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
Telephone Conference Call Meeting
523 East Capitol Avenue
Pierre, South Dakota

March 16, 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, Doyle Karpen, Jessica Peterson, Bob Morris, John Scheetz and Gary Haag.

BOARD MEMBERS ABSENT: Gregg Greenfield.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Tom Cline and Bret Graves, DANR Minerals, Mining, and Superfund Program. Charles McGuigan, Deputy Attorney General, Mark Hollenbeck, Powertech, Paul Goranson, Encore Energy, Lilias Jarding, Rapid City, Carla Cushman, Deputy Attorney, city of Rapid City, Carissa Shilling, Joel Hartman and Dorothy VanOss, BLM, and Bruce Ellison, attorney from Rapid City.

APPROVAL OF MINUTES FROM JANUARY 19, 2023, MEETING: Gary Haag pointed out that his last name is spelled incorrectly on the first page of the minutes.

Motion by Karpen, seconded by Blumhardt, to approve the minutes from the January 19, 2023, Board of Minerals and Environment meeting, as corrected. 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 transfers of liability and releases of liability, transfer of liability, and releases of surety. (See attachment)

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

Motion by Karpen, seconded by Haag, to accept the department recommendations for transfers of liability and releases of surety, transfer of liability, and releases of liability. A roll call vote was taken, and the motion carried unanimously.

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UPDATE ON FEDERAL LEGISLATION TO PURCHASE FEDERAL PROPERTY AT THE GILT EDGE SUPERFUND SITE: Roberta Hudson reported that in May 2022 she provided the annual update for the Gilt Edge Mine. At that time there were two bills pending before the US Congress to sell all property within the Gilt Edge Superfund site to the state of South Dakota. These bills would cover a total of 266 acres of US Forest Service land within the Superfund boundary. The two bills were consolidated with several other land conveyance acts that were going through federal legislation and joined into HR 2617. The bill passed in both the House of Representatives and the Senate, was finalized on December 22, 2022, and signed by the President on December 29, 2022.

On February 2, 2023, the state of South Dakota initiated the purchasing process by submitting a letter of intent to the US Forest Service. The process to purchase land from the US Forest Service involves the Forest Service going through the NEPA process in order to purchase those lands. The state is waiting for the Forest Service to work through that process, which involves numerous studies, an analysis on the land, and land appraisals. Ms. Hudson said that process may take a couple of years to complete, and it will then be up for public comment.

The long-term management of the Gilt Edge Superfund site rests with the state of South Dakota. When remediation activities are completed, the site will revert back to the state for long-term continuing maintenance. By purchasing the property, it gives the state full authority over everything within the Superfund site and makes management of the site easier.

In response to a question from Mr. Scheetz, Ms. Hudson stated that either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) is required as part of the NEPA process, and that would be done sometime in the next couple of years while going through the process of evaluating the land.

Mr. Scheetz stated that if the land is purchased, it could preclude the necessity of an EIS or an EA.

Ms. Hudson stated that she believes the Forest Service has to complete either an EIS or an EA as part of the purchasing process.

Mr. Scheetz asked if there will still be Forest Service land adjacent to the site.

Ms. Hudson answered that there is Forest Service land within the Superfund site boundary, and that is the land the state of South Dakota will purchase. There is Forest Service land adjacent to the property, which is outside the Superfund site boundary that will not be part of the purchase.

UPDATE ON THE STATUS OF THE POWERTECH (USA), INC. MATTER: Chairman Hagg stated that this is a contested case hearing regarding a uranium mining permit that, in accordance with an Order issued by Chairman Hagg in late 2013, the Board of Minerals and Environment continued the hearing until the Nuclear Regulatory Commission and the US Environmental Protection Agency have ruled and the state Water Management Board has decided the water rights.

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Chairman Hagg stated that following Mr. McGuigan's status update report, the public would be allowed to make comments as long as there is no argument on the merits of the case.

Charles McGuigan, Deputy Attorney General, is the board's legal counsel. He reported that the status of the Powertech matter has not changed significantly since his update at the October 2022 meeting.

The District of Columbia (DC) Circuit Court of Appeals had upheld licenses. Monday, March 13, 2023, was the Oglala Sioux Tribe's deadline to request that the Supreme Court review that decision. Mr. McGuigan said it appears that the tribe did not make that request, so he believes the NRC Source Material License is probably now final.

On Friday, March 10, 2023, the parties filed their 12th joint status report with the Eighth Circuit Court of Appeals, dealing with the Aquifer Exemption. Their suggestion to the Eighth Circuit was that the Aquifer Exemption appeal should continue to be held in abeyance pending the outcome of the appeal to the Environmental Appeal Board concerning the Underground Injection Control Permit.

On Monday, March 13, 2023, the parties filed their 8th status report with the Environmental Appeals Board. That status report acknowledged that the tribe did not file a petition for certiorari with the United States Supreme Court. The tribe requested that they be given 30 days from an order from the board to review the filings in the appeal to decide if they needed any amendment, and both Powertech and the United States requested a briefing schedule be set. As of the morning of March 16, 2023, the Environmental Appeals Board had not issued any orders concerning the status report.

This concluded Mr. McGuigan's status update.

Chairman Hagg asked that proponents of the matter identify themselves and/or offer comments.

Paul Goranson, Encore Energy, Parent Company of Powertech, was present. He had no comments.

Chairman Hagg asked that opponents of the matter identify themselves and/or offer comments.

Dr. Lilias Jarding was present. She had no comments.

Bruce Ellison, counsel for Black Hills Clean Water Alliance, was present. He stated that he had spoken with one of the attorneys that is handling the appeal matters for the tribe, and there is also the requirement for approval from the Bureau of Land Management (BLM).

Mr. Scheetz asked if the NEPA process has been started and if so, how long is it expected to take?

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Mr. McGuigan stated that he has been unable to find any information regarding the BLM approval.

Mr. Goranson stated that he does not have the complete information to provide an answer regarding the BLM process.

Joel Hartman, BLM, Billings, MT, stated that BLM is a cooperative agency with the NRC and a final EIS is on file, but he was not sure if it had been signed. A reclamation cost estimate has been sent to Powertech.

No board action was taken.

Chairman Hagg asked that the board receive another status update in two to four months.

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

NEXT MEETING: The next meeting is scheduled for May 18-19, 2023, at the Foss Building Matthew Training Center in Pierre.

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

Secretary, Board of Minerals and Environment	Date	Witness	Date

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Consent Calendar
South Dakota Board of Minerals & Environment

March 16, 2023

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Transfer of Liability & Release of Surety:					
Merwyn Larson Minneapolis, MN	98-655		$2,500	Dacotah Bank, Clark	Transfer liability and release $2,500.
		655001	NE1/4 Section 31; T117N-R57W, Clark County		
Transfer to:					
Clark County Highway Department Clark, SD	83-150		EXEMPT	NA	
Reynolds Construction Management Sioux Falls, SD	22-1107		$20,000	North American Specialty Insurance Company	Transfer liability and release $20,000.
		1107001	N1/2 NE1/4 Section 27, SE1/4 Section 22, & SW1/4 SW1/4 Section 23; T106N-R52W, Lake County		
Transfer to:					
Hilde Pipe & Gravel Inc. Madison, SD	22-1118		$5,000	First Interstate Bank, Madison	

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Consent Calendar
South Dakota Board of Minerals & Environment

March 16, 2023

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Transfer of Liability & Release of Surety:					
Sterzinger Construction LLC Ivanhoe, MN	83-204		$5,000	Western Casualty & Surety Company	Transfer liability and release $13,000.
			$8,000	Western Surety Company	
		204001	NW1/4 Section 9; T109N-R47W, Brookings County		
Transfer to:					
Sterzinger Crushing Inc. Taunton, MN	15-997		$20,000	First Security Bank, Hendricks, MN	
Transfer of Liability:					
Friessen Construction Inc. Sioux Falls, SD	83-129		$20,000	Ohio Farmers Insurance Company	Transfer liability.
		129008	NE1/4 SE1/4 Section 17; T101N-R50W, Minnehaha County		
Transfer to:					
Crusher Investment Company Sioux Falls, SD	83-24		$20,000	North American Specialty Insurance Company	

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Consent Calendar
South Dakota Board of Minerals & Environment

March 16, 2023

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Release of Liability:					
Fisher Sand & Gravel Company Dickinson, ND	83-54		$20,000	Liberty Mutual Insurance Company	Release liability.
		54103	SW1/4 NW1/4 Section 17; T21N-R16E, Perkins County		
Midland Contracting, Inc. Huron, SD	03-768		$20,000	Western Surety	Release liability.
		768011	N1/2 Section 10; T115N-R64W, Spink County		
Cavour Township Huron, SD	98-668		EXEMPT	NA	Release liability.
		668001	SW1/4 Section 9; T112N-R60W, Beadle County		
Custer County Highway Department Custer, SD	83-90		EXEMPT	NA	Release liability.
		90013	SE1/4 NE1/4 Section 6; T4S-R7E, Custer County		

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Consent Calendar
South Dakota Board of Minerals & Environment

March 16, 2023

License Holder	License No.	Site No.	Surety Amount	Surety Company or Bank	DANR Recommendation
Release of Liability:					
Roberts County Highway Department Sisseton, SD	83-23		EXEMPT	NA	Release liability.
		23004	SW1/4 SE1/4 Section 12; T125N-R50W, Roberts County		

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