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

January 19, 2023  
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, Gregg Greenfield, Doyle Karpen, Jessica Peterson, Bob Morris, John Scheetz and Gary Haag.

BOARD MEMBERS ABSENT: None.

OTHERS PRESENT: Mike Lees, Eric Holm, Roberta Hudson, Tom Cline and Bret Graves, DANR Minerals and Mining Program; Kyrik Rombough and Barb Regynski, DANR Air Quality Program.

GARY HAGG ORAL BIOGRAPHY: New board member Gary Haag provided a personal biography.

APPROVAL OF MINUTES FROM OCTOBER 20, 2022, MEETING: Motion by Karpen, seconded by Haag, to approve the minutes from the October 20, 2022, 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 the consent calendar, which is a table listing the department recommendations for release of liability and surety, transfer of liability and release of surety, transfer of liability, and release of liability. (See attachment)

Tom Cline, Minerals and Mining Program, presented the consent calendar. There were no questions from the board members regarding the consent calendar.

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

ANNUAL UPDATE OF POST CLOSURE FINANCIAL ASSURANCE FOR LAC

MINERALS (USA), LLC: Eric Holm reported that in the post closure conditions for Mine Permit 445, which were approved by the board on January 21, 2016, it states the financial assurance shall be automatically extended for periods of one year. At the time of each annual extension, the face value of the financial assurance shall be adjusted to the bonding schedule set by the board in 2016 and updated in April 2022 as part of the five-year review.

For 2023, the face value of the surety bond that serves as the post closure financial assurance is required to be \$31,596,628. This is an increase from the \$30,838,220 amount that was submitted last year as part of the five-year review of the bond. For the increase, LAC Minerals submitted a rider to Surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, which increases the amount to the new face value. Both surety companies are licensed in South Dakota and are on the US Department of Treasury's list of approved surety companies. Ratings for both companies from AM Best, Standard and Poor's, and Moody's are superior, very strong, and high quality, respectively. Outlooks are stable to positive.

The staff recommendation was that the board accept the rider to Surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, to increase the post closure financial assurance amount to \$31,596,628.

In response to questions from Mr. Scheetz, Mr. Holm stated that staff is currently reviewing the Homestake post closure bond, and staff is taking another look at inflation and discount rates. Homestake wanted to have its financial advisor review the rates. After DANR receives that information from Homestake's financial advisor, the information will be sent to the State Investment Council for an opinion. DANR intends to present the board with a report on the rates in the spring or summer of 2023.

Mr. Holm stated that third-party reviews have been done in the past, most recently by the U.S. Bureau of Reclamation. A couple of consulting firms have also reviewed DANR staff calculations, and their suggestions have been incorporated over the years. Staff has also incorporated some suggestions by the environmental community. Mr. Holm said he is always looking at improvements regarding bond calculations.

Motion by Morris, seconded by Karpen, to accept rider to Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the post closure financial assurance amount to \$31,596,628 for the LAC Minerals (USA), LLC. A roll call vote was taken, and the motion carried unanimously.

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.

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.

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 program, which is allotted 35 to 45 percent of the budget; a bus replacement plan, which is allotted 35 to 45 percent of the budget; and an electric vehicle charging station plan, which is 10 to 15 percent of the budget. There are also administrative costs, and the total budget is \$8,125,000.

#### Trucks – VW Categories 1 and 6

The VW Truck Rebate Program provides rebates for replacing old diesel trucks with newer, 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. This was done to help with differences in budget cycles between state and local governments.

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 and seven the rebate percentage was set at 35 percent.

The rebates for rounds eight and nine will also be 35 percent in 2023. Approximately \$1,000,000 in VW funds will be available.

Ms. Regynski stated that for rounds one through seven, awards were made to help replace 45 old diesel trucks

#### Buses – VW Categories 2 and 10

DANR had already been running the State Clean Diesel Grant Program, which provides rebates for replacing old diesel buses, with newer, cleaner buses, so the VW funds are being used in conjunction with the other funds. Every year DANR received DERA funds from EPA. The VW 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 VW Category 2 funds are also used.

The rebate percentages for the Bus Program are dictated by the State Clean Diesel Grant Program, so the percentages cannot be adjusted. The rebate percentages are 25 percent if the engine in new bus meets the current emissions standards or 35 percent if the new engine meets the CARB's Low-NOx standards. Some of the new propane buses did meet those standards, so some applicants received the 35 percent rebate. Forty-five percent rebates have been offered for electric buses, but no applications have been submitted for electric buses.

A new round opened in November 2022, and the agreements are currently being signed. For rounds 10 through 14 awards were made to help replace 146 buses, and in the new round awards will be offered for 24 more buses.

Ms. Regynski stated that under the federal Bipartisan Infrastructure Law (BIL) that was approved in 2022, EPA received funding for a bus rebate program for electric and CARB's Low-NOx. Five South Dakota school districts received funding through EPA for a total of eight buses. EPA is paying 100 percent for the buses.

#### Electric Vehicle Charging Stations – VW Category 9

The maximum allowed for this category 15 percent of the budget. The rebate percentages are up to 80 percent per charging station and installation. During round one, seven sites were approved, and later five of them withdrew their applications, so chargers will be installed in the remaining two sites, which are Mitchell and Chamberlain.

For round two, additional sites were approved for Vermillion, Huron, Yankton, Aberdeen, Pierre, Brookings, Murdo, and Spearfish.

To date, all of the funds have been obligated, but the rebates have not been paid yet. There have been delays in getting equipment and delays having the concrete work done. At least four of the sites are operational, but signs still need to be installed.

Ms. Regynski discussed a map showing existing electric vehicle charging stations in the state along with the planned VW charging station sites. This map was included with her presentation in the board packet. The Department of Transportation will receive \$29,000,000 in BIL funding over the next five years for electric vehicle charging stations. There is also an additional \$2,500,000,000 available nationwide through the Federal Highway Administration.

#### Administrative Costs

Through November 2022, \$160,731 has been spent. The maximum allowed for this category is 15 percent.

#### VW Funding Budget Summary

Ms. Regynski stated that of the \$8,125,000 available, \$5,622,483 has been either spent or obligated, which is 69 percent of the funds. By the end of next year, it is anticipated that 80 percent of the funds will be obligated.

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

In response to questions from the board, Ms. Regynski stated that in 2027, the trust will see how many beneficiaries have met the 80 percent obligated funds requirement. The ones that have not will have to return the unobligated funds, and everyone else will be able to apply for those returned funds.

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

Board of Minerals and Environment  
January 19, 2023, Meeting Minutes

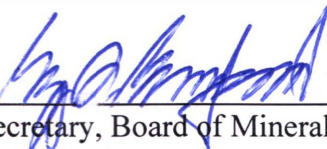
NEXT MEETING: Board discussion took place regarding the frequency of board meetings. Suggestions were made regarding the possibility of holding quarterly meetings or every other month meetings.

Chairman Hagg noted that the board will not meet in February. The next meeting is scheduled for March 16, 2023.

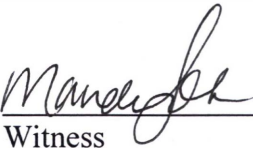
Chairman Hagg requested that at the next meeting staff provide the board with an update on the Gilt Edge Superfund Site and the federal legislation regarding of the purchase of the federal property at the site.

Mr. Scheetz requested that at the next meeting the board be updated on the status of the Powertech matter.

ADJOURN: Motion by Karpen, seconded by Scheetz, 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

3/19/23  
Date

  
\_\_\_\_\_  
Witness

3/16/23  
Date

*Consent Calendar  
South Dakota Board of Minerals & Environment*

*January 19, 2023*

<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>					
WC Land, LLC Crooks, SD	18-1044		\$20,000	United Fire & Casualty Company	Release liability and \$20,000.
		<b>1044001</b>	SE1/4 Section 18;	T109N-R49W, Brookings County	
Randall Schroth Buffalo Gap, SD	21-1102		\$500	First interstate Bank, Hot Springs	Release liability and \$500.
		<b>1102001</b>	W1/2 SW1/4 Section 14 & SE1/4 Section 15; T6S-R6E, Custer County		
<b><u>Transfer of Liability &amp; Release of Surety:</u></b>					
Benjamin P. Oldenkamp Kennebec, SD	99-684		\$1,000 \$3,000	First National Bank, Pierre BankWest, Kennebec	Transfer liability and release \$4,000.
		<b>684001</b>	SW1/4 Section 23;	T103N-R76W, Lyman County	
Transfer to:					
Tom Hills Kennebec, SD	22-1116		\$1,500	BankWest, Kennebec	

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

**January 19, 2023**

<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>Transfer of Liability:</u></b>					
Edmunds County Highway Department Ipswich, SD	83-161	<b>161013</b>	EXEMPT	NA	Transfer liability.
Transfer to: BDM Gravel LLC Roscoe, SD	20-1071		\$20,000	Plains Commerce Bank, Aberdeen	
Mc Cook County Highway Department Salem, SD	83-157	<b>157019</b>	EXEMPT	NA	Transfer liability.
Transfer to: Hanson County Highway Department Alexandria, SD	83-227		EXEMPT	W1/2 SW1/4 Section 9; T104N-R55W, Mc Cook County	
<b><u>Release of Liability:</u></b>					
Baker Ranch dba Badlands Sand & Gravel Inc. Hermosa, SD	95-551	<b>551003</b>	\$9,033	Black Hills Federal Credit Union, Rapid City	Release liability.
				N1/2 Section 8; T3S-R7E, Custer County	

*Consent Calendar  
South Dakota Board of Minerals & Environment*

*January 19, 2023*

<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:</u></b>					
Spencer Quarries, Inc. Spencer, SD	83-36	<b>36009</b>	\$20,000	United Fire & Casualty Company SE1/4 Section 33; T103N-R60W, Davison County	Release liability.
Edmunds County Highway Department Ipswich, SD	83-161	<b>161017</b>	EXEMPT	NA NE1/4 Section 34; T122N-R73W, Edmunds County	Release liability.
Haakon County Highway Department Philip, SD	83-40	<b>40017</b>	EXEMPT	NA SW1/4 Section 16; T7N-R23E, Haakon County	Release liability.
Roberts County Highway Department Sisseton, SD	83-23	<b>23027</b>	EXEMPT	NA W1/2 SW1/4 Section 5; T122N-R51W, Roberts County	Release liability.



*South Dakota Board of Minerals & Environment*

*January 19, 2023*

**DENR Recommendation**

**Surety Company or Bank**

**Surety Amount**

**Permit No.**

**Permit Holder**

**Annual Update of Post Closure Financial Assurance:**

LAC Minerals (USA), LLC Central City, SD	445	\$30,838,220	Fidelity & Deposit Company of Maryland  Zurich American Insurance Company	Accept rider to Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the Post Closure Financial Assurance amount to \$31,596,628.
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