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

May 20, 2021
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 appointed Bob Morris as secretary pro tem.

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

BOARD MEMBERS PRESENT: Rex Hagg, Dennis Landguth, Doyle Karpen, Daryl Englund, Bob Morris, Jessica Peterson, and John Scheetz.

BOARD MEMBER ABSENT: Gregg Greenfield and Glenn Blumhardt.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM APRIL 15, 2021 MEETING: Motion by Karpen, seconded by Peterson, to approve the minutes from the April 15, 2021, 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 table listing the department recommendations for transfer of liability and release of surety and releases of liability. (See attachment)

Mr. Landguth asked how many active sites are presently in the state and if the state has received any complaints regarding the sites. Mr. Cline answered that there are presently 1,625 active, un-reclaimed sites in the state. The main complaint the department receives is dust control, which is addressed at the county level. In 2021, there have been no other complaints regarding the sites.

Motion by Englund, seconded by Landguth, to accept the department recommendations for transfer of liability and release of surety and releases of liability, as listed on the consent calendar. A roll call vote was taken, and the motion carried unanimously.

VMC, LLC ORAL MINING REPORT: Mark Nelson reported that no mining activities were conducted during 2020. VMC, LLC requested approval of a county conditional use permit, which was denied by Lawrence County in early November 2020. VMC, LLC is now reassessing its opportunities for the project and there are no immediate plans for operations under Permit 416.

PUBLIC HEARING TO CONSIDER REVISIONS TO AND APPROVAL OF SOUTH DAKOTA’S VOLKSWAGEN BENEFICIARY MITIGATION PLAN: Barb Regynski, DANR Air Quality Program, provided a slide presentation discussing the proposed revisions to South Dakota’s Volkswagen Beneficiary Mitigation Plan.

The following table shows South Dakota’s current plan.

Category	Eligible Mitigation Action	Allocated % from Trust	Allocated Amount from Trust	Obligated	Remaining Funds
1/6	Class 8/Class 4-7 Local Freight Trucks	50%	\$4,062,500	\$908,262	\$3,154,238
2	Class 4-8 Buses	10%	\$812,500	\$237,803	\$574,697
3	Freight Switcher Locomotives	0%	\$ -	\$ -	\$ -
4	Ferries and Tugs	0%	\$ -	\$ -	\$ -
5	Ocean Going Vessels Shorepower	0%	\$ -	\$ -	\$ -
7	Airport Ground Support Equipment	0%	\$ -	\$ -	\$ -
8	Forklifts and Port Cargo Handling Equipment	0%	\$ -	\$ -	\$ -
9	Light Duty ZEV Supply Equipment	5%	\$406,250	\$406,245	\$5
10	DERA Option	25%	\$2,031,250	\$ 1,141,451	\$889,799
Admin	Administrative Costs (through 12/2020)	10%	\$812,500	\$164,147	\$648,353
Total VW Trust		100%	\$8,125,000	\$ 2,857,908	\$5,267,092

Ms. Regynski stated that the department proposed a range representing the minimum and maximum funding amounts for each category. The department also proposed combining C2-Buses and C10-DERA like was done for trucks for more flexibility; proposed a range of 35-45% for the combined bus category; proposed a range of 35-45% for the combined truck category; proposed a range of 10-15% for the electric vehicle charging station category; and proposed a range of 2.5-10% for administration.

Ms. Regynski stated that during the 30-day comment period, the department received 47 comments.

Forty-five comments were received in favor of increasing the funding for electric vehicle charging stations. Three of the commenters specified they wanted a set amount of funding for Category 9 at 15% and to not have a range and three of the commenters wanted the funding to be greater than 15%.

DANR's Response: South Dakota's draft proposed revisions to the plan currently increase funding for electric vehicle charging stations. A range of funding per category is preferred to avoid making additional revisions to the plan. If the funds spent of Category 9 do not end up exactly at 15% (due to changes in estimated project costs, trying to ensure minimum rebate amount, lack of applications, etc.) provisions of the plan would require DANR and the Board of Minerals and Environment to adjust the percentage again. The VW Trust limits the amount of funds to be used for Category 9 to a maximum of 15%, so DANR and the Board may not exceed the 15% threshold for Category 9.

DANR did not recommend any changes to the proposed revisions based on these comments.

Two commenters were not in favor of increasing the funding for electric vehicle charging stations.

One of these commenters stated that funds should not be increased for electric vehicle charging stations unless the state is going to subsidize actual gasoline and not just ethanol. The free market will determine if electric vehicles are a viable transportation method or just a flash in the pan.

The other commenter said taxpayers shouldn't be paying for charging stations, convenience stores should be putting them in if they want to keep open. The \$50 that electric vehicles will pay for tags won't cover the lost gas tax money that we won't get from tourist to drive on our roads.

DANR's Response: The majority of commenters are in favor of increasing the funding for electric vehicle charging stations. In addition, the two commenters did not recommend which of the other categories the funds should be used. In the alternative, DANR considered that these two commenters preferred the funding allocations would stay the same as originally approved. If DANR is able to minimize the amount of funding for Administration of the program, the majority of the increase of funding will go from administration of the program to the electrical vehicles category and the total funding for the other projects will be similar.

DANR did not recommend any changes to the proposed revisions based on these comments.

Several comments were received that did not pertain to revising the plan but dealt with program guidelines. Some of these comments included:

- Chargers should be located along I-90.
- Chargers should be located along I-29.

- Chargers are needed in locations other than along Interstates.
- More chargers should be added to the western side of the state.
- Chargers should be located at rest stops.
- Chargers should be located at tourist attractions and places to eat.
- Funding should be used for L3 DC fast chargers.
- Funding should be used for L2 chargers.
- Chargers should have plugs for all three standards: CCS, CHAdeMO, & Tesla.
- Use any additional funding for charging stations in a single additional round.
- Extend application window in future rounds.
- The charging station program requires too much financial commitment in advance for the applicants.

DANR Response: DANR will consider these comments when developing future application guidelines and selection criteria.

DANR did not recommend any changes to the proposed revisions based on these comments.

Two comments were received that were outside of the eligible funding criteria allowed by the Trust: use funds for lithium study using modern mining techniques in the Black Hills; and instead of registration fees on electric vehicles to make up for gas tax, put a usage fee on charging.

DANR Response: These comments are outside the scope of the proposed plan revisions.

DANR did not recommend any changes to the proposed revisions based on these comments.

A comment was received stating that there were inconsistencies between the proposed recommendation and the table for the changes to administrative funds.

DANR Response: DANR has updated the proposed revisions to fix the inconsistencies.

A comment was received stating that since the time the draft was made available to the public, the Department of Environment and Natural Resources and the Department of Agriculture have merged creating the new Department of Agriculture and Natural Resources.

DANR response: DANR has updated the proposed revisions with the department's new name.

Ms. Regynski stated that a notice of public hearing was published regarding the hearing for the Board of Minerals and Environment to consider the revisions to the plan.

The following table summarizes DANR's final recommendations:

Category	Eligible Mitigation Action	Proposed % Range	Allotted Amount	Obligated	Remaining Funds
1/6	Class 8/Class 4-7 Local Freight Trucks	35 to 45%	\$2,843,750 to \$3,656,250	\$908,262	\$1,935,488 to \$2,747,988
2/10	Class 4-8 Buses /DERA Option	35 to 45%	\$2,843,750 to \$3,656,250	\$1,379,254	\$1,464,496 to \$2,276,996
3	Freight Switcher Locomotives	0%	\$0	\$0	\$0
4	Ferries and Tugs	0%	\$0	\$0	\$0
5	Ocean Going Vessels Shorepower	0%	\$0	\$0	\$0
7	Airport Ground Support Equipment	0%	\$0	\$0	\$0
8	Forklifts and Port Cargo Handling Equipment	0%	\$0	\$0	\$0
9	Light Duty ZEV Supply Equipment	10 to 15% ¹	\$812,500 to \$1,218,750	\$406,245	\$406,255 to \$812,505
Admin	Administrative Costs	2.5 to 10% ¹	\$203,125 to \$812,500	\$ 164,147	\$38,978 to \$648,353
Total VW Trust		100%	\$8,125,000	\$2,857,908	\$5,267,092

¹ – The VW trust limits the maximum amount that may be used in the category to 15%.

Ms. Regynski noted that since the department made its final recommendation and published the notice for the board hearing, one additional comment was received in support of increasing Category 9 funding from 5% to 15%. Ms. Regynski provided the board with a copy of the written comment from the Campbell County and Herreid Economic Development Corporations.

Chairman Hagg requested public comments on the department’s proposed revisions to the plan.

No one offered public comments.

Board discussion took place regarding the departments proposed revisions with Ms. Regynski answering questions from the board members.

Motion by Morris, seconded by Karpen, to accept the Department of Agriculture and Natural Resources’ recommendations for revisions to the Volkswagen Beneficiary Mitigation Plan and to approve the final plan. A roll call vote was taken, and the motion carried unanimously.

Ms. Regynski stated that the approved plan will be submitted to the trustee.

A copy of the slide presentation is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>.

ORAL MINING REPORTS: The annual oral mining reports were presented to the board by representatives of the large-scale gold mining companies. The representatives reported on water

treatment, production, and reclamation activities during 2020 and plans for 2021. The annual oral mining presentations are required by statute. The following provided reports:

LAC Minerals (Richmond Hill Mine) and Homestake Mining Company – Mark Tieszen
Wharf Resources – Matt Zietlow

Copies of the slide presentations are available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>.

ACCEPTANCE OF FINANCIAL ASSURANCE INCREASE FOR WHARF RESOURCES (USA), INC., PERMITS 356, 434, 435, 464, AND 476: Eric Holm presented 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. The 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 \$731,300, which is an increase of \$21,300 from the 2020 update.

To cover the increase, Wharf submitted a rider to the Aspen American surety bond that currently serves as financial assurance, which increases the amount to \$731,300. Ratings for the company from AM Best, Standard and Poor's, and Moody's are excellent, strong, and upper medium quality respectively. All three rating agencies have stable outlooks.

The department recommended that the board accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond by \$21,300 to \$731,300.

Motion by Morris, seconded by Englund, to accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond by \$21,300 to \$731,300 for Wharf Resources (USA), Inc. A roll call vote was taken, and the motion carried unanimously.

UPDATE ON BROHM EPA SUPERFUND SITE: Roberta Hudson, DANR, presented the 2020 annual update on the Gilt Edge Mining Superfund site remediation and reclamation activities. She answered questions from the board.

A copy of Ms. Hudson's slide presentation is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>.

ANNUAL UPDATE OF PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS: Mr. Holm reported that under ARSD 74:29:10:19, the board 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), DANR publishes an annual notice to solicit petitions to add areas to the preliminary list.

The notice was published on January 27, 2021, in the Pierre Capitol Journal, Sioux Falls Argus Leader, Black Hills Pioneer, and the Rapid City Journal. Affidavits of publication were received from all newspapers

The deadline for submittal of petitions to nominate areas to the preliminary list was May 1, 2021, and no nominating petitions were submitted.

In response to a request by Chairman Hagg, Mr. Holm stated that some areas currently on the Preliminary List include the Spearfish Canyon watershed area, a pictograph area in Custer County, and a portion of the Mickelson Trail.

Mr. Holm noted that no board action was required.

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

NEXT MEETING: The next meeting is scheduled for July 15, 2021.

ADJOURN: Motion by Morris, seconded by Karpen, that the meeting be adjourned. Motion carried unanimously.

Secretary

Date

Witness

Date

Consent Calendar
South Dakota Board of Minerals & Environment

May 20, 2021

<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>
<u>Transfer of Liability & Release of Surety:</u>					
Anderson Sand & Gravel LLC Sturgis, SD	06-834		\$20,000	Bond Safeguard Insurance Company	Transfer liability and release \$20,000.
		834001	N1/2 Section 16, SW1/4, & S1/2 SE1/4 Section 9; T2N-R7E, Pennington/Meade County		
Transfer to:					
Western Construction Inc. Rapid City, SD	09-880		\$20,000	Western Surety Company	
<u>Release of Liability:</u>					
Halme Inc. Lake Norden, SD	16-1011		\$20,000	Travelers Casualty & Surety Company of America	Release liability.
		1011002	E1/2 Section 26; T113N-R54W, Hamlin County		
Western Construction Inc. Rapid City, SD	09-880		\$20,000	Western Surety Company	Release liability.
		880011	NE1/4 SE1/4 Section 21 & NW1/4 SW1/4 Section 22; T1N-R20E, Haakon County		