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Minutes of the  
Board of Minerals and Environment  
Telephone Conference Call Meeting  
523 East Capitol Avenue  
Pierre, South Dakota

January 18, 2024  
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.

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Bob Ewing, Gregg Greenfield, Gary Haag, Doyle Karpen, Bob Morris, and Jessica Peterson.

BOARD MEMBERS ABSENT: Laurie Schultz.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Eric Holm, Tom Cline, and Bret Graves, DANR Minerals, Mining, and Superfund Program; Barb Regynski, DANR Air Quality Program; Matt Zietlow, Wharf Resources, Stephanie Kuntz, Marsh; Sam Keeran, Bureau of Land Management; Liliias Jarding.

APPROVAL OF MINUTES FROM NOVEMBER 16, 2023, MEETING: Motion by Blumhardt, seconded by Haag, to approve the minutes from the November 16, 2023, 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 copy of the consent calendar, which is a table listing the department recommendations for release of liability and surety, transfers of liability, and release of liability. (See attachment)

Tom Cline, Minerals, Mining, and Superfund Program was available to answer questions. There were no questions from the board regarding the consent calendar.

Motion by Morris, seconded by Ewing, to accept the department recommendations for release of liability and surety, transfers of liability, and release of liability. A roll call vote was taken, and the motion carried unanimously.

TRANSFER OF SMALL SCALE MINE PERMIT 417 FROM FRED AND ANDREW KREJCI TO SHIRLEY AND ANDREW KREJCI: Eric Holm reported that Shirley and Andrew Krejci have requested transfer of Small Scale Mine Permit 417 from Fred and Andrew Krejci. The general location of the permitted operation is approximately 3.5 miles west of Lead, SD.

Under SDCL 45-6B-47 any mine permit can be transferred from one operator to another with the successor operator assuming all reclamation liability.

The complete transfer application form and the \$100 transfer fee were submitted on November 13, 2023. The \$2,500 replacement surety was submitted on November 20, 2023. The \$2,500 reclamation bond is replacing the current \$2,000 reclamation bond. The bond is being increased to the maximum \$2,500 bond amount for small scale mine permits.

The application was deemed complete on November 20, 2023.

DANR's recommendation to transfer the permit was prepared on December 12, 2023, and it was published in the Black Hills Pioneer on January 4 and 11, 2024. The Affidavit of Publication is on file at DANR. The recommendation was also posted on DANR's public notice web page.

No petitions to intervene were received.

Under SDCL 45-6B-47, the board cannot deny a mine permit transfer unless the operation is not in compliance or cannot be brought into compliance with all applicable federal, state, or local laws or the successor operator is in violation of state mining laws or mine permit conditions for any mining operation in the state. The current mine permit and Shirley and Andrew Krejci are both in compliance with all federal, state, and local laws and regulations. Shirley and Andrew Krejci also submitted a Certification of Applicant form and disclosed no violations.

The department recommended that the board approve the transfer of Small Scale Mine Permit 417 and liability from Fred and Andrew Krejci to Shirley and Andrew Krejci, release CD No. 03-00059853, First Interstate Bank, Omaha, Nebraska, in the amount of \$2,000, and accept CD No. 242778, First National Bank, Rapid City, SD in the amount of \$2,500.

In response to a question from Chairman Hagg, Mr. Holm stated that Fred Krejci passed away in April 2023; and his wife and son requested to take over the mine permit.

Motion by Morris, seconded by Haag, to transfer Small Scale Mine Permit 417 and liability from Fred and Andrew Krejci to Shirley and Andrew Krejci, release CD No. 03-00059853, First Interstate Bank, Omaha, Nebraska, in the amount of \$2,000, and accept CD No. 242778, First National Bank, Rapid City, SD in the amount of \$2,500. A roll call vote was taken, and the motion carried unanimously.

ACCEPTANCE OF FINANCIAL ASSURANCE BOND FOR WHARF RESOURCES (USA), INC. MINE PERMIT NOS. 356, 434, 435, 464, 476, AND 490: Mr. Holm reported that Wharf Resources (USA), Inc. has requested that the board approve the exchange of the United States Fire Insurance surety bond, which serves as Wharf's cyanide spill bond financial assurance, for a new surety bond issued by SiriusPoint America Insurance Company.

On December 13, 2023, Wharf submitted a new surety bond from SiriusPoint America Insurance Company in the amount of \$807,300. Information on SiriusPoint America Insurance Company

was included in the board packet. The recent ratings for SiriusPoint America Insurance Company are as follows:

AM Best – Financial strength A-, long term a- (excellent, stable)  
S&P – Financial strength A-, long term A- (strong, stable)  
Moody's – Not rated  
Fitch – Long term A- (high credit quality, stable)

SiriusPoint America Insurance Company is a certified company listed on the U.S. Department of Treasury Circular.

Mr. Holm stated that this surety exchange does not increase the current \$807,300 cyanide spill bond. The bond will be reviewed and updated as needed this spring.

The department recommended that the board release Surety Bond No. 612408650, United States Fire Insurance Company, in the amount of \$807,300 and accept Surety Bond No. SPA150347\_002, SiriusPoint America Insurance Company, in the amount of \$807,300.

Matt Zietlow of Wharf Resources and Stephanie Kuntz of Wharf's bond broker, Marsh, were available to answer questions from the board.

In response to a question from Chairman Hagg, Ms. Kuntz stated that SiriusPoint is a strong and solid surety provider. In addition to the credit ratings, SiriusPoint's U.S. Treasury listing is more than \$50,000,000.

Motion by Ewing, seconded by Blumhardt, to release Surety Bond No. 612408650, United States Fire Insurance Company, in the amount of \$807,300 and accept Surety Bond No. SPA150347\_002, SiriusPoint America Insurance Company, in the amount of \$807,300. A roll call vote was taken, and the motion carried unanimously.

**LEGISLATIVE UPDATE – MINING AND MINERAL EXPLORATION:** Mike Lees reported that DANR has been working with Senator Diebert of District 31 on revisions to the mining and mineral exploration statutes.

The bill is an act to revise requirements for mining and mineral exploration. Some of the key proposed changes address concerns the Board of Minerals and Environment has expressed for many years. The bill contemplates changes to SDCL 45-6, Sand, Gravel, and Construction Aggregate Mining, SDCL 45-6B, Mined Land Reclamation, and SDCL: 45-6C, Mineral Exploration.

Prior to 1983 all mining operators in the state were required to obtain a mine permit pursuant to SDCL 45-6B, regardless of the type of material being mined. In 1983 a legislative revision of the law resulted in a separate chapter, SDCL 45-6, Sand, Gravel, and Construction Aggregate Mining, designed to streamline and simplify the permitting and regulatory for sand and gravel pit operators.

Mr. Lees discussed the proposed changes.

#### SDCL 45-6

It is proposed that SDCL 45-6-65 be amended to revise the list of materials mineable under a mine license. The statute currently allows operators to mine sand, gravel, rock to be crushed and used in construction, pegmatite minerals or for limestone, iron ore, sand, gypsum, shale, pozzolan, or other materials used in the process of making cement or lime. The operators mining the same limestone from the same pit are required to go through two divergent regulatory processes depending upon the rocks intended use creating an unfair regulatory framework for operators producing lime for agricultural use. Since the potential environmental impact and overall scope of reclamation liability is the same regardless of the limestone's intended use, SDCL 45-6-65 needs to be changed so all limestone mining is covered under the streamlined mine license process.

The proposed change to SDCL 45-6-71 involves increasing the amount of surety required for construction aggregate mine operators from \$500 per acre to \$3,850 per acre and from the \$20,000 statewide blanket to a \$500,000 statewide blanket. Over the last 25 years approximately 60 licensed mine operators have abandoned their mine sites, leaving millions of dollars in reclamation liability with only, on average, a few hundred dollars per acre to cover the costs. DANR has communicated with many sand and gravel operators and industry associations, and DANR knows these changes will have a significant financial impact on mining operators. To temper the impact of a surety increase the bill provides a two-year deferment of the construction aggregate surety increase to give existing sand and gravel operators time to adjust to the new surety requirement.

Other surety-related changes to SDCL 45-6 include expanding the types of acceptable surety operators may post to include irrevocable letters of credit, clarifying how the department processes surety on behalf of the board, and making provisions for a joint powers agreement with any county or other local government that requires a construction aggregate surety.

The bill makes it clear that DANR may receive and process financial assurance such as CDs and surety bonds under the authority of the Board of Minerals and Environment, so the intent of this is to allow the department to serve as signatory on financial documents. All surety releases will still be approved by the board, but the intent is to have staff serve as signatory instead of the board chairman, which will eliminate a great deal of administrative work for the department and the board chairman.

The joint powers agreement would allow the department to enter into agreements with counties or municipalities to avoid the imposition of duplicate surety requirements for construction aggregate mining.

#### SDCL 45-6B

The proposed amendment to SDCL 45-6B-55 involves increasing the outdated surety cap for small scale mines from \$2,500 per site to actual reclamation costs up to a maximum bond of

\$38,500 per site. These mine permit requirements have not been updated since the early 1980s and are inadequate to cover reclamation costs. This proposed surety increase pertains only to small scale mine permits. Since the large scale financial assurance requirements currently consist of the operator posting surety amounting to actual reclamation costs the large scale surety amounts do not need to be amended.

The proposed amendment to SDCL 45-6B-81 adds authority for the Board of Minerals and Environment to promulgate financial assurance rules. The goal of this change is to adopt rules as to what constitutes acceptable financial assurance and what reclamation costs are covered by financial assurance.

#### SDCL 45-6C

The proposed change to SDCL 45-6C-19 increases the surety cap for mineral exploration operations from a \$20,000 statewide blanket surety to a \$100,000 statewide blanket surety.

The proposed amendment to SDCL 45-6C-13 removes the 30-day self-activation period for exploration notices of intent so exploration can only begin after the operator posts surety. Currently, there is some ambiguity regarding when an operator can commence exploration. The proposed language makes the requirement clear.

Mr. Lees stated that DANR received quite a bit of feedback from the construction aggregate industry regarding the proposed sand and gravel surety increase. The department also communicated with hard rock mining operators and interested parties, and no one has expressed concerns about the proposed changes to the mine permit and mineral exploration chapters.

In summary, the proposed legislation revises limestone requirements in SDCL 45-6 leveling the playing field for producers of agricultural lime allowing them to operate under the streamlined mine license process. The bill increases surety amounts for construction aggregate mining, small scale permit mining, and mineral exploration to protect the state and landowners from undue reclamation liability. The bill also updates various surety-related requirements to clarify and make the financial assurance process easier to understand and execute.

Mr. Lees answered questions from the board regarding the proposed surety amounts.

#### ANNUAL UPDATE ON SOUTH DAKOTA'S VOLKSWAGEN BENEFICIARY

MITIGATION PLAN: Barb Regynski, DANR Air Quality Program, provided an update on South Dakota's Volkswagen Beneficiary Mitigation Plan.

In 2016 the Environmental Protection Agency (EPA) and the State of California filed a lawsuit against Volkswagen for installing a system in some of the diesel vehicles that cheated the emission controls and allowed vehicles to emit nitrogen oxide (NOx) pollution to exceed levels allowed under the Clean Air Act.

As part of a court settlement Volkswagen agreed to fund an environmental mitigation Trust in the amount of approximately \$3,000,000,000 to be used to offset the excess pollution emitted by those noncompliant vehicles.

To receive the funds, the states needed to develop and submit a beneficiary mitigation plan to the Trust. DANR was designated by the Governor to be the lead agency in South Dakota to administer the state's allocation, which was \$8,125,000. The Trust allowed the plan to use ten specific categories to offset the excess emissions.

1. Class 8 local freight trucks and port drayage trucks (eligible large trucks)
2. Class 4-8 school bus, shuttle bus, or transit bus (eligible buses)
3. Freight switchers
4. Ferries/tugs
5. Ocean going vessels (OGV) shorepower
6. Class 4-7 local freight trucks (medium trucks)
7. Airport ground support equipment
8. Forklifts and port cargo handling equipment
9. Light duty zero emission vehicle supply equipment
10. Diesel Emissions Reduction Act (DERA) options

The Board of Minerals and Environment approved the Volkswagen Beneficiary Mitigation Plan in August 2018. In March 2019, Governor Noem signed a bill giving spending authority for the Volkswagen Trust funds. In May 2021, the Board of Minerals and Environment approved revisions to the plan. Some of the categories were grouped together and instead of a set amount for each category, a percentage range was approved. At least 80 percent of the funds must be obligated by October 2027.

There are currently three programs that are covered under the plan – a truck replacement rebate program, which is allotted 35 to 45 percent of the funds; a bus replacement rebate program, which is allotted 35 to 45 percent of the funds; and electric vehicle charging stations, which is 10 to 15 percent of the funds. There are also administrative costs which are allotted 2.5 to 10 percent of the funds.

#### Trucks – Categories 1 and 6

The Volkswagen Truck Rebate Program provides rebates for replacing old diesel trucks with new, cleaner trucks. The program is open to state and local governmental agencies.

There are currently two funding rounds per year open for applications in January and June.

For rounds one through three, the rebate percentages were 25 percent. For those three rounds, not many applications were submitted, so staff decided for rounds four and five to increase the rebate percentage to 50 percent. For those two rounds, there were many more applications than expected. For rounds six through nine the rebate percentage was set at 35 percent.

The remaining \$305,000 in truck rebate funds will be available in 2024 for rounds 10 and possibly 11. Round 10 is currently open and will be closing on January 26, 2024.

To date, approximately \$2,000,000 in rebates has been provided for the Truck Program. An additional \$1,300,000 is obligated for projects that are not yet completed.

#### Buses – Categories 2 and 10

DANR has been running the State Clean Diesel Grant Program, which provides rebates for replacing old diesel buses, with newer, cleaner buses, since 2009 so the Volkswagen funds are being used in conjunction with the other funds. Every year DANR receives DERA funds from EPA. The Volkswagen Category 10 funds can be used as match for the base EPA funds, and in doing that EPA also gives the program bonus funds, which are one half of the base funding the program received. If extra applications are received, the Volkswagen Category 2 funds are also used. Funds for administration are also being used for the Bus Rebate Program.

Rebate percentages have been 25 or 35 percent depending on fuel type of replacement bus. This is a DERA requirement. A 45 percent rebate has also been offered for electric buses, but no applications have been submitted.

Round 16 opened in November 2023, and agreements have been sent out for 19 buses, for rebates totaling approximately \$780,000. The agreements are due back to DANR in mid-February 2024.

As of November 2023, the rebate amount provided was \$1,880,000, and another \$200,000 is obligated for buses that have not been delivered. Approximately \$1,560,000 remains for the Bus Program.

Ms. Regynski stated that the Diesel Emissions Reduction Act (DERA) is a federal program used for projects that would reduce pollution from diesel engines. Since 2009, DANR has been helping schools purchase new buses by providing rebates.

#### Electric Vehicle Charging Stations – Category 9

The maximum allowed by the Trust for this category is 15 percent. The rebates are up to 80 percent per charging station and installation. During round one, seven sites were approved, and later five withdrew their applications, so chargers were to be installed at the remaining two sites which are Mitchell and Chamberlain. For round two there were projects for Vermillion, Huron, Yankton, Aberdeen, Pierre, Brookings, Murdo, and Spearfish. Since the last update to the board in January 2023, Chamberlain, Huron, Yankton, and Aberdeen have withdrawn their projects. Of the remaining projects, Mitchell and Pierre are still under construction and Vermillion, Brookings, Murdo, and Spearfish have been completed. The expended amount for those completed projects was approximately \$414,000, and approximately \$178,000 is obligated for the two projects that are not yet completed.

Round three is open through March 13, 2024.

In response to questions from the board, Ms. Regynski stated that the Department of Transportation (DOT) submitted their plan for electric vehicle infrastructure deployment, and the plan was approved in September 2022. With that approved plan, DOT has \$29,000,000 available for charging stations through 2026.

Electric vehicle charging stations have not been installed at the rest areas. Ms. Regynski said the law states that anything that charges a fee is not allowed at a rest station.

Ms. Regynski's presentation included a map showing the location of existing public charging stations.

#### Administrative Costs

The range for administrative costs is 2.5 to 10 percent. The maximum allowed by the Trust for this category is 15 percent.

Through November 2023, approximately \$226,000 has been expended, and approximately \$586,000 remains.

#### Funding Summary

Ms. Regynski stated that of the \$8,125,000 available, \$6,249,034 has been expended or obligated, which is 77 percent of the total funds.

More information on the Volkswagen Beneficiary Mitigation Plan is available at <https://danr.sd.gov/Environment/AirQuality/VolkswagenTrust/default.aspx>.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

Matt Zietlow, Wharf Resources, thanked the board and the staff for moving forward the Wharf's bond exchange.

Mike Lees noted that Mike Erickson, Patty McQuay, and Mark Keenihan have recently retired.

NEXT MEETING: The next meeting is scheduled for March 21, 2024, and will be held via telephone conference call.

ADJOURN: Motion by Karpen, seconded by Peterson, to adjourn the meeting. A roll call vote was taken, and the motion carried unanimously.

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Secretary, Board of Minerals  
and Environment

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Date

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Witness

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Date



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

**January 18, 2024**

January 18, 2024

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<b><u>Release of Liability &amp; Surety:</u></b>					
Richard Brower Hartford, SD	06-833		\$1,000	Farmers State Bank, Humboldt	Release liability and \$1,000.
		<b>833001</b>	NE1/4 Section 24; T103N-R52W, Minehaha County		
Robert P. Newth Newell, SD	85-288		\$9,500	United Fire & Casualty Company	Release liability and \$9,500.
		<b>288003</b>	E1/2 Section 21; T8N-R5E, Butte County		
<b><u>Transfer of Liability:</u></b>					
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	Liberty Mutual Insurance Company	Transfer liability.
		<b>54032</b>	SE1/4 NE1/4 Section 16; T113N-R60W, Beadle County		
Transfer to:  Dan L. Meyers dba Meyers Sand & Gravel Huron, SD	83-176		\$20,000	Sun Surety Insurance Company	

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

***January 18, 2024***

<b><u>License Holder</u></b>	<b><u>License No.</u></b>	<b><u>Site No.</u></b>	<b><u>Surety Amount</u></b>	<b><u>Surety Company or Bank</u></b>	<b><u>DANR Recommendation</u></b>
<b><u>Transfer of Liability:</u></b>					
Stromseth Construction Watertown, SD	90-414	<b>414001</b>	\$20,000	Ohio Farmers Insurance Company	Transfer liability.
Transfer to:					
Stromseth Dirt Works LLC Watertown, SD	23-1132		\$7,000	Dacotah Bank, Watertown	
Stromseth Construction Watertown, SD	90-414	<b>414012</b>	\$20,000	Ohio Farmers Insurance Company	Transfer liability.
Transfer to:					
Ries Brothers, LLC Watertown, SD	14-976		\$1,000	First Premier Bank, Sioux Falls	

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

***January 18, 2024***

<b><u>License Holder</u></b>	<b><u>License No.</u></b>	<b><u>Site No.</u></b>	<b><u>Surety Amount</u></b>	<b><u>Surety Company or Bank</u></b>	<b><u>DANR Recommendation</u></b>
<b><u>Transfer of Liability:</u></b>					
Miner County Highway Department Howard, SD	83-177		EXEMPT	NA	Transfer liability.
		<b>177025</b>	NE1/4 Section 28; T105N-R55W, Miner County		
Transfer to:					
Shannon Hutterian Brethren Inc. Winfred, SD	23-1130		\$2,000	Rivers Edge Bank, Howard	
<b><u>Release of Liability:</u></b>					
Wesley Dean Kor White, SD	05-821		\$2,000	Richland State Bank, Bruce	Release liability.
		<b>821002</b>	NW1/4 Section 10; T111N-R49W, Brookings County		
Quality Sand & Gravel Brookings, SD	98-644		\$5,000	VanTol Surety Company, Inc.	Release liability.
			\$1,500	First National Bank, Brookings	
		<b>644003</b>	NE1/4 NE1/4 exc. H-1 & PT E & N of H-1 Section 14; T109N-R50W, Brookings County		

*South Dakota Board of Minerals & Environment*

**January 18, 2024**

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<b><u>Transfer of Small Scale Mine Permit 417:</u></b>				
Fred & Andrew Krejci Springfield, NE	417	\$2,000	First Interstate Bank, Omaha, NE	Transfer Permit 417 and liability from Fred & Andrew Krejci to Shirley & Andrew Krejci. Release CD No. 03-00059853, First Interstate Bank, Omaha, NE, in the amount of \$2,000. Accept CD 242778, First National Bank, Rapid City, in the amount of \$2,500.
NE1/4 Section 34; T5N-R2E, Lawrence County				
Transfer to:				
Shirley & Andrew Krejci Springfield, NE				
<b><u>Acceptance of Financial Assurance Bond for Wharf Resources (USA), Inc.:</u></b>				
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, 476, & 490	\$807,300	United States Fire Insurance Company	Release Bond No. 612408650, United States Fire Insurance Company, in the amount of \$807,300. Accept Bond No. SPA150347_002, Siriuspoint America Insurance Company, in the amount of \$807,300.