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

March 21, 2024  
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, Bob Ewing, Gregg Greenfield, Gary Haag, Doyle Karpen, Bob Morris, and Laurie Schultz.

BOARD MEMBERS ABSENT: Jessica Peterson.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Eric Holm, Gage Koistinen, and Tom Cline, DANR Minerals, Mining, and Superfund Program; Patrick Malone, Jerry Aberle, Tim Comer, and Dwight Gubbrud, DTRC, LLC; Mark Tieszen and Jeff Burich, Homestake Mining Company; Michael Goodroad, Spearfish Canyon Homeowners Association; and Liliias Jarding.

APPROVAL OF MINUTES FROM JANUARY 18, 2024, MEETING: Motion by Ewing, seconded by Blumhardt, to approve the minutes from the January 18, 2024, 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 copy of the consent calendar, which is a table listing the department recommendations for release of liability and surety, transfer of liability and release of surety, transfers of liability, and release of liability. (See attachment)

Tom Cline with the Minerals, Mining, and Superfund Program was available for questions from the board. There were no questions.

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

TRANSFER OF MINE PERMIT 416 FROM VMC, LLC TO DTRC, LLC: Eric Holm reported that DTRC, LLC requested transfer of Large Scale Mine Permit 416 from VMC, LLC. The general location of the permitted operation is approximately five miles west of Lead, SD near

Spearfish Canyon. Under SDCL 45-6B-47, any mine permit can be transferred from one operator to another with the successor operator assuming all reclamation liability.

The complete transfer application form was submitted February 5, 2024. The \$100 transfer fee was submitted on January 23, 2024. The \$23,100 replacement surety was submitted January 31, 2024. The application was declared complete on February 5, 2024.

The DANR recommendation for approval of the transfer permit was prepared on February 19, 2024. The recommendation was published in the Black Hills Pioneer on March 7 and 14, 2024, and the Affidavit of Publication was received March 20, 2024. The DANR recommendation was also posted to the DANR public notice web page.

No comments and no petitions to intervene were received.

Under SDCL 45-6B-47, the board cannot deny a mine permit transfer unless the operation is not or cannot be brought into compliance with all applicable federal, state, or local laws or if the successor operator is in violation of state mining laws or mine permit conditions for any mining operation in the state. The current mine permit and DTRC, LLC are both in compliance with all federal, state, and local laws and regulations. DTRC, LLC also submitted a Certification of Applicant form and disclosed no violations.

The department recommended approval of the transfer of Large Scale Mine Permit 416 and liability from VMC, LLC to DTRC, LLC, release of Irrevocable Letter of Credit No. 248, First Interstate Bank, Spearfish, SD in the amount of \$23,100; and acceptance of CD 6601011949, First Interstate Bank, Lead, SD, in the amount of \$23,100.

Motion by Karpen, seconded by Schultz, to transfer Large Scale Mine Permit 416 and liability from VMC, LLC to DTRC, LLC, release Irrevocable Letter of Credit No. 248, First Interstate Bank, Spearfish, SD in the amount of \$23,100; and accept CD 6601011949, First Interstate Bank, Lead, SD, in the amount of \$23,100. A roll call vote was taken, and the motion carried unanimously.

ANNUAL UPDATE ON POSTCLOSURE FINANCIAL ASSURANCE FOR HOMESTAKE MINING COMPANY, PERMITS 332 AND 456: Mr. Holm reported that in the May 18, 2006, Board Order regarding the postclosure financial assurance for Mine Permits 332 and 456, 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 2006 and updated in 2012, 2018, and 2023 during the five-year financial assurance reviews.

For 2024, the face value of the surety bond that serves as the postclosure financial assurance is required to be \$82,004,927. This is an increase from the \$80,201,732 which was submitted last year.

For the increase, Homestake submitted a rider to Surety Bond No. 8233-63-10, Federal Insurance Company, which increases the amount to the new face value. Federal Insurance is licensed in

South Dakota and is on the US Department of Treasury list of approved surety companies. Ratings for the company from AM Best, Standard and Poor's, Moody's, and Fitch's are superior, very strong, high quality, and very high credit, respectively. Outlooks are stable except for a positive outlook from Moody's.

The department recommended the board accept the rider to Surety Bond No. 8233-63-10, Federal Insurance Company, increasing the postclosure financial assurance amount to \$82,004,927.

In response to a question from Chairman Hagg, Mr. Holm stated that in 2023 the discount rate was lowered to 4.2 percent.

Motion by Ewing, seconded by Morris, to accept the rider to Surety Bond No. 8233-63-10, Federal Insurance Company, increasing the postclosure financial assurance amount to \$82,004,927 for Homestake Mining Company Mine Permits 332 and 456. A roll call vote was taken, and the motion carried unanimously.

DISCOUNT RATE AND ANNUAL UPDATE OF POSTCLOSURE FINANCIAL ASSURANCE FOR HOMESTAKE MINING COMPANY, PERMIT 445: Mr. Holm reported that in the postclosure 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 financial assurance review.

For 2024, the face value of the surety bond that serves as the postclosure financial assurance is required to be \$40,634,534. This is an increase from the \$31,596,628 amount, which was submitted in 2023. Besides the annual update, the increase covers lowering the discount rate from 5 percent to 4.2 percent.

In October 2023, the board approved lowering the discount rate from 5 percent to 4.2 percent for the postclosure bond for Homestake's Mine Permits 332 and 456. This new discount rate is being applied to all postclosure bonds.

For the increase, Homestake Mining 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, Moody's, and Fitch's are superior, very strong, high quality, and very high credit, respectively. Outlooks are stable to positive.

The department recommended that the board accept the rider to Surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the postclosure financial assurance amount to \$40,634,534.

Motion by Morris, seconded by Haag, to accept the rider to Surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the postclosure financial assurance amount to \$40,634,534 for Homestake Mining Company Mine Permit 445. A roll call vote was taken, and the motion carried unanimously.

LEGISLATIVE UPDATE – MINING AND MINERAL EXPLORATION: Mike Lees, administrator of the Minerals, Mining and Superfund Program, provided an update on Senate Bill 111, an act to revise requirements of mining and mineral exploration. The bill was approved by the legislature with some amendments.

The first three sections of the bill are amendments to 45-6, construction aggregate.

Section 1 of the bill essentially allows mining of limestone for both agricultural and construction purposes under a mine license.

Section 2 of the bill provides that an operator shall submit a surety to the department, to be held under the authority of the board. The language was added with the intent that the chairman of the board will no longer have to serve as the signatory on the construction aggregate CDs and surety bonds. These will still be brought before the board for approval of surety releases, but the department will now serve as the signatory.

Also in Section 2, an increase to the construction aggregate surety was approved. When the bill was originally discussed with the board, the maximum cap for a statewide blanket surety was \$500,000. The legislature decreased amount to \$300,000.

The other change that was made was the implementation of increases is staggered for both the per-acre cost and the statewide blanket, so over a five-year period operators will have a chance to reclaim unneeded acres, so they can minimize the number of acres for which they need to post the increased amount.

Ultimately, at the end of the five-year period, the surety requirement for construction aggregate, sand and gravel mines will be \$3,850 per acre or a \$300,000 statewide blanket surety. The current statewide surety requirement is \$20,000.

Section 2 also allows an irrevocable letter of credit as a form of financial assurance that operators can use.

Section 3 of the bill provides for a joint powers agreement to avoid the imposition of duplicate surety requirements on sites.

Sections 4 and 5 amended 45-6B, mined land reclamation, and Sections 6 and 7 amended 45-6C, mineral exploration, to update the surety requirements.

Previously, the maximum surety amount for a small-scale mining permit was \$2,500. Section 4 of the bill provides for a surety amount determined sufficient by the board to cover the cost of reclamation, but not exceeding \$38,500.

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Section 5 of the bill gives the board explicit authority to establish procedures for posting and monitoring financial assurance by adding (11) to 45-6B-81. Mr. Lees noted that the department intends to present proposed financial assurance rules for mine permit activities to the board for approval at a later date.

Section 6 of the bill was amended to provide that exploration operators are required to post the surety before the department issues written restrictions, which will ensure operators post surety before they commence operations.

In Section 7 of the bill, the maximum surety for mineral exploration was amended from \$20,000 statewide to \$100,000 statewide.

Mr. Lees stated that the surety requirements were established in the early 1980s, so the updated surety amounts approved by the legislature were needed.

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

NEXT MEETING: The next meeting is scheduled for May 16, 2024.

ADJOURN: Motion by Morris, seconded by Karpen, 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

Date

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Witness

Date

*Consent Calendar*

*South Dakota Board of Minerals & Environment*

*March 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>
<b><u>Release of Liability &amp; Surety:</u></b>					
C & C Hauling & Construction Inc. Yankton, SD	13-948		\$1,000	First Dakota National Bank Yankton, SD	Release liability and \$1,000.
		<b>948001</b>		Accretion Lot C, Section 16; T93N-R55W Yankton County	
<b><u>Transfer of Liability &amp; Release of Surety:</u></b>					
Swenson Partnership Wessington Springs, SD	16-1013		\$20,000	Platte River Insurance Company Madison, WI	Transfer liability and release \$20,000.
		<b>1013001</b>		SW1/4 Section 16; T108N-R64W Jerauld County	
Transfer to:					
Feistner Gravel & Excavation Woonsocket, SD	03-759		\$20,000	Central Bank Brookings, SD	

*Consent Calendar*

*South Dakota Board of Minerals & Environment*

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<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>					
Aggregate Construction, Inc. Minot, ND	89-382		\$20,000	Ohio Farmers Insurance Company Westfield Center, OH	Transfer liability.
		<b>382041</b>	W1/2 SW1/4 and SW1/4 NW1/4 Section 8; T5N-R5E Meade County		
Transfer to:					
GCC Dacotah, Inc. Rapid City, SD	01-721		\$20,000	Wells Fargo Bank Belle Fourche, SD	
Atteberry Construction, Inc. Colome, SD	97-617		\$20,000	First Fidelity Bank Colome, SD	Transfer liability.
		<b>617010</b>	N1/2 SE1/4 Section 20; 43N-R25W Mellette County		
Transfer to:					
Hickey Land, LLC Chamberlain, SD	24-1133		\$3,000	First Dakota National Bank Chamberlain, SD	

*Consent Calendar*

*South Dakota Board of Minerals & Environment*

*March 21, 2024*

**License Holder**                      **License No.**                      **Site No.**                      **Surety Amount**                      **Surety Company or Bank**                      **DANR Recommendation**

**Release of Liability:**

Western Construction Inc.  
Rapid City, SD

09-880

**880023**

\$20,000

Western Surety Company  
Chicago, IL

Release liability.

NW1/4 Section 24; T41N-R40W  
Jackson County

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<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<b><u>Transfer of Large Scale Mine Permit 416:</u></b>				
VMC, LLC Steamboat Springs, CO	416	\$23,100	First Interstate Bank, Spearfish, SD	Transfer Permit 416 and liability from VMC, LLC to DTRC, LLC. Release ILOC No. 248, First Interstate Bank, Spearfish, SD, in the amount of \$23,100. Accept CD 6601011949, First Interstate Bank, Lead, SD, in the amount of \$23,100.
Sections 29, 30, 31, & 32; T5N-R2E, Lawrence County				
Transfer to:  DTRC, LLC Lead, SD				
<b><u>Annual Update of Post Closure Financial Assurance:</u></b>				
Homestake Mining Company Central City, SD	332 & 456	\$80,201,732	Federal Insurance Company	Accept rider to Bond No. 8233-63-10, Federal Insurance Company, increasing the Post Closure Financial Assurance amount to \$82,004,927.

*South Dakota Board of Minerals & Environment*

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<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<b><u>Discount Rate &amp; Annual Update of Post Closure Financial Assurance:</u></b>				
Homestake Mining Company Central City, SD	445	\$31,596,628	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 \$40,634,534.