

The board packet and the audio recording for this meeting are available on the SD Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>.

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

November 21, 2024
10:00 a.m. Central Time

CALL TO ORDER: The meeting was called to order by Chairman Glenn Blumhardt. 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: Glenn Blumhardt, Gregg Greenfield, Laurie Schultz, Bob Ewing, Gary Haag, Doyle Karpen, and Bob Morris.

BOARD MEMBERS ABSENT: Rex Hagg and Jessica Gruenwald.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Eric Holm, Bret Graves, and Michael Evans, DANR Minerals, Mining, and Superfund Program; Charles McGuigan, Deputy Attorney General; Jasmine McCauley, Coeur Wharf Environmental Manager; Jay Gear, Coeur, Vice President, Environment and Permitting; Anne Beckelheimer, Coeur, Vice President, Tax and Treasurer; Tom Elkins, Indemnity National Insurance Company President; Murray Epp, Senior Vice President, Marsh.

APPROVAL OF MINUTES FROM OCTOBER 24, 2024, MEETING: Motion by Karpen, seconded by Greenfield, to approve the minutes from the October 24, 2024, Board of Minerals and Environment meeting. The motion carried unanimously.

MINING ISSUES CONSENT CALENDAR: A copy of the consent calendar, which is a table listing the department recommendations for transfers of liability, transfers of liability and surety releases, and releases of liability, was included in the board packet. (See attachment.)

Bret Graves was available to answer questions about the consent calendar. There were no questions from the board.

Motion by Morris, seconded by Karpen, to approve the consent calendar, as presented. A roll call vote was taken, and the motion carried unanimously.

Handouts and slides for the next two agenda items are available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>.

ACCEPTANCE OF RECLAMATION SURETY AND POST-CLOSURE FINANCIAL ASSURANCE INCREASES FOR WHARF RESOURCES (USA), INC. PERMITS 356, 434, 464, 476, AND 490: A slide presentation prepared by DANR discussing the reclamation surety and post-closure financial assurance increases for Wharf Resources and a handout with information regarding Indemnity National Insurance Company was included in the board packet.

Jasmine McCauley, Wharf Environmental Manager, Jay Gear, Coeur Vice President of Environment and Permitting, Tom Elkins, President of Indemnity National Insurance Company, and Murray Epp, Senior Vice President of Marsh, introduced themselves.

Eric Holm reported that staff recalculated the reclamation surety in the amount of \$73,922,800. The current surety is \$72,152,900, so additional reclamation surety in the amount of \$1,769,900 is required.

The post-closure financial assurance was updated to \$65,101,800. The current financial assurance is \$52,689,000, so additional post-closure financial assurance in the amount of \$12,412,800 is required.

Mr. Holm stated that the reason for the increases in the surety amounts primarily involves the False Bottom Creek selenium treatment plant. During the hearing on the Boston Expansion mine permit application, which is now Mine Permit 490, DANR advised the board that Wharf was in violation of state surface water selenium standards in the east branch of False Bottom Creek.

Under Water Quality Condition #10 of approved Mine Permit 490, Wharf is required to follow a compliance schedule to construct the treatment plant and begin water treatment. Bond increases cover water treatment costs and final reclamation costs for the treatment facilities.

The surety increase also covers two small facility additions approved under technical revisions. Inflation increases for seeding, heavy equipment, labor, and building demolition costs and the associated increase in the direct costs are also included.

Page 5 of the presentation includes a map showing what is to be covered under the reclamation bond calculation in the False Bottom treatment area. Plant construction is just to the north of the Trojan Waste Rock Facility.

The reclamation surety calculated for the treatment plant construction disturbance is \$81,881. This involves ripping and regrading flat areas, topsoil placement, and seeding costs for the old pond area that was reclaimed. Water treatment costs during the five-year reclamation period in the amount of \$145,320 were added to the reclamation surety. The amount is based on a 56-gallon per minute treatment rate as estimated by Wharf's consultant.

Mr. Holm noted that annual treatment costs could change after the plant begins treating water and actual costs are obtained. A one-time consultant labor cost for year 1 in the amount of \$306,600 was also added to the reclamation surety amount.

On page 8 of the presentation is a map showing the False Bottom post-closure financial assurance calculation area. Costs for treating water in the treatment plant complex are based on a 50-year treatment period. Post-closure financial assurance for annual water treatment costs includes an annual treatment cost of \$145,320, a long-term liner and plant replacement cost in year 25 in the amount of \$111,200, and a plant overhaul cost in year 25 in the amount of \$1,300,000. Annual treatment costs could change after the plant begins treating water and actual costs are obtained.

Water treatment is anticipated to be completed in year 50 of the post-closure period. Costs for reclaiming the selenium treatment complex include reclaiming the treatment complex area , removing the holding pond and liner, reapplying topsoil, reclaiming the access road, and demolishing the plant building for a total of \$343,421. This does not include the 47% in indirect costs.

The following is a list of the current Wharf reclamation surety bonds:

United State Fire Insurance	\$10,866,800
United State Fire Insurance	\$ 8,000,000
Everest Reinsurance Co.	\$10,000,000
Everest Reinsurance Co.	\$ 5,786,000
Endurance Assurance	\$ 6,000,000
Liberty Mutual Insurance Co.	\$10,000,000
Argonaut Insurance Co.	\$ 7,593,300
Ascot Surety & Casualty	\$13,906,800
Total	\$72,152,900

Mr. Holm noted that all companies have strong to excellent stable ratings.

DANR recommended adding Indemnity National Insurance to cover the reclamation surety increase in the amount of \$1,769,900, which brings the new total reclamation bond to \$73,922,800.

The following is a list of the current Wharf post-closure surety bonds:

United State Fire Insurance	\$ 7,532,923
Ascot Surety & Casualty	\$ 9,267,077
Atlantic Specialty Insurance	\$10,000,000
Arch Insurance	\$11,596,200
Ascot Surety & Casualty	\$ 4,289,400
Everest Reinsurance Co.	\$10,003,400
Total	\$52,689,000

All companies have strong to excellent stable ratings. On November 19, 2024, AM Best upgraded its ratings for Indemnity National Insurance from A- to A for financial strength and a- to a for long-term credit. The outlook has been changed from positive to stable.

DANR recommended adding Indemnity National Insurance to cover the post-closure surety increase in the amount of \$12,412,800, which brings the new total post-closure bond to \$65,101,800.

The department recommendation for the reclamation surety increase for Wharf Resources is that the board accept Bond No. N-G000012, Indemnity National Insurance Company, in the amount of \$1,769,900, increasing the reclamation bond to \$73,922,800.

The department recommendation for the post-closure surety increase for Wharf Resources is that the board accept Bond No. N-G000013, Indemnity National Insurance Company, in the amount of \$12,412,800, increasing the post-closure financial assurance to \$65,101,800.

Motion by Ewing, seconded by Karpen, to accept Bond No. N-G000012, Indemnity National Insurance Company, in the amount of \$1,769,900, increasing the reclamation bond to \$73,922,800 for Wharf Resources (USA), Inc. Permit Nos. 356, 434, 435, 464, 476, and 490. A roll call vote was taken, and the motion carried unanimously.

Motion by Morris, seconded by Karpen, to accept Bond No. N-G000013, Indemnity National Insurance Company, in the amount of \$12,412,800, increasing post-closure financial assurance to \$65,101,800 for Wharf Resources (USA), Inc. Permit Nos. 356, 434, 435, 464, 476, and 490. A roll call vote was taken, and the motion carried unanimously.

DISCUSSION ON CONVERSION OF LIMESTONE MINE PERMITS TO MINE LICENSES:
Included in the board packet was a handout with information regarding conversion of limestone mine permits to mine licenses.

Mike Lees reported that the department participated in bringing Senate Bill 111 before the 2024 South Dakota Legislature. The bill had two main parts. One part of the bill brought a comprehensive increase to surety requirements for construction aggregate mining, small scale permitted mining, and mineral exploration. The second important part of the bill was designed to create a level playing field for limestone mining operators who sold their product for agricultural purposes such as for use in soil amendment or in cattle feed.

Prior to enactment of SB 111, operators could mine the same material from the same pit, with the same relatively low potential for environmental impact, but they would be subject to vastly different surety requirements depending on whether the material was used for agricultural purposes or construction purposes. This inconsistent bonding requirement was unfair to the handful of operators who chose to sell their limestone as an agricultural product.

Mr. Lees said SB111 was a major win for the board, the department, and all of South Dakota because it brought the mining surety requirements up to date after more than 40 years with no changes. The surety changes under SDCL 45-6, the Construction Aggregate statutes, were especially significant, raising the surety requirement from \$500 per acre to \$3,850 per acre and raising the statewide blanket surety requirement from \$20,000 to \$300,000.

Prior to SB111, only 8.4 percent of the \$44,189,000 in reclamation liability associated with sand and gravel mines was covered by surety. Mr. Lees noted that staff projects that SB111's incremental surety increases over the next five years will increase the percentage of reclamation liability covered by surety to approximately 51.5 percent.

At its last meeting the Board of Minerals and Environment expressed concern about five limestone mine sites where the required surety decreased due to enactment of SB111. Mr. Lees stated that the net impact of SB111 will be to significantly increase the surety requirement for approximately 1,000 other mine sites, thereby greatly increasing overall mining surety statewide. So, the small step backwards on the five sites was a reasonable compromise and was necessary to make things fair for agricultural limestone producers such as Pete Lien & Sons and Simon Contractors.

Mr. Lees said statewide there are only six mine permits, including Pete Lien and Sons and Simon Contractors' sites, that need to be converted to licenses. The one remaining conversion is a small scale mine permit which is less than 10 acres. The surety associated with the last limestone mine conversion will increase when the site is converted from a permit to a license.

Mr. Lees stated that following the last board meeting, some of the board members requested specific information regarding the recent conversion of Pete Lien & Sons and Simon Contractors' limestone permits to mine licenses. The information is outlined in the tables on page 1 of the handout provided in the board packet.

Mr. Lees and Bret Graves answered questions from Mr. Morris regarding the reclamation of sites, annual reporting by the operators, DANR site inspections, and the annual fee for license renewal for each active mine site.

Mr. Karpen expressed concern that DANR does not inspect every site annually. Mr. Lees responded that with there being more than 1500 sites, there is no way that DANR's three sand and gravel inspectors would be able to inspect each of the sites annually. Staff does have a list of reclaimed sites that will be inspected prior to surety release.

Chairman Blumhardt thanked staff for providing the information.

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

NEXT MEETING: The next meeting is January 16, 2025.

ADJOURN: Motion by Morris, seconded by Karpen, to adjourn the meeting. The motion carried unanimously.

Secretary, Board of Minerals
and Environment

Date

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

November 21, 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>
<u>Transfer of Liability:</u>					
Fisher Sand & Gravel Co. Dickinson, ND	83-54		\$20,000	Liberty Mutual Insurance Co.	Transfer liability.
		54142	NW1/4 Section 23; T122N-R53W, Day County		
Transfer to:					
B & B Contracting, Inc. Aberdeen, SD	07-716		\$20,000	North American Specialty Insurance Company	
Hovde Gravel Construction Vienna, SD	00-702		\$2,000	Bank of the West - Redfield Dacotah Bank – Clark	Transfer liability.
		702002	SW1/4 Section 31; T116N-R57W, Clark County		
Transfer to:					
Hovde Excavating & Gravel LLC - Clark, SD	24-1144		\$8,500	Reliabank Dakota – Hazel Dacotah Bank – Watertown	
<u>Transfer of Liability & Surety Release:</u>					
Harvey Sand & Gravel Inc Harvey, ND	02-751		\$2,500	Capitol Indemnity Corporation	Transfer Liability & \$2,500.
		751001	Section 35; T129N-R54W, Marshall County		
Transfer to:					
Alexandria Gravel Products, LLC – Alexandria, MN	17-1024		\$20,000	Travelers Casualty & Surety Company of America	

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

November 21, 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>
<u>Transfer of Liability & Surety Release:</u>					
Knodel Contractors LLC Freeman, SD	12-945		\$20,000	Security State Bank – Chancellor	Transfer Liability & \$20,000.
		945001		NW1/4 Section 26; T99N-R53W, Turner County	
Transfer to:					
Concrete Materials Sioux Falls, SD	83-144		\$3,500	United Fire & Casualty Company	
<u>Release of Liability:</u>					
Aggregate Construction Inc. – Minot, ND	89-382		\$20,000	Ohio Farmers Insurance Company	Release Liability.
		382037		S1/2 SE1/4 SE1/4 Section 17, N1/2 NW1/4 NW1/4 Section 21, and E21/2 Section 20; T5S-R7E, Custer County	
		382042		Section 1 and Section 2; T122N-R11E, Perkins County	
DOT Aberdeen Region Aberdeen, SD	83-10		Exempt		Release liability.
		10190		NE1/4 SE1/4 Section 2; T127N-R71W, McPherson County	
R & J Gravel & Trucking Chamberlain, SD	07-841		\$20,000	Sun Surety Insurance Company	Release liability.
		841008		E1/2 Section 14; T107N-R66W, Jerauld County	

*South Dakota Board of Minerals & Environment
Consent Calendar*

November 21, 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>
Release of Liability:					
Hand County Highway Department – Miller, SD	83-148		Exempt		Release liability.
		148001	NW1/4 Section 6; T116N-R69W, Hand County		
		148008	NE1/4 Section 9; T109N-R67W, Hand County		
		148009	N1/2 Section 9; T109N-R68W, Hand County		
		148010	SE1/4 Section 34; T110N-R66W, Hand County		
		148015	SW1/4 SE1/4 and SE1/4 SW1/4 Section 34; T116N-R70W, Hand County		

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South Dakota Board of Minerals & Environment

November 21, 2024

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Acceptance of Reclamation Bond Increase for Wharf Resources (USA) Inc.:</u>				
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, 476, & 490	\$1,769,900	Indemnity National Insurance Company	Accept Bond No. N-G000012, Indemnity National Insurance Company, in the amount of \$1,769,900. The acceptance of this bond will increase the Wharf reclamation bond to \$73,922,800.
<u>Acceptance of Post-Closure Financial Assurance Increase for Wharf Resources (USA), Inc.:</u>				
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, 476, & 490	\$12,412,800	Indemnity National Insurance Company	Accept Bond No. N-G000013, Indemnity National Insurance Company, in the amount of \$12,412,800. The acceptance of this bond will increase the Wharf post-closure financial assurance to \$65,101,800.