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Minutes of the  
Board of Minerals and Environment  
Matthew Training Center  
523 East Capitol Avenue  
Pierre, South Dakota

May 18-19, 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, Bob Morris, John Scheetz and Gary Haag.

BOARD MEMBERS ABSENT: Gregg Greenfield and Jessica Peterson.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM MARCH 16, 2023, MEETING: Motion by Morris, seconded by Karpen, to approve the minutes from the March 16, 2023, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:28, HAZARDOUS WASTE: Carrie Jacobson, DANR Waste Management Program, requested permission to advertise for a public hearing to consider amendments to ARSD 74:28, the hazardous waste rules.

The department intends to publish the public notice in 11 newspapers of general circulation to ensure coverage across the state. The public notice will also be mailed and emailed to individuals and interested parties on the department's mailing list. The draft rules will be available on the department's website, the state of South Dakota's general website, and can be obtained by contacting the Department of Agriculture and Natural Resources by phone or email.

Comments can be submitted in writing and mailed via postal service, email, or electronically. The public will be provided 45 days to comment on the proposed rules.

The department anticipates the public hearing will be held on July 20, 2023; therefore, the public notice will be sent for publishing on or before June 5, 2023. A copy of the draft public notice and draft proposed rules were included in the board packet.

The amendments reflect changes that occurred in the federal hazardous waste regulations from July 1, 2018, through June 30, 2022. The changes will be incorporated by reference in the administrative rules.

Mr. Scheetz asked Ms. Jacobson to summarize some of the major changes that were made between 2018 and now.

Ms. Jacobson stated that the primary change has to do with including aerosol cans and aerosol cans that are not empty as a universal waste. Because they are broadly generated across many different types of hazardous waste generation entities, it is a good way to ensure that those cans are managed safely, and yet not subject to onerous typical hazardous waste regulations.

Motion by Blumhardt, seconded by Karpen, to authorize the department to advertise for a public hearing to consider amendments to ARSD 74:28 at the July 20, 2023, 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 the consent calendar, which is a table listing the department recommendations for transfers of liability and release of surety, transfer of liability, and release of surety. (See attachment)

Tom Cline, Minerals, Mining, & Superfund Program, presented the consent calendar.

Regarding the transfer of liability from Morris Inc. to Perkins County Highway Department, Mr. Morris asked why the bond is not being released. Mr. Cline answered that Morris Inc. would like to stay in business. The company has 30 to 40 sites across the state. On this specific site, Morris Inc. is transferring the liability to the county. The county will take ownership of the reclamation liability for the footprint left from the stockpile, but meanwhile the pit area that was used to generate that pile has been reclaimed by Morris Inc. The \$20,000 surety bond covers all of Morris Inc.'s sites throughout the state.

Mr. Morris noted that he is not associated with Morris Inc.

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

ANNUAL UPDATE OF PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL OR UNIQUE LANDS: Eric Holm stated that under ARSD 74:29:10:19, the Board of Minerals and Environment is required to annually hold a hearing to consider any petitions received to nominate lands to the Preliminary List.

Under ARSD 74:29:10:17(4), the Department of Agriculture and Natural Resources publishes an annual notice to solicit petitions to add areas to the preliminary list. The notice was published on February 2, 2023, in the Capital Journal, Sioux Falls Argus Leader, Black Hills Pioneer, and Rapid City Journal. Affidavits of Publication were received from all newspapers.

On January 25, 2023, the South Dakota Department of Tourism, the Department of Game, Fish, and Parks, the Department of Education and Cultural Affairs, and the Archaeological Research Center were also invited to submit nominating petitions.

The deadline for submittal of petitions to nominate areas to the preliminary list was May 1, 2023. No nominating petitions were submitted, so no board action is needed.

ACCEPTANCE OF FINANCIAL ASSURANCE INCREASE FOR WHARF RESOURCES (USA), INC., LARGE SCALE MINE PERMIT 356, 434, 435, 464, AND 476: Mr. Holm presented the board with an adjustment of the financial assurance amount for Wharf Resources. This financial assurance, also known as the “cyanide spill bond”, is required under SDCL 45-6B-20.1 and covers costs to the state for responding to and remediating accidental releases of cyanide and other leaching agents at the Wharf site. This financial assurance is in addition to Wharf Resources’ \$58.2 million reclamation bond and \$38.4 million post closure bond.

The department adjusted the financial assurance for inflation and calculated a revised amount of \$807,300, which is an increase of \$46,700 from the 2022 update. This year, since the department was able to obtain the Construction Cost Index in the Engineering News Record, staff returned to using the index to calculate the inflationary increase in the bond instead of applying a three percent inflation rate.

To cover the increase, Wharf has submitted a rider to the United States Fire Insurance Company surety bond that currently serves as financial assurance, which increases the amount to \$807,300. United State Fire Insurance Company 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, and Moody’s are excellent, strong, and medium quality respectively. The AM Best and Standard and Poor’s outlooks are stable, while Moody’s outlook is positive.

The department recommended that the board accept the rider to Bond No. 612408650, United States Fire Insurance Company, increasing the financial assurance bond from \$760,600 to \$807,300.

In response to a question from Mr. Scheetz, Mr. Holm stated that the calculation is based on a slow, chronic release of cyanide, which staff determined would be more costly to remediate than an accidental spill of cyanide. Leach ponds and pads are double lined, and they have a leak detection system, which is taken into account when calculating the bond amount.

Motion by Karpen, seconded by Haag, to accept the rider to Bond No. 612408650, United States Fire Insurance Company, increasing the financial assurance amount to \$807,300. A roll call vote was taken, and the motion carried unanimously.

CONTESTED CASE HEARING IN THE MATTER OF WHARF RESOURCES (USA), INC. LARGE SCALE MINE PERMIT APPLICATION FOR WHARF’S BOSTON EXPANSION: A court reporter was present for the hearing and a transcript is being prepared. A copy of the transcript may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

Please refer to the transcript for the proceedings of the hearing.

Chairman Rex Hagg, hearing chairman for this matter, opened the hearing at 10:20 a.m. Central Time.

Dwight Gubbrud and Max Main, Bennett, Main, Gubbrud & Willert, Belle Fourche, SD, represented Wharf Resources.

Steve Blair, Assistant Attorney General, Pierre, SD, represented the DANR Minerals, Mining, and Superfund Program.

Intervenor, Carla Marshall, Rapid City, SD, appeared pro se.

The purpose of the hearing was to consider Wharf Resources (USA), Inc.'s application for a permit to mine gold and silver for its proposed Boston Expansion project approximately four miles west of Lead, SD, in Lawrence County.

The proposed expansion involves mining to the south of Wharf Resources' existing open pit gold mining operation. The mine permit will allow Wharf Resources to expand its existing operation by 48.2 acres. Of these, 40.6 acres are located outside of the current mine permit boundary, and 7.6 acres are to be included as new permitted affected acreage within the current mine permit boundary. Topsoil will be stripped and stockpiled for use during concurrent and final reclamation. Waste rock will be used to backfill the mine pits. Ore will be processed through cyanide heap leach methods before being treated and offloaded to an approved area at the mine. The proposed expansion will extend the total life of the mine to 2030. Reclamation will be conducted concurrently with the mining operation. The proposed post-mining land use is rangeland/woodland grazing.

DANR recommended conditional approval of the permit application.

Mr. Blair noted that the parties stipulated to Exhibit 1, the DANR administrative file for Wharf Resources, that narrative testimony was admissible, and beginning with public comments, and continuing with Wharf Resources, DANR, and Ms. Marshall presenting their cases.

Mr. Blair stated that the public comments were not a part of the formal hearing.

The following provided public comments in support of the application:

Bob Ewing, Spearfish, SD, chairman of the Lawrence County commission  
Tim Comer, Spearfish, SD  
Bill London, Terry Peak Ski Area  
Kayla Klein, Lead city commission  
Ken Harding, Rapid City, SD  
Dan Werdel, Rapid City, SD, Butler Machinery  
Marc Morgan, Spearfish, SD, Wharf employee

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Gerald Aberle, Lead, SD, Dakota Gold Corporation  
Beau Riopel, Spearfish, SD, Butler Machinery

During the public comments Mr. Ewing answered questions from Chairman Hagg and Mr. Scheetz. Chairman Hagg stated that since Mr. Ewing is a local official, the questions and answers would be made part of the record.

Opening statements were offered by the parties.

Witnesses administered the oath and testifying on behalf of Wharf Resources:

Ken Nelson, Rapid City, SD, Regional General Manager, Coeur Mining  
Matt Zietlow, Spearfish, SD, Environmental Manager, Wharf Mine  
Crystal Hocking, Rapid City, SD, Professional Geologist and Professional Engineer, RESPEC

Exhibits offered by Wharf Resources and admitted into the record:

Exhibit 30 – Ken Nelson curriculum vitae  
Exhibit 31 – Crystal Hocking curriculum vitae  
Exhibit 32 – Matthew Zietlow curriculum vitae  
Exhibit 33 – Copy of the draft Surface Water Discharge Permit, Wharf Resources (USA), Inc.  
Exhibit 34 – Letters of Support  
Exhibit 35 – Wharf Resources Boston Expansion presentation

Witnesses administered the oath and testifying on behalf of the Department of Agriculture and Natural Resources (DANR):

Roberta Hudson, Pierre, SD, Engineering Manager I, DANR Minerals, Mining, and Superfund Program.  
Kelli Buscher, Pierre, SD, Administrator of the DANR Water Quality Program  
Eric Holm, Pierre, SD, Engineer III, DANR Minerals, Mining and Superfund Program

Exhibits offered by DANR and admitted into the record:

Exhibit 1 – Administrative file, Wharf Resources Boston Expansion permit application  
Exhibit 2 – Roberta Hudson curriculum vitae  
Exhibit 3 – Large scale mining permit application checklist, Wharf Resources (USA), Inc.  
Exhibit 4 – Wharf Resources 2022 annual environmental audit and inspection report.  
Exhibit 5 – 2023 Boston expansion area map  
Exhibit 6 – DANR Recommendation, Wharf Resources (USA), Inc. large scale mine permit application  
Exhibit 8 – Wharf Resources violation history  
Exhibit 10 – July 21, 2021, letter from Roberta Hudson to Amy Allen, Wharf Resources Sr. Environmental Compliance Coordinator  
Exhibit 11 – November 17, 2021, letter from Roberta Hudson and Matt Hicks to Ken Nelson, Wharf Resources Mine Manager,

Exhibit 12 – DANR presentation, Wharf Resources expansion project large scale mine permit application

Exhibit 13 – Kelli Buscher curriculum vitae

Exhibit 14 – May 15, 2023, letter from Hunter Roberts to Matt Zietlow, Wharf Resources Environmental Manager

Exhibit 15 – Copy of the draft Surface Water Discharge Permit, Wharf Resources (USA), Inc.

Exhibit 16 – DANR presentation for Surface Water Discharge Permit for Wharf Resources

Exhibit 17 – Eric Holm curriculum vitae

Exhibit 18 – DANR 2023 Wharf mine reclamation bond recalculation summary

Exhibit 19 – DANR 2023 Wharf mine reclamation bond calculation, general information and assumptions

Exhibit 21 – DANR 2023 Wharf mine post closure bond calculation summary

Exhibit 22 – DANR 2023 Wharf mine post closure bond calculation general information and assumptions

Exhibit 23 – DANR presentation, Wharf Resources' Boston expansion project large scale mine permit application, bonding calculations

Chairman Hagg noted that Ms. Marshall was not present for the second day of the hearing, but he will let Ms. Marshall know that she is welcome to submit proposed Findings of Fact and Conclusions of Law.

Following witness testimony, cross-examination, and questioning by the parties and the board members, the parties offered closing statements.

Chairman Hagg stated that there will be no final decision today, but he is inclined to recommend to the board granting the permit with the conditions that were discussed during the hearing, specifically with regard to the selenium issue in False Bottom Creek. He asked that the department include in its proposed findings that the board is adopting the schedule regarding mitigation of selenium as a specific finding. The schedule should also be included in the permit conditions. He said that other than the selenium issue in False Bottom Creek, it appears that the permit application complies with SDCL 45-6B-32. Chairman Hagg said SDCL 45-6B-32 provides some obligation for the board to grant the permit. He believes the statute is discretionary on the items the board can consider in order to deny a permit. He expressed concern regarding the selenium issue but stated that the department and Wharf have given the board the assurance that Wharf has agreed to pursue compliance regarding mitigation of the selenium on a schedule that the discretion in the statute allows.

Chairman Hagg then requested that each of the parties submit proposed Findings of Fact, Conclusions of Law, and the Order by June 20, 2023. Mr. Gubbrud presented proposed findings, which do not include the mitigation schedule. Chairman Hagg received the findings and asked Mr. Gubbrud to submit supplemental findings that include the mitigation schedule by the deadline.

Mr. Blair said SDCL 45-6B-30 requires the board to make a final decision on the application within 120 days of the receipt of the application unless a time extension occurs, in which case the

decision shall be made within 30 days following the hearing. One hundred twenty days from receipt of the application is July 8, 2023. Chairman Hagg will make his proposed Findings of Fact, Conclusions of Law and Final Decision by July 8, 2023, then present them to the board at the July 20, 2023, meeting.

Chairman Hagg closed the hearing at 11:52 a.m. Central Time.

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

NEXT MEETING: The next meeting is scheduled for July 20, 2023.

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

  
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Secretary, Board of Minerals      Date  
and Environment

 7-20-23  
\_\_\_\_\_  
Witness      Date

ATTENDANCE SHEET  
BOARD OF MINERALS AND ENVIRONMENT

DATE May 18, 2023

<u>NAME (PLEASE PRINT)</u>	<u>ADDRESS</u>	<u>REPRESENTING</u>
Eric Holm	Pierre	DANR
Bob Zwinge	Spearfish, SD	Lawrence co commissioner
Max Main	Belle Fourche	Wharf
Mark Morgan	Spearfish SD	wharf
Tony Auld	Lead, SD	Wharf
Kelli Boscher	Pierre	DANR
Ken Harding	Rapid City	Self
Beau Riopel	Spearfish, SD	Butler Machinery
Matt Sudbeck	Rapid City, SD	Butler Machinery - CAT
Carla R Marshall	RC, SD	Self
Narsha Dodge	Rapid City	Rapid City Journal
Thomas Cline JR	Pierre SD	DANR - MoM program
Karl Nilsen	RC SD	Wharf
Crystal Hocking	Rapid City	Wharf / RESPEC
Matt Zietlow	Spearfish, SD	Wharf
Jim Wendte	Pierre	DANR
Camie Jackson	Pierre	SDDANR
Garrett Westenderf	Pierre	DANR
Kayla Klein	Lead SD	Self - commissioner of Lead
Ron Everett	Lead SD	Mayor
Timm Comar	Spearfish SD	Self
B. H. London	Lead SD	Terry Peak SK
Gerald Aberte	Lead SD	Dakota Gold Corp
Mike Lees	Pierre SD	DANR



DATE May 18, 2023

## REPRESENTING

## Keloland News

# Consent Calendar

## South Dakota Board of Minerals & Environment

May 18, 2023					
<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 &amp; Release of Surety:</u>					
Hilde Pipe & Gravel & Gravel Inc. Madison, SD	22-1118		\$5,000	First Interstate Bank, Madison	Transfer liability and release \$5,000.
Transfer to:					
Woodland Marina II LLC Sioux Falls, SD	23-1122		\$5,000	Plains Commerce Bank, Sioux Falls	
<u>Transfer of Liability:</u>					
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company	Transfer liability.
Transfer to:					
Perkins County Highway Department Bison, SD	83-91		EXEMPT	NA	
		1118001		N1/2 NE1/4 Section 27, SE1/4 Section 22, & SW1/4 SW1/4 Section 23; T106N-R52W, Lake County	
		2057		SE1/4 Section 35; T16N-R11E, Perkins County	

# Consent Calendar

## South Dakota Board of Minerals & Environment

<i>May 18, 2023</i>				
<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:</u></b>				
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company
		<b>2006</b>	N1/2 Section 29; T9N-R25E, Stanley County	Release liability.
		<b>2018</b>	Sections 29 & 30; T9N-R24E, Ziebach County	

# South Dakota Board of Minerals & Environment

May 18, 2023			
<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 Financial Assurance for Wharf Resources (USA), Inc.:</u>			
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$760,600	United States Fire Insurance Company  Accept rider to Bond No. 612408650, United States Fire Insurance Company, increasing the Financial Assurance amount to \$807,300.
<u>Application for Large Scale Mine Permit:</u>			
Wharf Resources (USA), Inc. Lead, SD	490	Reclamation Bond: \$72,152,900  Post Closure Bond: \$42,685,600	Conditional Approval.
	Legal:	Portions of Sections 2 & 3; T4N-R2E, Lawrence County	