



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

October 19, 2017
10:00 a.m. CDT

Live audio of the meeting can be heard at <http://www.sd.net/mtc>

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

Approval of minutes from the September 21, 2017, meeting

Mining issues:

- Consent Calendar – Tom Cline
- Transfer of Exploration Notice of Intent, EXNI-399, from Donald Wandler to Kelly J. Anderberg – Roberta Hudson

Next meeting

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, October 18, 2017. Interested parties may also participate at the Department of Environment and Natural Resources, Matthew Environmental Education and Training Center, 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 special arrangements is (605) 773-4216.

Board members are reminded that effective July 1, 2016, members are subject to SDCL 3-23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

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
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

Witness

Date

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center
Pierre, SD

Date 9-21-17

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Steve Blair		ATG
Kyrrik Rombough	Pierre	DENR - Air Quality
Bret Graves	Pierre	Minerals & Mining
Mike Lees	Pierre	" "
Mike Cepak	"	" "
Thomas Clin	523 East Capital, Pierre	DENR - M&M - Con Agg
Robert Hudson	Pierre	DENR - MM
Tom Patterson	25043 Little Water Ln	Woodford Court
BOB MERCER	Cluster Pierre 57730	Newspapers
Bob Tamm	Pierre	DENR
Steve Pinner	"	"

<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:</u>						
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	190-002-030	Liberty Mutual Insurance Co.	Transfer liability.
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	

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

						<i>October 19, 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>
<u>Releases of Surety:</u>						
JH Crushing, Inc. Belle Fourche, SD	10-903		\$4,000.13	8001000885	First Interstate Bank, Belle Fourche	Release \$4,000.13.
Dallas Lafferty Reliance, SD	93-480		\$500	7801324919	Wells Fargo Bank, Chamberlain	Release \$500.
			\$500	98550	First National Bank, Pierre	Release \$500.
<u>Transfer of Liability and Release of Surety:</u>						
Northern Improvement Company Fargo, ND	09-122		\$2,500	00458-43600	M&I Marshall & Ilsley Bank, Minneapolis	Transfer liability and release \$2,500.
		122001	NW1/4 Section 35; T129N-R54W, Marshall County			
Transfer to:						
Carlson Crushing & Excavating, LLC Britton, SD	10-904		\$3,000	I 4103	Northstar Federal Credit Union, Britton	
			\$1,000	K 4109		
			\$1,500	J 4170		
			\$11,500	L 4176		
			\$3,000	M 4259		

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Consent Calendar***

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<u>Transfers of Liability:</u>						
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	190-002-030	Liberty Mutual Insurance Company	Transfer liability.
		54094	NE1/4 Section 18; T113N-R74W, Sully County			
Transfer to:						
Harlan R. Smith Harrold, SD	10-905		\$500 \$5,000	188742 216870	First National Bank, Ft. Pierre	
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	190-002-030	Liberty Mutual Insurance Company	Transfer liability.
		54117	NE1/4 Section 33; T120N-R74W, Potter County			
Transfer to:						
Jensen Rock & Sand, Inc. Mobridge, SD	83-112		\$20,000	41-16-48	New Hampshire Insurance Company	

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<u>Transfers of Liability:</u>						
Halme Inc. Bryant, SD	16-1011		\$20,000	106561735	Travelers Casualty & Surety Company of America	Transfer liability.
		1011003	SW1/4 NW1/4 Section 28; T118N-R54W, Codington County			
Transfer to:						
LL & Sons Excavating, Inc. Hazel, SD	17-1030		\$2,500	235086	Reliabank, Hazel	
<u>Releases of Liability:</u>						
Bob Bak Construction Pierre, SD	83-61		\$3,000	4981	American State Bank, Pierre	Release liability.
			\$3,500	7410	American State Bank, Pierre	
			\$1,000	64334	First National Bank, Pierre	
			\$500	65266	First National Bank, Pierre	
			\$500	0621959600	Wells Fargo Bank, White River	
			\$500	7305	American State Bank, Pierre	
			\$500	13751	American State Bank, Pierre	
			\$500	13850	American State Bank, Pierre	
			\$4,000	13871	American State Bank, Pierre	
			\$6,000	532390	American Bank & Trust, Pierre	
		61023	SE1/4 Section 35; T41N-R28W, Mellette County			

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

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<u>Releases of Liability:</u>						
Berkner Excavating & Gravel, Inc. Milbank, SD	83-202		\$3,000	400FL1532	St. Paul Fire & Marine Insurance Company	Release liability.
			\$1,500	144260845	Great Western Bank, Milbank	
		202004	E1/2 Section 18; T118N-R48W, Grant County			
First Rate Excavate, Inc. Sioux Falls, SD	05-817		\$20,000	2047001	North American Specialty Insurance Company	Release liability.
		817008	NE1/4 & E1/2 NW1/4 Section 10; T103N-R52W, Minnehaha County			
Glen Haines dba Haines Trucking LLC Faith, SD	91-422		\$1,000	8506	Farmers State Bank, Faith	Release liability.
			\$1,000	39663		
		422003	SE1/4 Section 11; T15N-R18E, Ziebach County			

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Consent Calendar***

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<u>Releases of Liability:</u>						
Obenauer Sand & Gravel Eureka, SD	84-282		\$5,382	305050	Great Plains Bank, Eureka	Release liability.
			\$1,866	306016		
			\$2,984	30233		
			\$1,174	30174		
			\$1,007	31184		
			\$1,007	31185		
			\$4,000	61997		
	282010	NW1/4 Section 5; T124N-R72W, Edmunds County		Great Plains Bank, Aberdeen		
Faulk County Highway Department Faulkton, SD	83-103		EXEMPT	NA	NA	Release liability.
		103006	NE1/4 & NW1/4 Section 26; T118N-R67W, Faulk County			
		103009	SW1/4 Section 26; T116N-R70W, Hand County			
Tripp County Highway Department Winner, SD	83-89		EXEMPT	NA	NA	Release liability.
		89032	SW1/4 Section 27 & NW1/4 Section 34; T103N-R77W, Tripp County			

South Dakota Board of Minerals & Environment

October 19, 2017

<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>Transfer of Exploration Notice of Intent EXNI-399:</u>					
Donald Wandler Freeport, IL	EXNI-399	\$2,500	78258	First National Bank, Pierre	Transfer EXNI-399 from Donald Wandler to Kelly J. Anderberg and release CD No. 78258, First National Bank, in the amount of \$2,500. Accept CD No. 523800-20, Black Hills Federal Credit Union, in the amount of \$2,500.
Transfer to:					
Kelly J. Anderberg Rapid City, SD		\$2,500	523800-20	Black Hills Federal Credit Union, Rapid City	
			Legal:	Sections 1 & 12; T5N-R3E and Sections 6 & 7; T5N-4RE, Lawrence County	