review the information and discuss the new law more in depth at the next board meeting.

TOUR ABERDEEN ENERGY LLC ETHANOL PRODUCTION FACILITY: The board members toured the ethanol production facility. Pete Bullene did not participate in the tour.

ADJOURN: Motion by Blumhardt, seconded by Bullene, that the meeting be adjourned. Motion carried unanimously.

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Secretary \_\_\_\_\_ Date \_\_\_\_\_ Witness \_\_\_\_\_ Date \_\_\_\_\_

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ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Aberdeen Energy LLC  
Minna SD

Date 6-16-16

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Ellie Bailey

1302 E Hwy 14, Pierre SD

DENR

Bob Tomp

Pierre

DENR

M. Ka Lee

Pierre

DENR

Thomas Cline

Pierre SD

DENR - Mineral + Mining

Brian Gustafson

" "

DENR

Ashley Brack

Pierre SD

DENR

DRAFT

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

*June 16, 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>
<b><u>Release of Liability and Surety:</u></b>						
Dallas I. Hanson Construction Inc. Milbank, SD	06-829	<b>829002</b>	\$2,500	7060604260	Minnwest Bank Ortonville, Ortonville, MN	Release liability and \$2,500.
		NW1/4 Section 20; T121N-R47W, Grant County				
Richard D. Hill dba Big Mountain Gravel Pringle, SD	87-341	<b>341001</b>	\$500	12327	First Interstate Bank, Custer	Release liability and \$500
		SW1/4 Section 25 & SE1/4 Section 26; T8S-R4E, Fall River County				
<b><u>Release of Liability:</u></b>						
C & W Enterprises, Inc. Harrisburg, SD	98-671	<b>671003</b>	\$-0-	NA	NA	Release liability.
		East of Railroad Right of Way Section 14 & the portion East of I-90 NE1/4 Section 23; T3N-R6E, Meade County				

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*June 16, 2016*

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<b><u>Release of Liability:</u></b>						
Mineral Technology Corporation Rapid City, SD	90-403		\$-0-	NA	NA	Release liability.
		<b>403005</b>	SW1/4 Section 25 & SE1/4 Section 26; T2S-R6E, Custer County			
<b><u>Transfer of Liability:</u></b>						
C & W Enterprises, Inc. Harrisburg, SD	98-671		\$-0-	NA	NA	Transfer liability.
		<b>671011</b>	N1/2 NE1/4 Section 16; T110N-R71W, Hyde County			
Transfer to: Jason Pekarek Highmore, SD	16-1004		\$500	503864	American Bank & Trust, Miller	

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<b><u>Releases of Liability and Surety:</u></b>						
Fischer Construction Goodwin, SD	94-525	<b>525001</b>	\$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	<b>957001</b>	\$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	<b>370034</b>	\$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	
		<b>370055</b>			NW1/4 Section 19; T5S-R5E, Custer County	

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<b><u>Releases of Liability and Surety:</u></b>							
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		
		<b>279001</b>	2500 Hartford Twsp., Pt NW1/4 S of RY-ExH3NExStockwell track 1125, S (NW1/4 Section 25); T102N-R51W, Minnehaha County				
		<b>279002</b>	SE1/4 Section 13; T102N-R51W, Minnehaha County				
<b><u>Transfers of Liability:</u></b>							
Aggregate Construction, Inc. Minot, ND	89-382		\$20,000	5301306	Ohio Farmers Insurance Company	Transfer liability.	
		<b>382010</b>	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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<b><u>Transfers of Liability:</u></b>						
Aggregate Construction, Inc. Minot, ND	89-382		\$20,000	5301306	Ohio Farmers Insurance Company	Transfer liability.
		<b>382035</b>	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.
		<b>164009</b>	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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<b><u>Transfers of Liability:</u></b>						
Morris Inc. Pierre, SD	83-2		\$20,000	037 S 103597878	Travelers Casualty & Surety Company of America	Transfer liability.
		<b>2047</b>	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.
		<b>223010</b>	S1/2 SE1/4 Section 26; T98N-R69W, Charles Mix County			
Transfer to:						
Kory Standy Platte, SD	12-993		\$1,500	607096	First Fidelity Bank, Platte	
<b><u>Releases of Liability:</u></b>						
Aggregate Construction, Inc. Minot, ND	83-382		\$20,000	5301306	Ohio Farmers Insurance Company	Release liability.
		<b>382021</b>	E1/2 SE1/4 Section 9; T121N-R74W, Walworth County			
		<b>382036</b>	NW1/4 Section 5; T127N-R76W, Campbell County			

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<b><u>Releases of Liability:</u></b>						
Fisher Sand & Gravel Company Dickinson, ND	83-54	<b>54061</b>	\$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	<b>253006</b>	\$20,000		United Fire & Casualty Company	Release liability.
			NW1/4 Section 5; T98N-R49W, Lincoln County			
Morris Inc. Pierre, SD	83-2	<b>2039</b>	\$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	<b>988001</b>	\$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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<b><u>Releases of Liability:</u></b>						
Turtle Creek Construction LLC Redfield, SD	09-877	<b>877001</b>	\$20,000	1116795	Lexon Insurance Company	Release liability.
			NW1/4 Section 35; T115N-R68W, Hand County			
Van Zee Gravel & Construction Platte, SD	83-223	<b>223008</b>	\$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	<b>136001</b>	\$-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	<b>880007</b>	\$20,000	105126710	Travelers Casualty & Surety Company of America	Release liability.
			Section 34; T8N-R11E, Meade County			
		<b>880013</b>	S1/2 NE1/4 Section 9; T1N-R23E, Haakon County			

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<b><u>Releases of Liability:</u></b>						
Dick Wilde, Jr. Lake Preston, SD	83-208	<b>208005</b>	\$500	1537004350	Wells Fargo Bank, Watertown, SD	Release liability.
			W1/2 Section 3; T110N-R56W, Kingsbury County			
Hamlin County Highway Department Hayti, SD	83-56	<b>56012</b>	Exempt	NA	NA	Release liability.
			SW1/4 Section 21; T114N-R53W, Hamlin County			
Jerauld County Highway Department Wessington Springs, SD	83-80	<b>80002</b>	Exempt	NA	NA	Release liability.
			W1/2 Section 26; T107N-R63W, Jerauld County			

## *South Dakota Board of Minerals & 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>
<b><u>Acceptance of Financial Assurance Increase for Wharf Resources (USA), Inc.:</u></b>					
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.
<b><u>Release of Reclamation Surety:</u></b>					
Pacer Corporation Custer, SD	467	\$348,000	ILOC No. NZS627474	Wells Fargo Bank San Francisco, CA	Release \$348,000.