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

October 17, 2019  
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.

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

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

BOARD MEMBERS ABSENT: Bob Morris.

OTHERS PRESENT: Ashley Brakke, Kyrik Rombough, and Rick Boddicker, DENR Air Quality Program; Mike Lees, Lucy Blocker, Tom Cline, and Bret Graves, DENR Minerals and Mining Program; and Steve Blair, Attorney General's Office.

APPROVAL OF MINUTES FROM SEPTEMBER 18-19, 2019, MEETING: Motion by Blumhardt, seconded by Karpen, to approve the minutes from the September 18-19, 2019, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried with Blumhardt, Englund, Greenfield, Karpen, Peterson, Scheetz, and Hagg voting aye. Landguth abstained.

### MINING ISSUES

Consent Calendar: Prior to the meeting, the board received a table listing the department recommendations for releases of liability and surety, transfers of liability and release of surety, transfers of liability, releases of liability, and release of surety (see attachment).

Tom Cline answered questions from the board regarding inspection of the sites before releasing surety and liability.

Chairman Hagg stated that due to a conflict he would abstain from voting on the release of liability and surety for Thunderbird Realty, LLC.

Motion by Landguth, seconded by Karpen, to accept the department recommendations for release of liability and surety for James Gary Green; transfers of liability and releases of surety for Arthur E. Argo, Jr. to CT Sibson Gravel & Crushing, Inc.; and Benchmark Enterprises, LLC to Cody Schad; transfers of liability for Schladweiler Construction to Schultz Redi-Mix LLC and Dina Shefner to Aurora County Highway Department; releases of liability for Bowes Construction, Inc., Fischer Sand & Gravel, Lien Transportation Company, Opperman, Inc., Van Zee Gravel & Construction, and Butte County Highway Department; and release of surety for Schladweiler Construction, as shown on the consent calendar. A roll call vote was taken, and the motion carried unanimously.

Motion by Blumhardt, seconded by Peterson, to accept the department recommendation for release of liability and surety for Thunderbird Realty, LLC. A roll call vote was taken, and the motion carried with Blumhardt, Englund, Greenfield, Karpen, Landguth, Peterson, and Scheetz voting aye. Hagg abstained.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:36:01, 74:36:02, 74:36:03, 74:36:05, 74:36:07, 74:36:08, 74:36:09, 74:36:10, 74:36:11, 74:36:12, 74:36:13, 74:36:16, 74:36:18, 74:36:20, AND 74:36:21, AIR POLLUTION CONTROL PROGRAM The Board of Minerals and Environment held the public hearing at 10:05 a.m. Central Time on October 17, 2019, in the Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, South Dakota.

The purpose of the hearing was to consider the adoption and amendment of proposed rules numbered ARSD 74:36:01, 74:36:02, 74:36:03, 74:36:05, 74:36:07, 74:36:08, 74:36:09, 74:36:10, 74:36:11, 74:36:12, 74:36:13, 74:36:16, 74:36:18, 74:36:20, and 74:36:21, adopted under the authority of SDCL 34A-1-6, 34A-1-12, 34A-1-15, 34A-1-18, 34A-1-19, and 34A-1-21.

The hearing officer was board chairman, Rex Hagg.

Ashley Brakke, DENR Air Quality Program, presented and explained the proposed amendments to ARSD 74:36, Air Pollution Control Program.

In July 2019, DENR sent a letter and a draft of the proposed revisions to 136 Title V facilities and 43 interested parties. The department also emailed Title V facilities and posted the letter on DENR's website. DENR requested that comments be submitted by August 9, 2019, so the department could consider any proposed changes to the draft prior to requesting permission from the Board of Minerals of Environment to public notice on August 15, 2019. During that period, the department received comments from EPA, Appendix B in the Statement of Basis, which is included in the binder provided to the board. The department also received concurrence letters from the Sioux Falls Landfill, Watertown Landfill, and Rapid City Landfill during that time.

Ms. Brakke noted that the initial outreach is not part of the formal rule making process; however, DENR wanted to receive input from the public on the initial rough draft of the revisions.

Some of the parties that were notified during the initial outreach included:

Environmental Groups

Black Hills Group Sierra Club,  
EPA,  
Dakota Rural Action, and  
Black Hills Regional Multiple Use Coalition

Industry

Sioux Falls Regional Sanitary Landfill,  
Brookings Regional Landfill,  
Mitchell Regional Landfill,  
City of Rapid City Landfill,  
Brown County Solid Waste Landfill,  
Pierre Regional Landfill,  
City of Vermillion Landfill, and  
City of Watertown Regional Landfill

Other Interested Parties

Badlands National Park,  
Bureau of Land Management,  
Dakota Southern Railroad,  
Montana Dakota Utilities Company, and  
Wind Cave National Park

The notice of public hearing was published in 11 daily newspapers on September 13, 2019. Letters and the public notice were sent to 143 Title V facilities and 113 other interested parties. The public notice was placed on the Open South Dakota webpage, DENR One Stop webpage, and DENR Air Quality webpage. Notice was also served to the secretary of DENR, the LRC, and the BFM.

Written comments were received from:

- Bureau of Finance and Management (BFM) – concurrence with the department’s assumptions and fiscal impact calculations;
- Legislative Research Council (LRC) – concurrence for form and style (staff worked with LRC to make sure all changes all are incorporated into the rules);
- City of Brookings; City of Rapid City Landfill; City of Sioux Falls; Dakota Ethanol, Wentworth; Midwest Railcar, Brandon; NuGen Energy, LLC, Marion; POET, Hudson; Red River Energy, Rosholt; and Woodland Cabinetry, Sisseton – all concurring with the proposed rules.

Ms. Brakke stated that, periodically, the Air Quality Program needs to go through the state regulations to ensure they are equivalent to the federal regulations. For federal regulations that are adopted by reference, DENR proposes to update the reference date to the most current version of the federal regulation, which is currently July 1, 2018.

EPA revised the ambient air quality standards in which some of the standards were replaced by newer standards, but the regulation was not eliminated. DENR proposes to update the state's ambient air quality standards to eliminate the obsolete standards and ensure the current standard is equivalent to the federal standard.

EPA adopted federal emission guidelines and compliance times for municipal solid waste landfills. DENR is required to draft state rules that are equivalent to the federal regulations and submit a section 111(d) plan under the Clean Air Act.

General cleanup of the rules is also needed. LRC made several recommended changes to clean up the entire rule package outside of the newly drafted language that was drafted by DENR. LRC also recommended several rearranged sections, primarily from definitions, updated catchlines, and other typographical changes. Prior to the meeting, the board was provided with a copy of the draft rules with LRC's recommended changes incorporated.

The traditional method is for states to adopt rules and submit the state rules to EPA for implementation into what is known as a state implementation plan (SIP). For this process, EPA reviews the state's rules to determine if the rules are equivalent to the federal regulations. If the state's rules are equivalent, EPA approves the state's rules through a federal register notice.

A second method for administrating a federal air quality program is to request delegation of the program. The first step in requesting delegation is to adopt state rules that are equivalent to the federal regulations. Adopting the federal regulations by reference is the simplest method DENR has found to achieve this goal.

A third method for administrating a federal air quality program is to have the program approved. As with the first two methods of implementing a federal air quality program, the state must adopt rules that are equivalent to the federal program and submit the rules to EPA for approval.

Ms. Brakke stated that the reference date was changed from July 1, 2016 to July 1, 2018, throughout the rules, unless otherwise noted.

In subsection 74:36:01:01(70), the definition of "subject to regulation," references "subchapter C of this chapter". The reference to "this chapter" is to a federal regulation. Therefore, this definition will be cleaned up by revising the definition to reference "40 C.F.R. Part 50 (July 1, 2018)." In addition, EPA changed the date used to define an existing municipal solid waste landfill from May 30, 1991 to July 17, 2014, which impacts section 74:36:01:19.

Chapter 74:36:02 establishes the air quality goals and ambient air quality standards for South Dakota. EPA adopted several ambient air quality standards, such as ozone, that made other standards within the federal regulations obsolete. EPA does not repeal these standards so DENR has inadvertently retained ambient air quality standards and not adopted the most current ambient air quality standard. Therefore, with this proposal, DENR will revise section 74:36:02:02 and 74:36:02:03 to adopt the most up-to-date ambient air quality standards and methods of sampling and analysis.

Chapter 74:36:03 identifies the contingency plan DENR will follow during an air pollution emergency episode. Chapter 74:36:05 is South Dakota's Title V air quality operating permit program, which is also referred to as an Operating Permit for Part 70 Sources program. Chapter 74:36:08 includes the federal regulations DENR has adopted by reference to maintain delegation of federal standards applicable to hazardous air pollutants. Chapter 74:36:09 is DENR's Prevention of Significant Deterioration preconstruction permit program for large sources in areas of the state that attain the federal National Ambient Air Quality Standards identified in Chapter 74:36:02. The primary changes in these chapters are changing the reference date for the federal regulations and any minor inconsistency between South Dakota's SIP and EPA's federal regulations.

Chapter 74:36:10 is DENR's New Source Review preconstruction permit program for large sources in areas of the state that are not attaining the federal National Ambient Air Quality Standards identified in Chapter 74:36:02. All of the state of South Dakota is in attainment with the federal National Ambient Air Quality Standards; therefore, no facilities require a preconstruction permit under this program. Chapter 74:36:11 identifies the performance testing requirements used by permitted facilities to demonstrate compliance with permit limits. Chapter 74:36:12 identifies visible emission limits for units that emit air pollution. Chapter 74:36:13 identifies the continuous emission monitoring requirements for sources required to install continuous monitoring equipment by the Secretary. Chapter 74:36:16 is South Dakota's Acid Rain Program, and it is delegated to the state by EPA.

Chapter 74:36:20 requires an air quality construction permit for new businesses and facilities and existing businesses and facilities that modify their operations and do not meet the requirements for obtaining a preconstruction permit in Chapters 74:36:09 and 74:36:10. Chapter 74:36:21 contains the requirements DENR agreed to as part of South Dakota's Regional Haze Program. The primary changes related to these chapters deal with changing the reference date for the federal regulations and any minor inconsistency between South Dakota's SIP and EPA's federal regulations, and approved Title V air quality operating permit program.

The majority of the new rules proposed are on pages 14 and 15 (definitions section) and pages 102 through 178 (new municipal solid waste rules).

For the new sections proposed, DENR reviewed the federal regulations related to the New Source Performance Standards and determined EPA promulgated one additional standard that DENR is proposing to adopt at this time. The standard for crude oil and natural gas facilities is not applicable to any facility in South Dakota, but DENR proposes adopting this federal regulation in the event that a facility applicable to this standard is constructed in the future.

In the proposed revisions to adopt the federal emissions guidelines for municipal solid waste landfills, there are two terms used that need to be defined and are being added to section 74:36:01:01 (pages 14-15) as subsection (71) and (72). The two terms are "closed landfill" and "closed landfill subcategory."

In addition, EPA promulgated emission guidelines for municipal solid waste landfills which DENR is not able to adopt by reference, but has to draft regulations equivalent to EPA's guidelines. DENR is proposing sections 74:36:07:94 through 74:36:07:145 (pages 102-178).

These sections along with the definitions in subsection 74:36:01(71) and (72) will be submitted to EPA as part of DENR's section 111(d) plan under the Clean Air Act. Sections 74:36:07:34 through 74:36:07:42.01 will no longer be in effect on the effective date of EPA's approval of the state's 111(d) plan required in the Clean Air Act because these rules will be replaced by sections 74:36:07:94 through 74:36:07:145. Section 74:36:07:43 is being repealed and is replaced by section 74:36:07:146. The existing municipal solid waste landfill rules may currently impact approximately eight municipal solid waste landfills in South Dakota.

There are also the language rearrangements as recommended by LRC and a new section in Chapter 74:36:21 – Regional Haze calculation language that was removed from the definition and added to make a new section.

This concluded Ms. Brakke's presentation. She requested approval of the proposed rules, including LRC's recommended changes.

At the request of Chairman Hagg, Kyrik Rombough, administrator of the Air Quality Program, explained the 111(d) Plan in the Clean Air Act. The 111 (d) Plan requires DENR to identify a list of potential landfills that would be applicable to the standard. In addition to that, DENR has to develop these regulations, which are submitted to EPA for approval. EPA will determine if the rules are equivalent to the federal plan, and if so, EPA will approve them, and the state will attain delegation to implement these rules for the landfills in South Dakota. Mr. Rombough explained that the existing landfill regulations will be repealed once EPA approves the new plan.

Chairman Hagg asked if DENR has received any indication from any of the municipal solid waste landfills of any difficulty complying with the proposed rules?

Ms. Brakke stated that DENR has discussed the proposed rules with all of the landfills and has received concurrence regarding the rules from the landfills. DENR has not received any indication from any landfills that there will be difficulty in meeting the standards.

Mr. Rombough noted that the landfills have already had to meet most of these requirements for the past several years. EPA has changed the threshold for when control devices are required from 50 megagrams to 34 megagrams.

Chairman Hagg asked if any of the board members had questions. There were no questions from the board.

Chairman requested public comment regarding the proposed rules. There were no public comments.

Motion by Karpen, seconded by Landguth, to adopt ARSD 74:36, Air Pollution Control Program, as presented, including changes made by the Legislative Research Council. A roll call vote was taken, and the motion carried.

Chairman Hagg closed the hearing at 10:35 a.m. Central Time.

UPDATE ON SPYGLASS CEDAR CREEK LITIGATION: Chairman Hagg stated that at the last board meeting, Assistant Attorney General Steve Blair reported that the complaint was amended because facts were represented by Mr. Kimmel and Mr. Sellers in their filing that they were not considered general partners of Spyglass. When the information was provided, the general partner was Xanthus Capital, LLC. Chairman Hagg said the Attorney General's Office confirmed that they were not general partners; and therefore, Mr. Kimmel and Mr. Sellers were dismissed from the action and the complaint was amended to include Xanthus Capital, LLC. Chairman Hagg stated that at this time the state is proceeding forward with litigation, but the two individuals are not general partners; therefore, they are not part of the litigation.

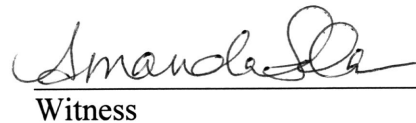
Mr. Blair noted that he received the Answer of Defendants on October 15, 2019. The state will now be moving forward with the lawsuit.

PUBLIC COMMENT PERIOD: There were no public comments.

NEXT MEETING: The next meeting is November 21, 2019.

ADJOURN: Motion by Englund, seconded by Peterson, that the meeting be adjourned. A Roll call vote was taken, and the motion carried unanimously.

  
Secretary \_\_\_\_\_  
11/21/19  
Date

  
Witness \_\_\_\_\_  
11/21/19  
Date

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

**October 17, 2019**

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<b><u>Releases of Liability &amp; Surety:</u></b>					
James Gary Green Golden, CO	18-1043	<b>1043001</b>	\$1,500	Dacotah Bank, Sioux Falls	Release liability and \$1,500.
				Section 29; T93N-R51W, Clay County	
Thunderbird Realty, LLC Rapid City, SD	07-847	<b>847001</b>	\$20,000	Sun Surety Insurance Company	Release liability and \$20,000.
				N1/2 Section 24; T2N-R8E, Pennington County	
<b><u>Transfers of Liability &amp; Release of Surety:</u></b>					
Arthur E. Argo, Jr. Wilmot, SD	09-876	<b>876001</b>	\$7,000	Minnwest Bank of Wilmot	Transfer liability and release \$7,000.
		<b>876002</b>		S1/2 NE1/4 Section 25; T123N-R51W, Roberts County	
		<b>876004</b>		E1/2 SW1/4 Section 24; T124N-R51W, Roberts County	
		<b>876006</b>		W1/2 Section 9; T120N-R51W, Grant County SW1/4 Section 26; T126N-R53W, Marshall County	
Transfer to:					
CT Sibson Gravel & Crushing Inc. Beardsley, MN	19-1054		\$10,000	Frandsen Bank & Trust, Clinton, MN	



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**October 17, 2019**

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<b><u>Transfers of Liability &amp; Release of Surety:</u></b>					
Benchmark Enterprises LLC Rapid City, SD	13-953		\$2,500	First Interstate Bank, Custer	Transfer liability and release \$2,500.
		<b>953001</b>		SW1/4 Section 19; T5N-R1E, Lawrence County	
Transfer to:					
Cody Schad Rapid City, SD	19-1047		\$2,500	Pioneer Bank, Rapid City	
<b><u>Transfers of Liability:</u></b>					
Schladweiler Construction Mitchell, SD	83-167		\$10,000	Fulton State Bank, Mitchell Farmers State Bank, Mitchell	Transfer liability.
		<b>167034</b>		SE1/4 SW1/4 Section 1; T95N-R65W, Charles Mix County	
Transfer to:					
Schultz Redi-Mix LLC Avon, SD	15-985		\$3,500	Commercial State Bank, Wagner	

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<b><u>Transfers of Liability:</u></b>					
Dina Shefner Plankinton, SD	89-392		\$3,000	American Bank & Trust, Alpena	Transfer liability.
		<b>392001</b>		Section 8; T105N-R63W, Aurora County	
Transfer to:					
Aurora County Highway Department Plankinton, SD	83-87		EXEMPT	NA	
<b><u>Releases of Liability:</u></b>					
Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	Hudson Insurance Company	Release liability.
		<b>164023</b>		SE1/4 Section 27; T101N-R66W, Aurora County	

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<b><u>Releases of Liability:</u></b>					
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	Liberty Mutual Insurance Company	Release liability.
		<b>54005</b>		E1/2 NW1/4 Section 9; T102N-R59W, Hanson County	
		<b>54010</b>		W1/2 Section 9; T102N-R59W, Hanson County	
		<b>54074</b>		W1/2 SE1/4 Section 10; T2N-R7E, Meade County	
		<b>54075</b>		W1/2 NE1/4 Section 36; T116N-R72W, Hyde County	
		<b>54087</b>		SW1/4 Section 23; T116N-R72W, Hyde County	
		<b>54123</b>		SE1/4 Section 26; T116N-R70W, Hand County	
		<b>54128</b>		N1/2 Section 31 & W1/2 NW1/4 Section 32; T8N-R3E, Butte County	

*Consent Calendar*  
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**October 17, 2019**

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<b><u>Releases of Liability:</u></b>						
Lien Transportation Company Aberdeen, SD	84-257		\$20,000	Western Surety Company	Release liability.	
		<b>257002</b>	E1/2 SW1/4 Section 29; T124N-R63W, Brown County			
		<b>257003</b>	NW1/4 Section 16; T124N-R63W, Brown County			
		<b>257012</b>	NE1/4 SE1/4 Section 26; T123N-R64W, Brown County			
		<b>257016</b>	S1/2 Section 18; T121N-R64W, Brown County			
		<b>257017</b>	S1/2 NE1/4 & NE1/4 NE1/4 Section 5; T127N-R67W, McPherson County			
		<b>257019</b>	SW1/4 Section 12; T125N-R73W, McPherson County			
Opperman, Inc. Gregory, SD	83-4		\$20,000	Sun Surety Insurance Company	Release liability.	
		<b>4015</b>	SW1/4 Section 36; T100N-R70W, Charles Mix County			

*Consent Calendar*  
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**October 17, 2019**

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<b><u>Releases of Liability:</u></b>					
Van Zee Gravel & Construction Platte, SD	83-223		\$8,000	Bank of the West, Platte	Release liability.
		<b>223011</b>		NE1/4 Section 21; T100N-R67W, Charles Mix County	
Butte County Highway Department Belle Fourche, SD	83-6		EXEMPT	NA	Release liability.
		<b>6013</b>		NE1/4 Section 12; T16N-R1E, Harding County	
<b><u>Release of Surety:</u></b>					
Schladweiler Construction Mitchell, SD	83-167		\$10,000	Fulton State Bank, Mitchell Farmers State Bank, Mitchell	Release \$10,000.