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

September 21, 2017
10:00 a.m. CT

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

Chairman Hagg announced that this meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

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

BOARD MEMBER ABSENT: None.

OTHERS PRESENT: See attached attendance sheet.

INTRODUCTION OF NEW MEMBER: Steve Pirner introduced new board member, John Scheetz of Spearfish. He is the environmental manager of the Sanford Underground Research facility at the old Homestake Mine in Lead. Mr. Scheetz replaces Linda Hilde of Madison who had served on the board since 1987.

Chairman Hagg welcomed Mr. Scheetz, and he thanked Ms. Hilde for her many years of service on the board.

APPROVAL OF MINUTES FROM JULY 20, 2017, MEETING: Motion by Englund, seconded by Blumhardt, to approve the minutes from the July 20, 2017, Board of Minerals and Environment meeting. Motion carried unanimously.

MINING ISSUES

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

Tom Cline, DENR Minerals and Mining Program, was available to answer questions. There were no questions from the board or the audience.

Motion by Greenfield, seconded by Landguth, to accept the department recommendations for the transfer of liability and the two releases of liability, as shown on the consent calendar. Motion carried unanimously.

INFORMATIONAL UPDATE ON PROPOSED INCREASE TO TITLE V FEES: Kyrik Rombough, Air Quality Program, provided an informational update on the proposed increase fees to implement the Title V air quality operating permit program.

Mr. Rombough noted that DENR Secretary Steve Pirner will conduct the public hearing regarding proposed amendments to ARSD 74:37:01 – Air Emission Fees on October 18, 2017.

DENR currently needs to generate approximately \$550,000 per year to continue to implement the Title V air quality operating permit program. The department is proposing to raise each fee proportionally at approximately 8 percent, as listed below, starting in SFY 2019 (payable July 1, 2018):

1. Annual administrative fees for sources emitting less than 50 tons per year of pollutants will increase from \$125 to \$135. For sources emitting more than 50 tons but less than 100 tons, the annual fee will increase from \$600 to \$650. For sources emitting 100 tons or more of pollution each year, the fee will increase from \$1,250 to \$1,350.
2. The fee for the actual amount of pollution emitted from each permitted air pollution source will increase from \$7.50 per ton to \$8.10 per ton.
3. The annual minimum fee paid by any permitted source for items number 1 and 2 above will increase from \$250 to \$270.
4. The application fee for a construction permit for a source required to obtain a Title V air quality operating permit, a new Title V air quality operating permit, a modification to a construction or Title V air quality operating permit, and the renewal of a Title V air quality operating permit will increase from \$125 to \$135.
5. The annual fee for rock crushers subject to the Title V air quality operating permit program will increase from \$400 to \$435. Rock crushers are not subject to the emissions fee in item 1 and 2 above.
6. The annual fee for asphalt plants subject to the Title V air quality operating permit program will increase from \$300 to \$325. Asphalt plants are not subject to the emissions fee in item 1 and 2 above.
7. The annual fee for the Big Stone coal-fired power plant will increase from \$220,000 to \$238,000. The Big Stone coal-fired power plant will not be subject to emissions fees in item 1 and 2 above.
8. DENR is also proposing an annual fee increase based on the Consumer Price Index as allowed under SDCL 34A-1-58 but only if the fee reserve in the previous fiscal year is less than or equal to \$50,000. The annual fee increase is proposed to start in state fiscal year 2020.

DENR expects these fee changes will provide sufficient funds to implement the Title V air quality operating permit program now and into the future.

Mr. Rombough answered questions from the board.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER IN THE MATTER OF QUARTZ OPERATIONS, LLC, SURETY BOND PARTIAL DISBURSEMENT PETITION OF WOODFORD CONSTRUCTION COMPANY: Quartz drilled an oil exploration well near Wasta, SD in 2013, but due to drilling problems it failed to properly plug the well, and its permit was revoked and bond was forfeited. Woodford Construction Company, a contractor for Quartz, submitted a petition for partial disbursement of the bond as payment for work it had done for Quartz.

In February 2017, Woodford Construction Company filed a petition initiating a contested case requesting partial release of the surety held by the Board of Minerals and Environment in relation to the permit to drill granted to Quartz Operations, LLC for the Northern Points 1 well.

Chairman Hagg appointed himself hearing chairman for this matter.

In April 2017, Woodford Construction filed a brief regarding the board's jurisdiction to hear and consider Woodford's petition. Also in April 2017, the Department of Environment and Natural Resources filed a Motion to Dismiss or in the alternative a Motion for Judgement as a Matter of Law that was supported by an accompanying brief.

A telephonic hearing was held on May 23, 2017, to hear arguments from the parties regarding the department's pending motion. On June 23, 2017, Hearing Chairman Hagg issued a written decision granting the department's Motion to Dismiss.

Mr. Blair's proposed Findings of Fact, Conclusions of Law and Order were received on July 31, 2017.

Mr. Patterson's proposed additional Findings of Fact and Conclusions of Law were received on August 28, 2017.

Chairman Hagg presented his proposed Findings of Fact, Conclusions of Law and Order.

Steven Blair, assistant Attorney General, was present on behalf of the Department of Environment and Natural Resources. Mr. Blair stated that the department had no objection to Hearing Chairman Hagg's proposed Findings of Fact, Conclusions of Law and Order.

Charles T. "Tom" Patterson, was present on behalf of Woodford Construction Company. Mr. Patterson presented argument as to why the board should adopt Woodford Construction Company, Inc.'s proposed additional Findings of Fact and Conclusions of Law.

Motion by Morris, seconded by Bullene, to adopt the hearing chairman's Findings of Fact, Conclusions of Law, and Order granting the Department of Environment and Natural Resource's motion to Dismiss or in the Alternative Motion for Judgement as a Matter of Law and dismissing

Woodford's Petition Initiating a Contested Case. A roll call vote was taken, and the motion carried unanimously.

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

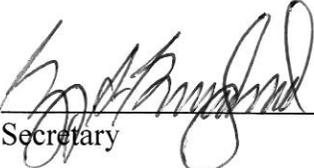
NEXT MEETING: The next meeting is scheduled for October 19, 2017, via telephone conference call.

Chairman Hagg noted that the board received a copy of the opinion of the South Dakota Supreme Court in the matter of LAC Minerals (USA), LLC's petition for release of reclamation liability, Mine Permit Nos. 445 and 460. Chairman Hagg stated that he does not believe the board is required to take any action on this matter.

Gregg Greenfield, hearing chairman for the LAC Minerals matter, said he agrees with Chairman Hagg's conclusion.

Mr. Blair stated that the matter has been remitted back to the Circuit Court.

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


Secretary _____
Date 10/23/17


Witness _____
Date 10/23/17

September 21, 2017

DENR Recommendation

| <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>Transfer of Liability:</u> | | | | | | |
| Fisher Sand & Gravel Company Dickinson, ND | 83-54 | | \$20,000 | 190-002-030 | Liberty Mutual Insurance Co. | Transfer liability. |
| | | 54009 | | | | |
| | | | | | S1/2 NW1/4 & SW1/4 Section 29, E1/2 & NW1/4 SE1/4 & SE1/4 NE1/4 Section 30; T7N-R2E, Lawrence County | |
| Transfer to: | | | | | | |
| Sacrison Paving, Inc. Whitewood, SD | 17-1023 | | \$2,000 | 55-215411 | United Fire & Casualty Company | |
| <u>Releases of Liability:</u> | | | | | | |
| Knife River – Central ND Division Bismarck, ND | 00-701 | | \$20,000 | 190-012-541 104101642 | Liberty Mutual Insurance Company/Travelers Casualty & Surety Company of America | Release liability. |
| | | 701001 | | | | |
| | | | | | NW1/4 SE1/4 Section 30; T8N-R6E, Butte County | |
| Butte County Highway Department Belle Fourche, SD | 83-6 | | EXEMPT | NA | NA | Release liability. |
| | | 6011 | | | | |
| | | | | | SW1/4 Section 13; T8N-R5E, Butte County | |