

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

October 18, 2018
10:00 a.m. CDT

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

DENR Secretary Steve Pirner introduced new board member Jessica Peterson who was appointed by Governor Dugaard to replace Pete Bullene.

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

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

BOARD MEMBERS ABSENT: None.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM September 20, 2018, MEETING: Motion by Karpen, seconded by Blumhardt, to approve the minutes from the September 20, 2018, 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 release of surety, release of liability and surety, transfers of liability and releases of liability (see attachment).

Bret Graves, DENR Minerals and Mining Program, was available to answer questions.

Responding to a question from Mr. Morris, Mr. Graves stated that when the board releases liability, that means the site has been reclaimed to the satisfaction of DENR. When the board releases surety, it means the operator no longer wants to hold the license. If liability has been released for a certain site, but the surety is still in place, the operator may have multiple sites.

Motion by Morris, seconded by Landguth, to accept the department recommendations for release of surety, release of liability and surety, transfers of liability and releases of liability as listed on the consent calendar. A roll call vote was taken, and the motion carried unanimously.

Exchange of Surety for Wharf Resources (USA) Inc.'s Post Closure Bonds for Permits 356, 434, 435, 464, 476, and 450: Eric Holm reported that Wharf Resources (USA), Inc. has requested that the board approve the exchange of a surety bond for an irrevocable letter of credit, which serves as post closure financial assurance for Permit 450.

On July 11, 2018, Wells Fargo Bank notified the department that it would not extend Irrevocable Letter of Credit No. IS0274134U beyond the expiry date of February 6, 2019. That same day, the department notified Wharf Resources it would be required to replace the letter of credit with another financial assurance instrument before the end of this year.

On October 11, 2018, Wharf submitted a surety bond from Aspen American Insurance Company in the amount of \$1,767,077 to replace the letter of credit. The department has reviewed Aspen American Insurance Company and found it has excellent credit ratings. The department's recommendation is to exchange Wells Fargo Bank Irrevocable Letter of Credit No. IS0274134U for Aspen American Insurance Company Surety Bond No. SU53944 in the amount of \$1,767,077.

Mr. Blumhardt asked what the department knows about the status of Aspen American Insurance Company. Mr. Holm stated that the company is under review, according to A.M. Best, but in checking with Wharf's broker, Mr. Holm learned that the company is being acquired by Apollo Global Management. Mr. Holm stated that it is standard practice for A.M. Best to place any company under review when they are involved in some type of acquisition. Wharf's surety broker said Aspen American Insurance Company is viewing the acquisition positively and anticipates additional opportunity to expand the surety footprint.

Mr. Holm stated that Aspen American Insurance Company also holds other surety bonds for Wharf such as the \$669,200 cyanide spill bond and an \$8 million portion of the reclamation bond.

Mr. Blumhardt expressed concern about the financial status of Aspen American Insurance Company. He asked if the department performed a review of Apollo Global Management.

Mr. Holm stated that he could not find anything on Apollo Global Management. Mr. Blumhardt stated that Apollo Global Management has an A- bond rating. Mr. Blumhardt said he has angst about approving these surety exchanges worth over \$28,000,000.

Mr. Holm said he performed his review of Aspen American Insurance Company using A.M. Best Company's credit rating services. He noted that Standard and Poors, and Moody's credit rating services did not have ratings available for Aspen American Insurance Company. Mr. Holm said A.M. Best gave Aspen American Insurance Company "A" ratings for financial strength and long term issuer credit, both of which equate to a rating of "Excellent".

Chairman Hagg asked if the same issue exists with Argonaut Insurance Company as Wells Fargo Bank. Mr. Holm said he does not know why Wharf is changing from Argonaut Insurance Company. They may be getting a better rate from Aspen American Insurance Company.

Chairman Hagg asked how Argonaut Insurance Company is rated. Mr. Holm stated that Argonaut has held past bonds and have had good ratings in the past.

Chairman Hagg stated that the Wells Fargo Bank letter of credit has a time-sensitive deadline. Mr. Holm said Wells Fargo Bank is withdrawing the letter of credit on the expiry date of February 6, 2019. There is no deadline for the Argonaut Insurance Company surety bond.

Mr. Morris asked if there is an entity within state government or a private entity that the department can rely upon to get advice from when renewal of or exchange of a surety is required. Mr. Holm stated that the South Dakota Investment Council might be willing to assist.

Mr. Morris said he shares the same concerns that Mr. Blumhardt expressed.

Chairman Hagg suggested that the exchange of surety for Wharf Resources (USA) Inc.'s post closure bonds be deferred until the November 15, 2018, board meeting to allow more time to look into the situation with Aspen American Insurance Company. Mr. Holm stated that the department wouldn't object to deferring until the November 15 meeting.

Motion by Greenfield, seconded by Englund, to defer the exchange of surety for Wharf Resources (USA) Inc.'s post closure bonds until the November 15, 2018, board meeting. A roll call vote was taken, and the motion carried unanimously.

IN THE MATTER OF THE APPLICATION OF PETER K. ROOSEVELT, DENVER, CO, FOR APPROVAL OF A PERMIT TO INJECT PRODUCTION WATER IN THE EXISTING 2-33 ALKALI FEDERAL WELL AND TO INJECT PRODUCTION WATER IN THE UNCONSOLIDATED SAND OF THE MINNELUSA FORMATION FOR SALT WATER DISPOSAL: A court reporter was present for the hearing and a transcript was prepared. The transcript and exhibits are on file at the Department of Environment and Natural Resources.

A copy of the transcript may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

Chairman Hagg turned the gavel over to hearing chairman, Gregg Greenfield, who opened the hearing.

Oil and Gas Case No. 5-2017 is the application of Peter K. Roosevelt, Denver, CO, for approval of a permit to inject production water into the existing 2-33 Alkali Federal well located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33, Township 11 South, Range 1 East, in Fall River County, eighteen miles southwest of Edgemont, SD, to inject production water in the unconsolidated sand of the Minnelusa Formation for salt water disposal.

The 2-33 Alkali Federal well was completed with 268 feet of 8 5/8-inch steel surface casing, cemented to protect underground sources of drinking water, and 3,679 feet of 5 1/2-inch steel production casing, cemented to protect underground sources of drinking water. The injection zone will be in the Unconsolidated Sand of the Minnelusa Formation. Injection water will be produced from the 3-33 Alkali Federal well producing from the 2nd Leo Member of the Minnelusa Formation. There are four other wells located within the one-half mile area of review, or maximum calculated radius of influence. Injection into this well will not affect any underground sources of drinking water.

Water from the Unconsolidated Sand of the Minnelusa Formation at the proposed injection well has a total dissolved solid content of less than 10,000 milligrams per liter; therefore, an aquifer exemption is required to conduct injection operations at this well. The department recommended granting a 3,150-foot radius aquifer exemption in the Minnelusa Formation around the proposed injection well. DENR made this recommendation because the Minnelusa Formation near the proposed injection well does not currently serve as a source of drinking water, is not expected to supply a public water system, and will not serve as a source of drinking water in the future because its location makes recovery of water for drinking water purposes economically impractical.

The requested maximum injection pressure is 550 pounds per square inch and the requested duration of this application is 30 years or the time required to inject 8,212,500 cumulative barrels of water, whichever comes first.

DENR recommended approval of the application with the following conditions:

- 1) Injection operations authorized under the permit to inject must be conducted accordance with SDCL Chapter 45-9, ARSD 74:12 and any applicable orders or rules promulgated by the board;
- 2) The total number of barrels injected during the life of this permit may not exceed 8,212,500 barrels of water;
- 3) The maximum injection rate must not exceed 750 barrels of water per day;
- 4) The life of the permit may not exceed 30 years;
- 5) The maximum pressure must not exceed 550 pounds per square inch surface pressure during injection operations;
- 6) Prior to the commencement of injection, the Secretary's recommended Aquifer Exemption for this operation must be approved by the United States Environmental Protection Agency;
- 7) A mechanical integrity test must be successfully conducted prior to the commencement of injection activity. The well must pass the mechanical integrity test at 1,000 pounds per square inch surface pressure. The operator is required to notify the Secretary a minimum of 72 hours prior to running a mechanical integrity test;
- 8) Once mechanical integrity is established, the well must be retested at least once every five years to ensure that mechanical integrity is maintained, unless the department indicates differently;
- 9) If an unsuccessful pressure test occurs, the operator must cease operations immediately if it is determined the injection will threaten any underground source of drinking water. If the failure is not threatening ground water, the operator must cease operations within 48 hours after receipt of the department secretary's notice, and take corrective action on the well as soon as feasible. Corrective action options include

repairing the well so that a successful test result can be obtained, plugging and abandoning the well, or any other action approved by the department.

- 10) At all times this well shall have an accurate, operating pressure gauge or pressure recording device and injection volume totalizer or volume recording device. The operator shall keep and maintain an accurate log of monitoring equipment readings, which may be subject to review by the department at any time.

Max Main, attorney from Belle Fourche, represented the applicant.

Steve Blair, Assistant Attorney General, represented the Department of Environment and Natural Resources.

The following filed petitions to intervene in this matter: Brad Thomsen, Eckard Water Company, Quinto Ranch, LLC, Susan R. Henderson, and the Fall River County Commissioners. None of the intervenors were present at the hearing.

Mr. Blair and Mr. Main joined in a motion to hold the petitioners in default and note that they have waived their due process rights by failure to appear at the hearing.

Mr. Greenfield granted the motion that the petitioners are in default and have waived their due process rights by failure to appear at the hearing.

Mr. Blair and Mr. Main orally stipulated to entry of each other's exhibits and requested that the exhibits be admitted.

Mr. Greenfield granted the request for admission of the exhibits for Peter K. Roosevelt and DENR.

Dennis V. Johnson, geologist from Rapid City, SD, was administered the oath and testified on behalf of Peter K. Roosevelt.

Exhibits offered and admitted into the record for Peter K. Roosevelt:

1. Dennis V. Johnson Curriculum Vitae.
2. Map C in the Application, prepared by PermitCo, showing one mile and half mile radii around the injection well.
3. One mile radius map, showing injection and water wells.
4. Field Map.
5. Generalized Stratigraphic Section, Southwest Fall River County, SD, Lower Cretaceous to the Mississippian Madison.
6. Log of the 2-33 Alkali Federal proposed injection well.
7. Log of the 3-33R Alkali Federal well, pages 1 and 2.
8. Log of the 15-9 Federal Stagecoach well, now the Quinto Ranch water well.
9. Wellbore Schematic of the 2-33 Well Bore Schematic
10. Reservoir characteristics of the Proposed Injection Zone for the 2-33 Alkali Federal proposed injection well.

Brian J. Walsh, Department of Environment and Natural Resources (DENR) Ground Water Quality Program, was administered the oath and testified on behalf of DENR.

Exhibits offered and admitted into the record for DENR:

100. DENR file maintained regarding Roosevelt Application
101. Brian Walsh Witness Declaration & Curriculum Vitae
102. Roosevelt Injection Permit Application Documents
103. Notice of Recommendation Issued by DENR
104. Affidavits of Publication
105. Eckard Water Intervention Documents
106. Quinto Ranch Intervention Documents
107. Fall River County Intervention Documents
108. Susan Henderson Intervention Documents
109. Notice of Hearing
110. Applicant's Affidavit of Notice to Landowner(s)
111. Aquifer Exemption Documents Submitted to EPA
112. Well Log Diagram
113. General Site Map including Well Information
114. SDCL §§ 74:12:07:01 & 74:12:07:24

Following testimony, cross examination, and questions from the board members, hearing chairman Greenfield requested board action.

Mr. Main offered proposed Findings of Fact and Conclusions of Law.

Mr. Blair stated that he had reviewed and is in agreement with Mr. Main's proposed Findings of Fact and Conclusions of Law. He noted that the department did not intend to submit proposed Findings of Fact and Conclusions of Law.

Hearing chairman Greenfield stated that he would require Mr. Main to serve the proposed Findings of Fact upon the intervenors, and he would give the intervenors 10 days to respond. Hearing chairman Greenfield stated the he will review the proposed Findings of Fact and Conclusions of Law and make a recommendation as to the proposed Findings of Fact, Conclusions of Law and Order at the next board meeting.

Mr. Blair objected to serving the intervenors because they were found to be in default at the beginning of the hearing and their due process rights were waived. Mr. Main joined in the objection.

Hearing chairman Greenfield said he would remove the requirement to serve the intervenors and request board in discussion.

Following input from several of the board members, hearing chairman Greenfield stated that ARSD 74:09:01:19 states that all parties to a contested case proceeding shall present proposed Findings of Fact, Conclusions of Law and an Order to the board. He said he believes the intervenors are still a party even if they are in default.

Hearing chairman Greenfield noted Mr. Blair and Mr. Main's objection to having to serve the intervenors, but ordered they the proposed Findings of Fact, Conclusions of Law, and order be served upon the intervenors.

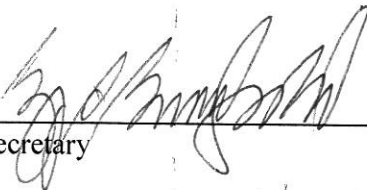
He stated that the board members will be provided a copy the proposed Findings of Fact, Conclusions of Law and Order and adopt the final Findings of Fact, Conclusions of Law and Order the November 15, 2018, meeting.

Hearing chairman Greenfield declared the hearing closed at 12:20 p.m. He turned the gavel back over to Chairman Hagg.


NEXT MEETING: The next meeting is for November 15, 2018.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: No one offered public comments.

ADJOURN: Motion by Morris, seconded by Greenfield, that the meeting be adjourned. A roll call vote was taken, and the motion carried unanimously.



Secretary Date
11/26/18



Witness Date
11/26/18

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

<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>	<i>October 18, 2018</i> <u>DENR Recommendation</u>
<u>Release of Surety:</u>						
Marty's Gary, SD	10-896		\$1,000	60903	DNB National Bank, Gary	Release \$1,000.
<u>Release of Liability and Surety:</u>						
David Glissendorf White Lake, SD	12-939		\$1,000	4474	Farmers & Merchants Bank, Plankinton	Release liability and \$2,500.
			\$1,500	4745	Farmers & Merchants Bank, White Lake	
		939001	SE1/4 Section 9; T103N-R66W, Aurora County			
<u>Transfer of Liability and Release of Surety:</u>						
Kenneth Kaup Akaska, SD	13-961		\$500	300016130	Plains Commerce Bank, Hoven	Transfer liability and release \$2,000.
			\$500	300016371	Plains Commerce Bank, Hoven	
			\$1,000	300016654	Plains Commerce Bank, Hoven	
		961001	NW1/4 Section 33; T120N-R74W, Potter County			
Transfer to:						
Brownlee Construction, Inc. Watertown, SD	89-393		\$20,000	54-40062	United Fire & Casualty Company	

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

<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>	<i>October 18, 2018</i> <u>DENR Recommendation</u>
<u>Transfers of Liability:</u>						
Dawson Construction, Inc. Howard, SD	83-21		\$20,000	RC-0024	Sun Surety Insurance Company	Transfer liability.
		21020	W1/2 Section 16; T106N-R52W, Lake County			
Transfer to:						
Reinicke Construction, Inc. Madison, SD	91-419		\$500	929200	Wells Fargo Bank, Madison	
			\$1,000	991708	Wells Fargo Bank, Madison	
			\$1,000	0401211826	Wells Fargo Bank, Madison	
			\$2,000	602175	First Bank & Trust, Madison	
Lyman County Highway Department Kennebec, SD	83-215		Exempt	NA	NA	Transfer liability.
		215006	N1/2 NE1/4 Section 22 & NE1/4 NW1/4 Section 15; T103N-R72W, Lyman County			
Transfer to:						
Oacoma Township Oacoma, SD	18-1033		Exempt	NA	NA	

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

<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>	<i>October 18, 2018</i> <u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Central Specialties, Inc. Alexandria, MN	02-733	733002	\$20,000	5944949	Ohio Farmers Insurance Company	Release liability.
			E1/2 Section 27 & W1/2 Section 26; Day County			
Bennett County Highway Department Martin	93-485	485007	Exempt	NA	NA	Release liability.
			NE1/4 Section 19; Jackson County			
Jones County Highway Department Murdo, SD	83-205	205014	Exempt	NA	NA	Release liability.
			NE1/4 Section 14 & SW1/4 Section 13; Jones County			

South Dakota Board of Minerals & Environment

October 18, 2018

<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>Exchange of Surety for Wharf Resources (USA) Inc.'s Post Closure Bonds:</u>					
Wharf Resources (USA) Inc. Lead, SD	450	\$1,767,077.00	ILOC No. IS0274134U	Wells Fargo Bank, Winston-Salem, NC	Exchange Wells Fargo Bank, Irrevocable Letter of Credit No. IS0274134U, for Aspen American Insurance Company, Bond No. SU53944, in the amount of \$1,767,077.00
Wharf Resources (USA) Inc. Lead, SD	356, 434, 435, 464, & 476	\$26,800,000.00	SUR0032045	Argonaut Insurance Company	Exchange Argonaut Insurance Company, Bond No. SUR0032045, for Aspen American Insurance Company, Bond No. SU53942, in the amount of \$26,800,000.00.