



**Board of Minerals
and Environment**
523 East Capitol Avenue
Pierre, SD 57501-3182
(605)773-3886

Live audio for this meeting is available at <http://www.sd.net> and the board packet is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

AGENDA

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

July 17, 2025

10:00 a.m. Central Time

Call to order and roll call

Approve agenda

Approve minutes from May 15, 2025, meeting

Mining issues consent calendar – Tom Cline

Annual update of the Preliminary List of Special, Exceptions, Critical or Unique Lands – Eric Holm

Public Hearing to consider amendments and additions to ARSD 74:36 – Air Pollution Control
Program rules – Samantha Olmstead

Public Hearing to consider amendments to ARSD 74:29 – Mined Land Reclamation rules – Roberta Hudson

Petition to revoke Small Scale Mine Permit 404 issued to Roy Schiefer and Fred Johnson and petition for forfeiture of surety – Steve Blair

Election of Officers

Executive Session

Public comment period in accordance with SDCL 1-25-1

Upcoming board meetings

Adjourn

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@state.sd.us as soon as possible but no later than two business days prior to the meeting to ensure accommodations are available.

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

May 15, 2025
10:00 a.m. Central Time

CALL TO ORDER: The meeting was called to order by Vice Chairman Gregg Greenfield. 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: Bob Ewing, Gregg Greenfield, Jessica Gruenwald, Gary Haag, Doyle Karpen, Rhett Miller, Bob Morris, and Laurie Schultz.

BOARD MEMBERS ABSENT: Glenn Blumhardt.

OTHERS PRESENT: Mike Lees, Roberta Hudson, Eric Holm, Bret Graves, DANR Minerals, Mining, and Superfund Program; Kyrik Rombough and Samantha Olmstead, DANR Air Quality Program; David McVey, Attorney General's Office; Mark Tieszen, Homestake Mining Company/Richmond Hill; Jasmine McCauley and Ken Nelson, Wharf Resources (USA), Inc.; Timm Comer, DTRC, LLC; and Jerry Aberle, Dakota Gold Corp.

APPROVE AGENDA: Motion by Ewing, seconded by Schultz, to approve the agenda. A roll call vote was taken, and the motion carried unanimously.

APPROVAL OF MINUTES FROM MARCH 20, 2025, MEETING: Motion by Miller, seconded by Morris, to approve the minutes from the March 20, 2025, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE FOR PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:36 – AIR POLLUTION CONTROL PROGRAM: Samantha Olmstead provided an explanation of proposed amendments and requested permission to advertise for a public hearing to consider amendments to the Air Pollution Control Program rules. The department proposes holding the public hearing during the July 17, 2025, Board of Minerals and Environment meeting.

Motion by Karpen, seconded by Schultz, to grant permission to advertise for a public hearing to consider amendments to ARSD 74:36. A roll call vote was taken, and the motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE FOR PUBLIC HEARING FOR CONSIDER AMENDMENTS TO ARSD 74:29 – MINED LAND RECLAMATION: Roberta Hudson provided an explanation of proposed amendments and requested permission to advertise for a public hearing to consider amendments to the Mined Land Reclamation rules. The department proposes holding the public hearing during the July 17, 2025, Board of Minerals and Environment meeting.

Motion by Ewing, seconded by Karpen, to grant permission to advertise for a public hearing to consider amendments to ARSD 74:29. 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 (see attachment).

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

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

ACCEPTANCE OF FINANCIAL ASSURANCE INCREASE FOR WHARF RESOURCES (USA), INC., LARGE SCALE MINE PERMITS 356, 434, 435, 464, 476, AND 490: Eric 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' \$73.92 million reclamation bond and \$65.10 million post closure bond.

The department adjusted the financial assurance for inflation and calculated a revised amount of \$840,000 which is an increase of \$14,300 from the 2024 update. The Construction Cost Index in the Engineering News Record was used to calculate the inflationary increase in the bond.

To cover the increase, Wharf has submitted a rider to the Siriuspoint America Insurance Company surety bond that currently serves as financial assurance, which increases the amount to \$840,000. Siriuspoint America 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 excellent, strong, upper medium grade, and high credit quality, respectively. Outlooks are stable except for positive outlooks from AM Best and Fitch.

The department recommended the board accept the rider to Bond No. SPA153047_002, Siriuspoint America Insurance Company, increasing the financial assurance bond from \$825,700 to \$840,000.

Board of Minerals and Environment
May 15, 2025, Meeting Minutes

Motion by Karpen, seconded by Miller, to accept the rider to Bond No. SPA153047_002, Siriuspoint America Insurance Company, increasing the financial assurance bond from \$825,700 to \$840,000. A roll call vote was taken, and the motion carried unanimously.

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 2024 and plans for 2025. The annual oral mining presentations are required by statute.

Mark Tieszen presented the annual reports for Homestake Mining Company's Mine Permits 332, 445, and 456.

Jasmine McCauley presented the annual report for Wharf Resources.

Timm Comer presented the annual report for DTRC, LLC.

UPDATE ON BROHM EPA SUPERFUND SITE: Roberta Hudson, DANR Minerals, Mining, and Superfund Program, presented the annual update for the Brohm Superfund site and answered questions from the board.

The slide presentations for the oral mining reports and Brohm EPA Superfund Site are available at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>.

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

UPCOMING BOARD MEETINGS: The board will meet in person July 17, 2025, at the Foss Building Matthew Training Center in Pierre, at the Capitol Lake Visitors Center in Pierre August 20 and 21, 2025, and in Deadwood September 17 and 18, 2025.

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

Secretary, Board of Minerals Date
and Environment

Witness Date

Consent Calendar
South Dakota Board of Minerals & Environment

May 15, 2025

<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>					
Quality Real Estate, Inc. Oral, SD	91-421		\$20,000	American Contractors Indemnity Company	Partial Transfer of Liability
		421011	Section 9 & Section 16; T8S-R6E, Fall River County		
Transfer to:					
Croell, Inc. Sundance, WY	96-604		\$20,000	North American Specialty Insurance Company	
<u>Release of Liability:</u>					
Fisher Sand & Gravel Co. Dickenson, ND	83-54		\$20,000	Liberty Mutual Insurance Company	Release Liability
		54127	NE1/4 Section 31; T41N-R43W, Oglala Lakota County		
Marshall County Highway Dept. Britton, SD	83-26		Exempt	N/A	Release Liability
		26003	NW1/4 Section 33; T126N-57W, Marshall County		
R & J Gravel & Trucking Chamberlain, SD	07-841		\$20,000	Sun Surety Insurance Company	Release Liability
		841004	NW1/4 Section 8; T105N-R66W, Aurora County		

South Dakota Board of Minerals & Environment

May 15, 2025

<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, & 490	\$825,700	Siriuspoint America Insurance Company	Accept rider to Bond No. SPA150347_002, Siriuspoint America Insurance Company, increasing the Financial Assurance amount to \$840,000.

DRAFT

Consent Calendar

South Dakota Board of Minerals & Environment

July 17, 2025

<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>					
Hand County Highway Dept. Miller, SD	83-148		Exempt	NA	Transfer liability
		148005	NE1/4 Section 3; T115N-R70W, Hand County		
Transfer to:					
Charles Martinmaas Orient, SD	05-362		\$8,047	American Bank & Trust - Miller	
<u>Release of Liability & Surety Release:</u>					
Michael Gustafson Deadwood, SD	12-943		\$1,500	First Interstate Bank - Deadwood	Release Liability & \$1,500
		943001	NE1/4 Section 23 and SE1/4 Section 14; T5N-R3E, Lawrence County		
William S. Raabe Tyndall, SD	10-891		\$2,500	Community Bank - Avon	Release Liability & \$2,500
		891001	NE1/4 Section 14; T95N-R60W, Bon Homme County		
Robideau Trucking Company Mitchell, SD	97-628		\$1,500	First National Bank - Mitchell Fulton State Bank - Mitchell	Release Liability & \$1,500
		628001	Section 22 & SW1/4 Section 23; T104N-R60W, Davison County		

Consent Calendar
South Dakota Board of Minerals & Environment

July 17, 2025

<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>Release of Liability & Surety Release</u>					
Tri State Construction LLC Queen Creek, AZ	83-85		\$20,000	United Fire & Casualty Company Cedar Rapids, IA	Release Liability & \$20,000
		85004	NE1/4 SE1/4 Section 25; T8N-R2E & Section 30, Butte County		
<u>Release of Liability:</u>					
Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	Hudson Insurance Company New York, NY	Release Liability
		164027	N1/2 SE1/4 Section 19; T92N-R49W, Union County		
Cedar Township Ree Heights, SD	94-531		Exempt	NA	Release Liability
		531001	NW1/4 Section 17; T110N-R70W, Hand County		
Central Specialties Alexandria, MN	02-733		\$20,000	Ohio Farmers Insurance Company Westfield Center, OH	Release Liability
		733005	NW1/4 Section 16; T121N-R74W, Walworth County		

Consent Calendar
South Dakota Board of Minerals & Environment

July 17, 2025

July 17, 2025					
<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>Release of Liability:</u>					
Corson County Highway Dept. McIntosh, SD	83-239		Exempt	NA	Release Liability
		239022	NE1/4 Section 3; T19N-R27E, Corson County		
Dawson Construction, Inc Howard, SD	83-21		\$20,000	Sun Surety Insurance Company Rapid City	Release Liability
		21007	N1/2 Section 11; T106N-R56W, Miner County		
First Rate Excavate Inc Sioux Falls, SD	05-817		\$20,000	North American Specialty Insurance Company - Sioux Falls	Release Liability
		817003	SW1/4 SW1/4 Section 1; T101N-R49W, Minnehaha County		
Gregory County Highway Dept. Burke, SD	83-171		Exempt	NA	Release Liability
		171002	Section 16; T97N-R68W, Gregory County		
		171013	W1/2 Section 20; T97N-R68W, Gregory County		
		171015	SE1/4 Section 13; T97N-R73W, Gregory County		
Hand County Highway Dept. Miller, SD	83-148		Exempt	NA	Release Liability
		148011	SW1/4 Section 11; T114N-R68W, Hand County		
		148018	NE1/4 Section 16; T115N-R67W, Hand County		

Consent Calendar
South Dakota Board of Minerals & Environment

July 17, 2025

July 17, 2025

<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>Release of Liability:</u>					
Cory Harms DBA Harms Gravel Milbank, SD	83-94		\$9,000	First Interstate Bank - Billings, MT	Release Liability
		94006	SE1/4 Section 8; T120N-R51W, Grant County		
Daniel J. Healy Utica, SD	11-919		\$5,000	CorTrust Bank, Yankton	Release Liability
		919003	Section 18; T95N-R55W, Yankton County		
Jerauld County Highway Dept. Wessington Springs, SD	83-80		Exempt	NA	Release Liability
		80044	SE1/4 Section 1; T106N-R63W, Jerauld County		
Marlene Pajl Winner, SD	92-463		\$1,000	First Fidelity Bank - Winner	Release Liability
		463001	W1/2 Section 28; T102N-R77W, Tripp County		
Midland Contracting, Inc. Volga, SD	03-768		\$20,000		
		768005	SW1/4 Section 18; T110N-R63W, Beadle County		
		768010	NW1/4 Section 17; T109N-R63W, Beadle County		

Consent Calendar
South Dakota Board of Minerals & Environment

July 17, 2025

<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>Release of Liability:</u>					
Miner County Highway Dept. Howard, SD	83-177		Exempt	NA	Release Liability
		177006	SE1/4 Section 28; T105N-R55W, Miner County		
Morris Inc. Ft. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company Cedar Rapids, IA	Release Liability
		2014	Section 9; T110N-R78W, Hughes County		
Gale Nitteberg DBA Nitteberg Construction Co. Estelline, SD	95-566		\$20,000	United Fire & Casualty Company Cedar Rapids, IA	Release Liability
		566003	SW1/4 Section 5; T113N-R53W, Hamlin County		
Ries Brothers, LLC Watertown, SD	14-976		\$1,000	First Premier Bank - Sioux Falls	Release Liability
		976001	NW1/4 Section 17; T116N-R51W, Codington County		
Roger Johnson Sand & Gravel Huron, SD	83-139		\$14,058	First National Bank - Pierre	Release Liability
		139006	NE1/4 Section 32; T112N-R62W, Beadle County		
		139008	NW1/4 Section 24; T111N-R65W, Beadle County		

Consent Calendar
South Dakota Board of Minerals & Environment

July 17, 2025

<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>Release of Liability:</u>					
SD Game Fish & Parks Pierre, SD	21-1100		Exempt	NA	Release Liability
		1100001	NE1/4 SE1/4 Section 9; T10N-R6E, Butte County		
Wheatland Township of Day County Webster, SD	87-348		Exempt	NA	Release Liability
		348003	SW1/4 Section 15; T120N-R55W, Day County		
Zandstra Construction Inc. Rapid City, SD	84-254		Exempt	NA	Release Liability
		254004	SW1/4 SE1/4 Section 6; T3S-R8E, Custer County		

Department of Agriculture and Natural Resources
Notice of Public Hearing to Revise Rules

A public hearing will be held in the Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501 on July 17, 2025, at 10:00 am (Central) to consider the adoption and amendment of proposed Administrative Rules of South Dakota numbered

- a. Revising Chapter 74:36:01 (e.g. revising sections 74:36:01:01, 74:36:01:05, and 74:36:01:20);
- b. Revising Chapter 74:36:02 (e.g. revising sections 74:36:02:02 through 74:36:02:05);
- c. Revising all of Chapter 74:36:03;
- d. Revising Chapter 74:36:04 (e.g. revising section 74:36:04:12);
- e. Revising Chapter 74:36:05 (e.g. revising sections 74:36:05:04, 74:36:05:04.01, and 74:36:05:16.01);
- f. Revising Chapter 74:36:07 (e.g. revising sections 74:36:07:01 through 74:36:07:07, 74:36:07:07.01, 74:36:07:09, 74:36:07:10, 74:36:07:12 through 74:36:07:14, 74:36:07:15 through 74:36:07:22, 74:36:07:22.01, 74:36:07:23, 74:36:07:24 through 74:36:07:28, 74:36:07:31 through 74:36:07:34, 74:36:07:36, 74:36:07:37, 74:36:07:39 through 74:36:07:42, 74:36:07:42.01, 74:36:07:44 through 74:36:07:93, 74:36:07:97, 74:36:07:101 through 74:36:07:103, 74:36:07:105, 74:36:07:107, 74:36:07:109, 74:36:07:110, 74:36:07:114, 74:36:07:115, 74:36:07:117, 74:36:07:125, 74:36:07:126, 74:36:07:131, 74:36:07:136, 74:36:07:137, 74:36:07:139 through 74:36:07:143, 74:36:07:146, and 74:36:07:147; and adding sections 74:36:07:14.01, 74:36:07:22.01, and 74:36:07:23.01);
- g. Revising Chapter 74:36:08 (e.g. revising sections 74:36:08:01 through 74:36:08:130);
- h. Revising Chapter 74:36:09 (e.g. revising sections 74:36:09:02 and 74:36:09:03);
- i. Chapter 74:36:10 (e.g. sections 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07, and 74:36:10:08);
- j. Chapter 74:36:11 (e.g. section 74:36:11:01);
- k. Chapter 74:36:12 (e.g. sections 74:36:12:01 through 74:36:12:03);
- l. Chapter 74:36:13 (e.g. sections 74:36:13:02 through 74:36:13:04, 74:36:13:06 through 74:36:13:08);
- m. Chapter 74:36:16 (e.g. sections 74:36:16:01, 74:36:16:02, 74:36:16:04, and 74:36:16:05);
- n. Chapter 74:36:18 (e.g. section 74:36:18:10);
- o. Chapter 74:36:20 (e.g. sections 74:36:20:05 and 74:36:20:11); and
- p. Chapter 74:36:21 (e.g. sections 74:36:21:02, 74:36:21:04, 74:36:21:05, and 74:36:21:09).

The effect of the proposed amendments will be to update South Dakota's existing air quality rules by incorporating updated, codified regulations by reference. The proposed amendments primarily reflect changes made to the federal air quality regulations as of June 30, 2024.

The reason for the adopting the proposed amendments is to continue to have South Dakota's air quality rules comply with the federal regulations and to allow South Dakota to maintain approval of its air quality program.

Persons interested in presenting amendments, data, opinions, and arguments for or against the proposed rules may appear in-person at the hearing, or mail or e-mail them to the South Department of Agriculture and Natural Resources, Air Quality Program, 523 East Capitol, Pierre, South Dakota 57501 and Samantha.olmstead@state.sd.us. The deadline to submit any such written comments for consideration is by the close of business day on July 11, 2025.

After the written comment period, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

For Persons with Disabilities: This hearing will be located at a physically accessible place. Please contact the Department of Agriculture and Natural Resources at least 48 hours before the public hearing if you have special needs for which special arrangements can be made by calling (605) 773-3151.

Copies of the proposed rules may be obtained without charge from:

Samantha Olmstead
Department of Agriculture and Natural Resources and/or www.rules.sd.gov and/or
<https://danr.sd.gov/public/default.aspx>
523 East Capitol Avenue
Pierre, South Dakota 57501
Samantha.olmstead@state.sd.us
(605) 773-3151

Published at the approximate cost of \$_____.

PROPOSED AMENDMENTS
ARSD 74:36
AIR POLLUTION CONTROL PROGRAM
SAMANTHA OLMSTEAD

South Dakota Department of Agriculture and Natural Resources

INITIAL OUTREACH

- April 2025 – Initial Outreach
 - Letter and email
 - On website

INITIAL PUBLIC OUTREACH

- Environmental Groups
 - Black Hills Sierra Club Group, EPA, Dakota Rural Action
- Industry
 - Ag Processing, Aberdeen Energy, Hub City Energy, Glacial Lakes Energy, Huron Energy, NuStar, Dakota Ethanol, Pete Lien, Red River Energy, Redfield Energy, Ring Neck Energy, Magellan, NuGen Energy, Otter Tail, POET Biorefining, SD Soybean, Valero
- Other Interested Parties
 - BAE Systems, Black Hills Corporation, Black Hills Council of Local Governments, Bureau of Land Management, Sioux Falls Public Works, South Dakota State University

PROCEDURAL STEPS

- June 2025
 - Interested parties
 - Served secretary of DANR
 - Served Legislative Research Council
 - Served Bureau of Finance and Management

PROCEDURAL STEPS CONT.

- June 2025
 - Public Notice
 - 9 daily newspapers
 - Interested parties
 - Webpage(s)
 - Open South Dakota
 - DANR One Stop
 - DANR Air Quality

OVERVIEW

- Chapter 74:36:01 – Definitions
- Chapter 74:36:02 – Ambient Air Quality
- Chapter 74:36:03 – Air Quality Episodes
- Chapter 74:36:04 – Operating Permits for Minor Sources
- Chapter 74:36:05 – Operating Permits for Part 70 Sources
- Chapter 74:36:07 – New Source Performance Standards
- Chapter 74:36:08 – National Emission Standards for Hazardous Air Pollutants
- Chapter 74:36:09 – Prevention of Significant Deterioration
- Chapter 74:36:10 – New Source Review
- Chapter 74:36:11 – Performance Testing
- Chapter 74:36:12 – Control of Visible Emissions
- Chapter 74:36:13 – Continuous Emission Monitoring Systems
- Chapter 74:36:16 – Acid Rain Program
- Chapter 74:36:18 – Regulations for State Facilities in the Rapid City Area
- Chapter 74:36:20 – Construction Permits for New Sources or Modifications
- Chapter 74:36:21 – Regional Haze Program

REVISED SECTIONS

- Changed reference date from July 1, 2018 to July 1, 2024
 - Chapter 74:36:01 – Definitions
 - Chapter 74:36:02 – Ambient Air Quality
 - Chapter 74:36:03 – Air Quality Episodes
 - Chapter 74:36:04 – Operating Permits for Minor Sources
 - Chapter 74:36:05 – Operating Permits for Part 70 Sources
 - Chapter 74:36:07 – New Source Performance Standards
 - Chapter 74:36:08 – National Emission Standards for HAPs
 - Chapter 74:36:09 – Chapter Prevention of Significant Deterioration

REVISED SECTIONS CONT.

- Changed reference date from July 1, 2018 to July 1, 2024
 - Chapter 74:36:10 – New Source Review
 - Chapter 74:36:11 – Performance Testing
 - Chapter 74:36:12 – Control of Visible Emissions
 - Chapter 74:36:13 – Continuous Emission Monitoring Systems
 - Chapter 74:36:16 – Acid Rain Program
 - Chapter 74:36:18 – State Facilities in the Rapid City Area
 - Chapter 74:36:20 – Construction Permits
 - Chapter 74:36:21 – Regional Haze Program

REVISED SECTIONS

- 74:36:01:01(18)
 - "Criteria pollutant" means selected and specified pollutants for which limiting ambient air quality standards have been set, including sulfur dioxides, particulate matter, carbon monoxide, ozone, nitrogen oxides, and lead;

REVISED SECTIONS

- 74:36:01:01(18)
 - "Criteria pollutant" means nitrogen oxides, volatile organic compounds, and selected and specified pollutants for which limiting ambient air quality standards have been set, including sulfur dioxides, particulate matter, carbon monoxide, ozone, ~~nitrogen-oxides~~ dioxides, and lead;

REVISED SECTIONS CONT.

- 74:36:02:02
 - The ambient air quality standards listed in 40 C.F.R. §§ 50.1 through 50.3, (July 1, 2018); 40 C.F.R. §§ 50.5 and 50.6 (July 1, 2018); 40 C.F.R. § 50.8 (July 1, 2018); 40 C.F.R. § 50.11 (July 1, 2018); 40 C.F.R. § 50.13 (July 1, 2018); 40 C.F.R. § 50.14 (July 1, 2018); and 40 C.F.R. §§ 50.16 through 50.19 (July 1, 2018, define the types and levels of air pollution above which the ambient air would limit the attainment of the goals specified in § 74:36:02:01. These standards apply to the entire state and no person may cause these standards to be exceeded. The standards include normal background levels of air pollutants.

REVISED SECTIONS CONT.

- 74:36:02:02
 - The ambient air quality standards listed in 40 C.F.R. §§ 50.1 through 50.3, (~~July 1, 2018~~ July 1, 2024); 40 C.F.R. §§ ~~50.5~~ and 50.6 (~~July 1, 2018~~ July 1, 2024); 40 C.F.R. § 50.8 (~~July 1, 2018~~ July 1, 2024); 40 C.F.R. § 50.11 (~~July 1, 2018~~ July 1, 2024); 40 C.F.R. § 50.13 (~~July 1, 2018~~ July 1, 2024); 40 C.F.R. § 50.14 (~~July 1, 2018~~ July 1, 2024); and 40 C.F.R. §§ 50.16 through ~~50.19~~ and 50.17 (July 1, 2024); 40 C.F.R. § 50.19 and 50.20 (~~July 1, 2018~~ July 1, 2024); and 89 Fed. Reg. 105,785 (December 27, 2024) (to be codified at 40 C.F.R. § 50.21), define the types and levels of air pollution above which the ambient air would limit the attainment of the goals specified in § 74:36:02:01. These standards apply to the entire state and no person may cause these standards to be exceeded. The standards include normal background levels of air pollutants.

REVISED SECTIONS CONT.

- 74:36:04:12
 - The department shall mail a copy of the draft permit for a minor source to the applicant.

REVISED SECTIONS CONT.

- 74:36:04:12
 - The department shall ~~mail~~ provide a copy of the draft permit for a minor source to the applicant.

REVISED SECTIONS CONT.

- 74:36:04:12
 - The department shall ~~mail~~ provide a copy of the draft permit for a minor source to the applicant.
- 74:36:05:04.01
 - The following emission units are considered insignificant activities and are exempt from inclusion in a Part 70 operating permit unless the source has requested federally-enforceable permit conditions related to the insignificant activity to avoid needing a PSD preconstruction permit or NSR preconstruction permit or the emission unit is applicable to a standard in chapter 74:36:07 of 74:36:08:

REVISED SECTIONS CONT.

- 74:36:04:12
 - The department shall ~~mail~~ provide a copy of the draft permit for a minor source to the applicant.
- 74:36:05:04.01
 - The following emission units are considered insignificant activities and are exempt from inclusion in a Part 70 operating permit unless the source has requested federally-enforceable permit conditions related to the insignificant activity to avoid needing a PSD preconstruction permit or NSR preconstruction permit or the emission unit is applicable to a standard in chapter 74:36:07-~~of~~ or 74:36:08:

REVISED SECTIONS CONT.

- 74:36:07:105
 - Existing municipal solid waste landfill emission guidelines.

REVISED SECTIONS CONT.

- 74:36:07:105
 - Existing municipal solid waste landfill emission ~~guidelines~~ guidelines.

REVISED SECTIONS CONT.

- 74:36:07:105
 - Existing municipal solid waste landfill emission ~~guidelines~~ guidelines.
- 74:36:07:125(3)
 - This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the five years for which an nonmethane organic compound emission rate is estimated.

REVISED SECTIONS CONT.

- 74:36:07:105
 - Existing municipal solid waste landfill emission ~~guidelines~~ guidelines.
- 74:36:07:125(3)
 - This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the five years for which ~~an~~ a nonmethane organic compound emission rate is estimated.

REVISED SECTIONS CONT.

- 74:36:07:105
 - Existing municipal solid waste landfill emission ~~guidelines~~ guidelines.
- 74:36:07:125(3)
 - This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the five years for which ~~an~~ a nonmethane organic compound emission rate is estimated.
- 74:36:07:131
 - Recordkeeping for existing municipal solid waste landfill – Performance tests and compliance determinations.

REVISED SECTIONS CONT.

- 74:36:07:105
 - Existing municipal solid waste landfill emission ~~guidelines~~ guidelines.
- 74:36:07:125(3)
 - This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the five years for which ~~an~~ a nonmethane organic compound emission rate is estimated.
- 74:36:07:131
 - Recordkeeping for existing municipal solid waste landfill – ~~Perormance~~ Performance tests and compliance determinations.

REVISED SECTIONS CONT.

- 74:36:137
 - Recordkeeping for existing municipal solid waste landfill -- Control system monitor.

REVISED SECTIONS CONT.

- 74:36:137
 - ~~Recordkeeping~~ Recordkeeping for existing municipal solid waste landfill -- Control system monitor.

REVISED SECTIONS CONT.

- 74:36:137
 - ~~Recordkeeping~~ Recordkeeping for existing municipal solid waste landfill -- Control system monitor.
- 74:36:141(8)
 - Subsequent annual liquids reports shall contain items in subdivisions (1) through (6) for the 365-day period following the 365-day period included in the previous annual liquidsort, and the report shall be submitted no later than 365 days after the date the previous report was submitted;

REVISED SECTIONS CONT.

- 74:36:137
 - ~~Recordkeeping~~ Recordkeeping for existing municipal solid waste landfill -- Control system monitor.
- 74:36:141(8)
 - Subsequent annual liquids reports shall contain items in subdivisions (1) through (6) for the 365-day period following the 365-day period included in the previous annual ~~liquidsort-liquids report~~, and the report shall be submitted no later than 365 days after the date the previous report was submitted;

REVISED SECTIONS CONT.

- 74:36:08:59
 - **National emission standards for hazardous waste combusters.** The national emission standards for hazardous waste combusters are those in 40 C.F.R. § 63, Subpart EEE (July 1, 2018 July 1, 2024).

REVISED SECTIONS CONT.

- 74:36:08:59
 - **National emission standards for hazardous waste ~~combusters~~ combustors.**
The national emission standards for hazardous waste ~~combusters~~ combustors are those in 40 C.F.R. § 63, Subpart EEE (July 1, 2018 July 1, 2024).

REVISED SECTIONS CONT.

- 74:36:08:59
 - **National emission standards for hazardous waste ~~combusters~~ combustors.**
The national emission standards for hazardous waste ~~combusters~~ combustors are those in 40 C.F.R. § 63, Subpart EEE (July 1, 2018 July 1, 2024).
- 74:36:09:02
 - For the purposes of this chapter, the state's definitions and requirements for the prevention of significant deterioration are those in 40 C.F.R. § 52.21 (July 1, 2018), except for 40 C.F.R. § 52.21 (a)(1), (a)(2)(iv)(e), (b)(2)(iii)(h), (b)(3)(iii)(b), (b)(32), (b)(42), (b)(49)(v), (b)(55), (b)(56), (b)(57), (b)(58), (f), (k)(2), (q), (s), (t), (u), (x), (y), (z), and (cc) (July 1, 2018) with the following differences:

REVISED SECTIONS CONT.

- 74:36:08:59
 - **National emission standards for hazardous waste ~~combusters~~ combustors.**
The national emission standards for hazardous waste ~~combusters~~ combustors are those in 40 C.F.R. § 63, Subpart EEE (July 1, 2018 July 1, 2024).
- 74:36:09:02
 - For the purposes of this chapter, the state's definitions and requirements for the prevention of significant deterioration are those in 40 C.F.R. § 52.21 (~~July 1, 2018~~ July 1, 2024), except for 40 C.F.R. § 52.21(a)(1), (a)(2)(iv)(e), (b)(2)(iii)(h), (b)(3)(iii)(b), (b)(32), (b)(42), (~~(b)(49)(v), (b)(55), (b)(56), (b)(57), (b)(58),~~ (f), (k)(2), (q), (s), (t), (u), (x), (y), and (z), and (cc) (~~July 1, 2018~~ July 1, 2024) with the following differences:

REVISED SECTIONS CONT.

- 74:36:12:02(3)
 - For brief periods during soot blowing, start-up, shut-down, and malfunctions.

REVISED SECTIONS CONT.

- 74:36:12:02(3)
 - For brief periods during such operations as soot blowing, start-up, shut-down, and malfunctions.

REVISED SECTIONS CONT.

- 74:36:12:02(3)
 - For brief periods during such operations as soot blowing, start-up, shut-down, and malfunctions.
- 74:36:20:11
 - The department shall mail a copy of the draft permit to the applicant. The department shall publish a public notice of the draft permit once in a legal newspaper in the county where the source is located.

REVISED SECTIONS CONT.

- 74:36:12:02(3)
 - For brief periods during such operations as soot blowing, start-up, shut-down, and malfunctions.
- 74:36:20:11
 - The department shall ~~mail~~ provide a copy of the draft permit to the applicant. The department shall publish a public notice of the draft permit once in a legal newspaper in the county where the source is located.

REPEALED SECTIONS

- Chapter 74:36:05 – Operating Permits for Part 70 Sources
 - Provisions for permit emission exceedances due to emergencies (ARSD 74:36:05:16.01(18))
- Chapter 74:36:09 – Prevention of Significant Deterioration
 - Provisions for prevention of significant deterioration program (ARSD 74:36:09:02(6), ARSD 74:36:09:2(7), ARSD 74:36:09:02(8), ARSD 74:36:09:02(9), and ARSD 74:36:09:02(10))

NEW SECTIONS

- 74:36:07:14.01 – Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification after October 4, 2023.
- 74:36:07:22.02 – Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after April 25, 2023.
- 74:36:07:23.01 – Standards of performance for bulk gasoline terminals that construction, reconstruction, or modification commenced after June 10, 2022.

COMMENTS

PROPOSED AMENDMENTS

ARSD 74:36

AIR POLLUTION CONTROL PROGRAM

JUNE 2025

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1.0 Background

The Air Quality Program within the South Dakota Department of Agriculture and Natural Resources (DANR) implements federal air quality programs. There are several methods by which the U.S. Environmental Protection Agency (EPA) gives states approval to implement federal air quality programs. The more traditional method is for states to adopt rules and submit the state rules to EPA for implementation into what is known as a state implementation plan (SIP). For this process, EPA reviews the state's rules to determine if the rules are equivalent to the federal regulations. If the state's rules are equivalent, EPA approves the state's rules through a federal register notice.

A second method for administering a federal air quality program is to request delegation of the program. The first step in requesting delegation is to adopt state rules that are equivalent to the federal regulations. Adopting the federal regulations by reference is the simplest method DANR has found to achieve this goal.

A third method for administering a federal air quality program is to have the program approved. As with the first two methods of implementing a federal air quality program, the state must adopt rules that are equivalent to the federal program and submit the rules to EPA for approval.

The proposed revisions to South Dakota's Air Pollution Control Program are discussed in the following chapters and may be viewed in Appendix A.

2.0 Chapter 74:36:01 – Definitions

The terms used throughout Article 74:36 – Air Pollution Control Program are defined in Chapter 74:36:01. EPA approved sections 74:36:01:01 through 74:36:01:21 of this chapter into South Dakota's SIP.

Eight definitions in Chapter 74:36:01 reference federal regulations. The federal regulations are periodically updated to ensure these definitions are consistent with the federal regulations. For example, the definition of a volatile organic compound is revised periodically by EPA by adding compounds to the list of organic compounds that have negligible photochemical reactivity, and therefore, are not considered a volatile organic compound. The sections in Chapter 74:36:01 that require updating the reference date to the most current version of the federal reference as of July 1, 2024, involve the following:

1. 74:36:01:01(8);
2. 74:36:01:01(29);
3. 74:36:01:01(64);
4. 74:36:01:01(70);
5. 74:36:01:05(1);
6. 74:36:01:20(5);
7. 74:36:01:20(7); and
8. 74:36:01:20(8).

There is a National Ambient Air Quality Standard for Ozone. Ozone is formed by the reaction of volatile organic compounds and nitrogen oxides in the presences of sunlight. DANR has received comments that it is not clear that volatile organic compounds are considered a criteria pollutant. The other National Ambient Air Quality Standards are for sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, and lead. DANR will update the definition of “criteria pollutant” under 74:36:01:01(18) to clarify volatile organic compounds and nitrogen oxides are considered a criteria pollutant.

The proposed changes to Chapter 74:36:01 may be observed in Appendix A.

3.0 Chapter 74:36:02 – Ambient Air Quality

Chapter 74:36:02 establishes the air quality goals and ambient air quality standards for South Dakota. EPA approved sections 74:36:02:01 through 74:36:02:05 of this chapter into South Dakota’s SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota’s SIP and EPA’s federal regulations as of July 1, 2024.

EPA revised the National Ambient Air Quality Standard for particulate matter less than 2.5 microns (e.g. PM_{2.5}) on March 6, 2024, and for sulfur oxides on December 27, 2024. The revisions incorporate these new National Ambient Air Quality Standards.

The following sections in Chapter 74:36:02 involve this type of change:

1. 74:36:02:02;
2. 74:36:02:03;
3. 74:36:02:04; and
4. 74:36:02:05

The proposed changes to Chapter 74:36:02 may be observed in Appendix A.

4.0 Chapter 74:36:03 – Air Quality Episodes

Chapter 74:36:03 identifies the contingency plan DANR will follow during an air pollution emergency episode. EPA approved sections 74:36:03:01 and 74:36:03:02 of this chapter into South Dakota’s SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota’s SIP and EPA’s federal regulations as of July 1, 2024. These changes involve 74:36:03:01 and 74:36:03:02.

The proposed changes to Chapter 74:36:03 may be observed in Appendix A.

5.0 Chapter 74:36:04 – Operating Permits for Minor Sources

Chapter 74:36:04 is South Dakota's minor air quality operating permit program. EPA approved sections 74:36:04:01 through 74:36:04:33 of this chapter into South Dakota's SIP.

Changes are proposed to update a typographical error. The error is found in the Table of Contents for this chapter.

DANR has received requests to receive the permitting documents by email instead of by mail. To allow the use of email as a method of notification, changes are proposed to update language referring to how the department sends a copy of the draft permit for a minor source to the applicant. These changes involve section 74:36:04:12.

The proposed changes to Chapter 74:36:04 may be observed in Appendix A.

6.0 Chapter 74:36:05 – Operating Permits for Part 70 Sources

Chapter 74:36:05 is South Dakota's Title V air quality operating permit program, which is also referred to as an Operating Permit for Part 70 Sources program. Title V air quality operating permit programs are not part of South Dakota's SIP; however, EPA has approved South Dakota's program. This program is located in sections 74:36:05:01 through 74:36:05:52.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This will update any minor inconsistency between South Dakota's approved program and EPA's federal regulations as of July 1, 2024. These changes involve sections 74:36:05:04 and 74:36:05:16.01.

There is a typographical error in Section 74:36:05:04.01, DANR proposed to update this typographical error.

EPA has removed 40 CFR Part 70.6(g) from the federal regulations. To maintain approval of the Title V permitting program, DANR proposes to remove Section 74:36:05:16.01(18).

The proposed changes to Chapter 74:36:05 may be observed in Appendix A.

7.0 Chapter 74:36:07 – New Source Performance Standards

Chapter 74:36:07 includes all of the federal new source performance standards DANR has adopted by reference to maintain delegation of this program. The following three sections are not delegated, but are included in South Dakota's SIP:

1. 74:36:07:08 – Ash disposal requirements
2. 74:36:07:29 – Operating requirements for wire reclamation furnaces; and
3. 74:36:07:30 – Monitoring requirements for wire reclamation furnaces.

The ash disposal requirements are for municipal waste combustors and reference Article 74:27, which are DANR's solid waste requirements. The sections on wire reclamation furnaces were developed to ensure existing wire reclamation furnaces were minimizing air emissions and conducting monitoring to ensure compliance. None of these sections are being revised at this time.

This chapter was last updated in September 2019, when the federal regulations promulgated as of July 1, 2018, were adopted by reference. The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's rules and EPA's federal regulations as of July 1, 2024. There are also some minor changes that are typographical in nature that DANR is proposing to make at this time.

There is a typographical error in Section 74:36:07:105, DANR proposed to update this typographical error.

There is a typographical error in Section 74:36:07:141(8), DANR proposed to update this typographical error.

EPA has promulgated new standards since the last update to this chapter. The following sections are proposed to be included into South Dakota's rules.

- 74:36:07:22.02. National emission standards for Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after April 25, 2023.
- 74:36:07:14.01. National emission standards for volatile organic liquid storage vessels for which construction, reconstruction, or modification commenced after October 4, 2023.
- 74:36:07:23.01. National emission standards for bulk gasoline terminals that construction, modification, or reconstruction commenced after June 10, 2022.

7.1 74:36:07:22.02

This federal regulation establishes standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after April 25, 2023. This standard is located in 40 CFR Part 60 Subpart VVb (July 1, 2024). DANR is proposing to adopt this standard by reference.

7.2 74:36:07:14.01

This federal regulation establishes standards of performance for volatile organic liquid storage vessels for which construction, reconstruction, or modification commenced after October 4, 2023. This standard is located in 40 CFR Part 60, subpart Kc. DANR is proposing to adopt this standard by reference.

7.3 74:36:07:23.01

This federal regulation establishes standards of performance for bulk gasoline terminals for which construction, reconstruction, or modification commenced after June 10, 2022. This standard is located in 40 CFR Part 60, subpart XXa. DANR is proposing to adopt this standard by reference.

The proposed changes to Chapter 74:36:07 may be observed in Appendix A.

8.0 Chapter 74:36:08 – National Emission Standards for Hazardous Air Pollutants

Chapter 74:36:08 includes the federal regulations DANR has adopted by reference to maintain delegation of federal standards applicable to hazardous air pollutants.

The revision process for chapter 74:36:08 is similar to the revision process for chapter 74:36:07. The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's rules and EPA's federal regulations as of July 1, 2024. There are 138 sections in this chapter. All but the first section is being revised.

Changes are proposed to update a typographical error. The error is found in section 74:36:08.59.

The proposed changes to Chapter 74:36:08 may be observed in Appendix A.

9.0 Chapter 74:36:09 – Prevention of Significant Deterioration

Chapter 74:36:09 is DANR's Prevention of Significant Deterioration preconstruction permit program for large sources in areas of the state that attain the federal National Ambient Air Quality Standards identified in Chapter 74:36:02. EPA approved the Prevention of Significant Deterioration preconstruction permit program in South Dakota's SIP. The Prevention of Significant Deterioration preconstruction permit program consists of sections 74:36:09:01 through 74:36:09:03 of this chapter.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These changes involve sections 74:36:09:02 and 74:36:09:03.

The proposed changes to Chapter 74:36:09 may be observed in Appendix A.

10.0 Chapter 74:36:10 – New Source Review

Chapter 74:36:10 is DANR's new Source Review preconstruction permit program for large sources in areas of the state that are not attaining the federal National Ambient Air Quality Standards identified in Chapter 74:36:02. All of the state of South Dakota is in attainment with

the federal National Ambient Air Quality Standards; therefore, no facilities require a preconstruction permit under this program. EPA approved sections 74:36:10:01 through 74:36:10:08 of this chapter into South Dakota's SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These changes involve the following sections:

1. 74:36:10:02;
2. 74:36:10:03.01;
3. 74:36:10:05;
4. 74:36:10:07; and
5. 74:36:10:08.

The proposed changes to Chapter 74:36:10 may be observed in Appendix A.

11.0 Chapter 74:36:11 – Performance Testing

Chapter 74:36:11 identifies the performance testing requirements used by permitted facilities to demonstrate compliance with permit limits. EPA approved sections 74:36:11:01 through 74:36:11:04 of this chapter into South Dakota's SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These changes involve section 74:36:11:01.

The proposed changes to Chapter 74:36:11 may be observed in Appendix A.

12.0 Chapter 74:36:12 – Control of Visible Emissions

Chapter 74:36:12 identifies visible emission limits for units that emit air pollution. EPA approved sections 74:36:12:01 through 74:36:12:03 of this chapter into South Dakota's SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These changes involve sections 74:36:12:01 and 74:36:12:03.

South Dakota's opacity requirements do not apply during such operations as soot blowing, startup, shutdown, and malfunctions. However, the wording in section 74:36:04:12(3) does not include "such operations as". Changes to section 74:36:12:02 are proposed to add this phrase.

The proposed changes to Chapter 74:36:12 may be observed in Appendix A.

13.0 Chapter 74:36:13 – Continuous Emission Monitoring Systems

Chapter 74:36:13 identifies the continuous emission monitoring requirements for sources required to install continuous monitoring equipment by the Secretary. EPA approved sections 74:36:13:01 through 74:36:13:07 of this chapter into South Dakota's SIP.

Section 74:36:13:08 is not part of South Dakota's SIP but was approved by EPA as part of South Dakota's Title V air quality operating permit program noted in Chapter 74:36:05.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP, approved Title V permitting program, and EPA's federal regulations as of July 1, 2024. These changes involve the following sections:

1. 74:36:13:02;
2. 74:36:13:03;
3. 74:36:13:04;
4. 74:36:13:06;
5. 74:36:13:07; and
6. 74:36:13:08.

The proposed changes to Chapter 74:36:13 may be observed in Appendix A.

14.0 Chapter 74:36:16 – Acid Rain Program

South Dakota's Acid Rain Program is similar to Chapter 74:36:07 – New source performance standards and Chapter 74:36:08 – National emission standards for hazardous air pollutants. This chapter is delegated to South Dakota by EPA.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These changes involve the following sections:

1. 74:36:16:01;
2. 74:36:16:02;
3. 74:36:16:04; and
4. 74:36:16:05.

The proposed changes to Chapter 74:36:16 may be observed in Appendix A.

15.0 Chapter 74:36:18 – Regulations for State Facilities in the Rapid City Area

Chapter 74:36:18 is part of South Dakota's SIP and EPA approved sections 74:36:18:01 through 74:36:18:12 of this chapter into South Dakota's SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These changes involve section 74:36:18:10.

The proposed changes to Chapter 74:36:18 may be observed in Appendix A.

16.0 Chapter 74:36:20 – Construction Permits for New Sources or Modifications

Chapter 74:36:20 requires an air quality construction permit for new businesses/facilities and existing businesses/facilities that modify their operations that do not meet the requirements for obtaining a preconstruction permit in Chapters 74:36:09 and 74:36:10. Chapter 74:36:20 is part of South Dakota's SIP and EPA approved sections 74:36:20:01 through 74:36:20:24 of this chapter into South Dakota's SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. These proposed changes involve section 74:36:20:05.

DANR has received requests to receive the permitting documents by email instead of by mail. To allow the use of email as a method of notification, changes are proposed to update language referring to how the department sends a copy of the draft construction permit to the applicant. These changes involve section 74:36:20:11.

The proposed changes to Chapter 74:36:20 may be observed in Appendix A.

17.0 Chapter 74:36:21 – Regional Haze Program

Chapter 74:36:21 contains the requirements DANR agreed to as part of South Dakota's Regional Haze Program. EPA approved sections 74:36:21:01 through 74:36:21:12 of this chapter into South Dakota's SIP.

The reference date for the federal regulation is proposed to be updated to the most current version of the federal reference of July 1, 2024. This revision will update any minor inconsistency between South Dakota's SIP and EPA's federal regulations as of July 1, 2024. The proposed changes involve the following sections:

1. 74:36:21:02;
2. 74:36:21:04;
3. 74:36:21:05; and
4. 74:36:21:09.

The proposed changes to Chapter 74:36:21 may be observed in Appendix A.

Board of Minerals and Environment
Notice of Public Hearing to Adopt Rules
Mined Land Reclamation

A public hearing will be held by the South Dakota Board of Minerals and Environment in the Matthew Environmental Education and Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, SD 57501 on July 17, 2025, at 10:00 a.m. CDT to consider the adoption and amendment of proposed rules numbered

§§ 74:29:01:02; 74:29:01:07; 74:29:10:19; 74:29:12:01; 74:29:12:02; 74:29:12:03;
74:29:12:04; 74:29:12:05; 74:29:12:06; 74:29:12:07; 74:29:12:08; 74:29:12:09;
74:29:12:10; 74:29:12:11; 74:29:12:12; 74:29:12:13; 74:29:12:14; 74:29:12:15;
74:29:12:16; 74:29:12:17; 74:29:12:18

The effect of the rules will be to clarify the requirements that permitted mine operators must meet when posting financial assurance to cover reclamation and postclosure liability, and to adjust certain mine permit application timing requirements.

§ 74:29:01:02 – removes unnecessary details regarding computation of time associated with processing of permit applications;

§ 74:29:01:07 – changes the Department of Agriculture and Natural Resources’ timeline for reviewing and responding to an applicant’s response to deficiencies in a mine permit application from seven days to thirty days;

§ 74:29:10:19 – changes the requirement for board hearings to consider nominating petitions for updating the preliminary list of special, exceptional, critical or unique lands from annual to as needed; and

§§ 74:29:12:01 – 74:29:12:18 (New Chapter) – clarifies requirement that permitted mine operators must meet when posting financial assurance to cover reclamation and postclosure liability and clarifies surety requirements pertaining to long term water treatment costs.

The reasons for adopting the proposed rules are to provide clear financial assurance requirements for permitted mine operators, and to adjust cumbersome mine permit application timing requirements.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by participating in the hearing or by sending them to the South Dakota Department of Agriculture and Natural Resources, Minerals, Mining, and Superfund Program, 523 East Capitol Avenue, Pierre, South Dakota 57501. Interested persons may participate in the hearing at the Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, South Dakota. Material sent by mail must reach the Department of Agriculture and Natural Resources by July 11, 2025, to be considered.

After the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture and Natural Resources at least 48 hours before the public hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making special arrangements is (605) 773-4201.

An electronic version of the rules is available on the department's public notice website at <https://danr.sd.gov/public/default.aspx> and the Minerals, Mining, and Superfund website at <https://danr.sd.gov/Environment/MineralsMining/default.aspx> or copies of the proposed rules may be obtained without charge from the

South Dakota Department of Agriculture and Natural Resources
Minerals, Mining, and Superfund Program
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501
Phone: (605) 773-4201

Hunter Roberts
Secretary of the Department of Agriculture and Natural Resources

BOARD OF MINERALS AND ENVIRONMENT

HEARING FOR ADOPTION OF ARSD 74:29:12 AND AMENDMENTS TO ARSD 74:29:01 AND 74:29:10

JULY 17, 2025



PROPOSED CHANGES TO ARSD 74:29

Rule amendments:

Chapter 74:29:01 - Permit Application – Filing and Review

**Chapter 74:29:10 - Special, Exceptional, Critical, or Unique
Lands**

New proposed Chapter:

Chapter 74:29:12 - Reclamation and Financial Assurance

INDUSTRY COMMENTS

- Proposed rule changes were sent out for review to the mine operators in the state
- Received some comments on a few of the proposed rule changes and amendments
- Comments will be presented for the applicable rules
- DANR response will be addressed and any proposed modifications that were made based on comments received

LEGISLATIVE RESEARCH COUNCIL

- The Legislative Research Council (LRC) completed their review of the rules in early July 2025. Many changes on the proposed rules were style and form changes which were incorporated into the final draft
- LRC did provide additional questions and comments on some of the proposed rules which prompted DNR to recommend additional changes to the proposed regulations for consideration by the Board. These proposed changes will be presented in this presentation

PROPOSED REVISIONS TO CHAPTER 74:29:01 PERMIT APPLICATION- FILING AND REVIEW

- Article 74:29 applies to mine permit applications filed under SDCL 45-6B
- The proposed revisions update department review timelines for a mine permit application
 - Make the rules more consistent with other permits issued by the department
 - Allow longer review time for department necessary for larger, more complex permits
 - Removes unnecessary definition of review timeline calculation

RULES FOR REVIEW TIMELINES

➤ 74:29:01:02 Computation of Time

- Currently defines a review period of “less than 7 days” to exclude Saturdays, Sundays, and legal holidays from the computation of time

➤ 74:29:01:07 Determination of Procedural Completeness

- Currently allows for secondary review timeline to provide a written response of application adequacy to applicant “within 7 days” of receipt of deficiency response by applicant

PROPOSED CHANGES TO REVIEW TIMELINES

General changes:

- Calculation of a timeline for less than 7 days outlined in ARSD 74:29:01:02
 - Remove definition from regulation
- Modify allowed timeline for secondary review in ARSD 74:29:01:07
 - Initial review is set at 30 days, and all subsequent reviews are to be completed within 7 days
 - Change would allow for subsequent reviews to be set at 30 days

ARSD 74:29:01:02

74:29:01:02. Computation of time. In computing any time period prescribed by this article, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. ~~When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.~~

ARSD 74:29:01:07

74:29:01:07. Determination of procedural completeness. The department shall determine the procedural completeness of a permit application as follows:

- (1) Within 30 days after submission of an application, the department shall notify the applicant in writing whether the application is procedurally complete;
- (2) An application is considered filed on the final day of the initial 30-day review period if it is procedurally complete; if the application is procedurally incomplete, the department shall identify in the notification the items required to complete the application. The department shall determine the adequacy of the applicant's response to the notice of deficiencies and shall notify the applicant in writing of the adequacy of the response within ~~7~~30 days after receipt of the response. If the response is adequate, the application is considered filed;
- (3) If the response is inadequate, the applicant may do one of the following:
 - (a) Submit additional information necessary to complete the application;
 - (b) Request in writing that the application be considered filed; or
 - (c) Withdraw the application.

If additional information is submitted to complete the application, the procedure in subdivision (2) of this section shall be followed.

ARSD 74:29:01:07

(2) An application is considered filed on the final day of the initial 30-day review period if it is procedurally complete; if the application is procedurally incomplete, the department shall identify in the notification the items required to complete the application. The department shall determine the adequacy of the applicant's response to the notice of deficiencies and shall notify the applicant in writing of the adequacy of the response within ~~7~~30 days after receipt of the response. If the response is adequate, the application is considered filed;

REASONS FOR PROPOSED CHANGES TO ARSD 74:29:01

74:29:01:02 – Computation of time

- Calls for definition of timelines for less-than 7 days. However, there are currently no 7-day timelines in the mine permit review process. The closest review timeline is addressed in ARSD 74:29:01:07
 - ARSD 74:29:01:02 uses “less than 7 days” meaning 6 days or less
 - ARSD 74:29:01:07 uses “within 7 days” meaning 7 days or less

Due to differences for the wording, the definition is not applicable for current established review timelines

In addition, we are asking for an increase from the 7 day deadline to 30 days in the proposed rule modifications

REASONS FOR PROPOSED CHANGES TO ARSD 74:29:01

74:29:01:07 – Determination of Procedural Completeness

- Secondary review timeline is only 7 days. Since the establishment of this rule, mine permit applications have become increasingly more complex to ensure all items are addressed adequately and appropriately address environmental concerns, prevention, mitigation, remediation, and reclamation
- Review often involves multiple Departments (i.e. GFP, DOE), as well as multiple programs within the DANR
- Concurrent technical review

COMMENTS FROM INDUSTRY

- One comment was received regarding the proposed change to ARSD 74:29:01:07
 - No objection to increasing the secondary review to 30 days
 - Concern over the possibility of the review timeline being extremely difficult and prolonged
 - Requested items addressed in the initial letter be the only items addressed during subsequent reviews
- Department response
 - Complexity of permits over what had been when rules enacted
 - Permits already streamlined as much as possible
 - Reviews are largely dependent on applicants' thoroughness and clarity in addressing application requirements

RULE FOR SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS

- **Preliminary List of Special, Exceptional, Critical, or Unique Lands**
 - Designation provided to lands deemed to have significant features that may require special mitigative measures during mining or prohibit mining activities
 - Request for Determination submitted prior to any mine permit application
 - Nominating petitions may only be submitted during annual update of preliminary list

RULE FOR SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS

- **74:29:10:19 Board update of preliminary list.**
 - Currently regulation allows an annual update of the preliminary list
 - An annual notice is published in which the Board solicits nominating petitions from the public to update the preliminary list

PROPOSED CHANGE TO RULE FOR SPECIAL, EXCEPTIONAL, CRITICAL, OR UNIQUE LANDS

General changes:

- Remove requirement for publishing the annual public notice
- Allow submittal of nominating petitions by the public throughout the year rather than the annual update period

ARSD 74:29:10:19

74:29:10:19. Board update of preliminary list. Following the establishment of the initial preliminary list, the board shall ~~annually~~ hold a hearing to consider any nominating petitions received ~~during the preceding year~~ at any time by the department to update the preliminary list. ~~The notification and publication requirements of subdivision 74:29:10:17(4) shall be followed prior to the hearing.~~ The board shall publish a notice of the time, date, and location of the hearing in a newspaper of general circulation within the county where any lands being nominated to the preliminary list are located. The notice shall be published once a week for two consecutive weeks immediately prior to the hearing.

LRC PROPOSED MODIFICATION AND DANR RECOMMENDATION

74:29:10:19. Board update of preliminary list. Following the establishment of the initial preliminary list, the board shall ~~annually~~ hold a hearing to consider any petition nominating ~~petitions received during the preceding year~~ lands for inclusion on the preliminary list. The board shall hold the hearing within one hundred twenty days of receiving the petition. The notification and publication requirements of subdivision 74:29:10:17(4) shall be followed prior to the hearing.

REASONS FOR PROPOSED CHANGES TO ARSD 74:29:10

74:29:10:19 – Board update of preliminary list

- Remove annual public notice requirement
 - No petitions submitted during annual update period since 1992
- Allows greater flexibility for submittal of nominating petition
- No comments received from industry

ARSD 74:29:12 – RECLAMATION AND POSTCLOSURE FINANCIAL ASSURANCE

- 2024 SD Legislature approved SB 111
- Granted approval for BME to promulgate rules to establish a procedure for posting and monitoring financial assurance - SDCL 45-6B-81(11)
- The new proposed rules allow for clarity on several issues, including:
 - What is considered when establishing a bond
 - Types of bonds
 - Expectations and requirements for each bond type
 - Operator bankruptcy
 - Board refusal of a bond, and
 - Review of financial assurance amounts

ARSD 74:29:12:01

74:29:12:01. Financial assurance cost elements. The required financial assurance shall be in an amount sufficient to cover the costs to the Department of hiring a third-party contractor to conduct reclamation and postclosure activities. The Department shall at a minimum consider the following in calculating reclamation surety and/or postclosure financial assurance amounts:

- 1) The amount of disturbed and reclaimed acreage and volume of material to be hauled or moved;
- 2) Backfilling, slope reduction, contouring, regrading, and topsoil placement;
- 3) Seedbed preparation, seeding, mulching, and fertilizing;
- 4) Drainage, sedimentation and erosion control;
- 5) Removal and disposal of buildings, foundations, chemicals, and debris;
- 6) Fencing and other site access control;

ARSD 74:29:12:01 (CONT'D)

- 7) Water treatment;
- 8) Water quality and other monitoring;
- 9) Heavy equipment normally available to a third-party contractor;
- 10) Heavy equipment, labor, and supervision costs;
- 11) Maintenance and replacement of mine facilities such as pond liners, capping systems, water treatment facilities, and monitoring equipment;
- 12) Noxious weed control; and
- 13) Mobilization/demobilization, contingency, contractor profit and overhead, contract administration, scope and bid, engineering and consulting, and state excise tax costs.

LRC COMMENT AND DANR RECOMMENDATION

- LRC provided a comment indicating it appeared the factors listed were a minimum number of factors and if the department should be allowed to consider other factors as a catchall subdivision (14)
- DANR agreed with this comment and drafted the following:
 - (14) Other factors determined necessary to include in the calculation during review of the mine permit application or inspection of the proposed mine site.
 - DANR recommends including subdivision (14) outlined above to ARSD 74:29:12:01

ARSD 74:29:12:02

74:29:12:02. Long term water treatment costs. For mine permits in which long term water treatment is required, the operator shall submit estimated capital and replacement costs of the treatment system and estimated annual treatment costs to the Department for review and verification prior to inclusion in the financial assurance calculation. A ten percent contingency cost shall be applied to the total capital and annual treatment costs. The Board may require more than a ten percent contingency cost as needed. The Department shall use its own estimate if it cannot verify the accuracy of the operator's estimate.

INDUSTRY COMMENTS AND DANR RESPONSES

- Wanted a clearer definition for 'water treatment system', confusion on why there should be replacement costs for entire 'water treatment system considered in bond estimates, and 'water treatment system' vs 'water treatment equipment'
 - Water treatment system is to encompass all parts and equipment associated with the long-term water treatment for a site. This would include pumps, pipelines, ponds, tanks, hoses, etc. Not all equipment has to be replaced on an annual basis, but regular wear and tear of the various components would require those components to be replaced at some point in the future which must be accounted for in the bond

INDUSTRY COMMENTS AND DANR RESPONSES

- Concern that 74:29:12:02 and 74:29:12:17 are duplicative
 - These are not duplicative. 74:29:12:02 identifies long-term water treatment costs for bonding estimates. 74:29:12:17 identifies limiting or prohibiting creditors from removing essential water treatment equipment from a site upon an operators' declaration of bankruptcy
- Concern on utilizing a 25% contingency for water treatment costs and a “one-size-fits-all” approach
 - The 25% contingency was modeled after the state of Kentucky. However, the department agreed the contingency may be adapted upon consideration of the appropriate level of risk associated with long-term water treatment at a site. We modified the regulation to provide for a 10% contingency which may be adjusted at the Board's discretion

ARSD 74:29:12:03

74:29:12:03. Building salvage value not allowed. Credit for salvage value of buildings and other structures or abandoned equipment and supplies shall not be allowed in a financial assurance calculation.

ARSD 74:29:12:04

74:29:12:04. Forms of Financial Assurance. The Board of Minerals and Environment may accept the following forms of financial assurance:

- 1) Surety bonds;
- 2) Certificates of deposit;
- 3) Irrevocable letters of credit;
- 4) Cash;
- 5) Government securities; and
- 6) A combination of any of the above.

The Board shall not accept any type of self-bond agreement or corporate guarantee for the required financial assurance.

ARSD 74:29:12:05

74:29:12:05. Surety bonds. Surety bonds are subject to the following requirements:

- (1) The operator shall submit a fully executed corporate surety bond on a form provided by the Department and signed by the operator as principal and by a surety insurer certified under chapter 58-21.
- (2) A surety bond may only be cancelled after approval by the Board of Minerals and Environment. The surety company must give proper written notification, mailed by certified mail return receipt requested, to the Board and the operator one hundred fifty days prior to cancellation. In the event of cancellation, the surety bond will remain in full force and effect and the surety company will not be relieved of its liability to cover all reclamation and postclosure liabilities and obligations accrued prior to the date of cancellation unless the operator submits replacement financial assurance that is accepted by the Board of Minerals and Environment. The Department may proceed with surety bond forfeiture if replacement financial assurance is not submitted and accepted by the Board no later than ninety days after the notice of cancellation is received by the operator. The surety company shall be liable for payment of the forfeited surety bond.

ARSD 74:29:12:05 CONT'D

- 3) The surety bond shall not constitute an asset of the operator and may not be canceled, assigned, revoked, disbursed, replaced, or allowed to terminate without board approval. The surety bond may not be assigned for the benefit of creditors, attached, garnished, levied, or executed on, or subject to process issued from any court except for the purpose of enabling the state of South Dakota to effectuate reclamation and environmental cleanup.
- 4) The surety bond must be payable to the Department in full upon demand and receipt from the Department of a notice that the operator has failed to comply with the provisions of Chapter 45-6B, the rules adopted thereunder, or the mine permit, the failure of which authorizes forfeiture of the surety bond.
- 5) The surety company is required to have a minimum of twenty million dollars in net worth.

ARSD 74:29:12:05 CONT'D

- 6) The board may not accept a surety bond in excess of ten percent of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant for the most recent annual reporting period attached to the surety bond.
- 7) The board may not accept a surety bond from a surety company for any operator, on all permits held by that operator, in excess of three times the company's maximum single obligation as provided in (6).
- 8) The board may not accept a surety bond from a surety company for any operator, on all permits held by that operator, unless the surety company is licensed with the South Dakota Division of Insurance and is listed in the United States Department of the Interior Circular 570 as revised.

ARSD 74:29:12:05 CONT'D

- 9) The operator must provide evidence that the surety company issuing the surety bond is in good financial standing and condition, as evidenced by its ratings from nationally recognized rating organizations. AM Best ratings shall be at an A- or better or its equivalent based on other organization's rating scales.
- 10) A power of attorney and a notarized attorney-in-fact acknowledgement must be attached to the surety bond.
- 11) The surety bond shall provide that the surety and the operator shall be jointly and severally liable.
- 12) The surety bond must provide a mechanism for the surety company to give prompt notice to the Department and the operator of any action alleging bankruptcy or insolvency of the surety company or violation that would result in suspension or revocation of the license of the surety company.

INDUSTRY COMMENT AND DANR RESPONSE

- Industry had concern on the timeline for submittal and review of a replacement surety prior (ARSD 74:29:12:05(2))
 - DANR agreed to extend the deadline for surety company notification from 120 to 150 days and allow for 90 days to submit a replacement surety rather than the originally proposed 60 days
 - This still gives DANR 60 days to proceed with surety forfeiture in the event a replacement surety is not submitted

ARSD 74:29:12:05(2)

- A surety bond may only be cancelled after approval by the Board of Minerals and Environment. The surety company must give proper written notification, mailed by certified mail return receipt requested, to the Board and the operator one hundred fifty days prior to cancellation. In the event of cancellation, the surety bond will remain in full force and effect and the surety company will not be relieved of its liability to cover all reclamation and postclosure liabilities and obligations accrued prior to the date of cancellation unless the operator submits replacement financial assurance that is accepted by the Board of Minerals and Environment. The Department may proceed with surety bond forfeiture if replacement financial assurance is not submitted and accepted by the Board no later than ninety days after the notice of cancellation is received by the operator. The surety company shall be liable for payment of the forfeited surety bond.

ARSD 74:29:12:06

74:29:12:06. Certificates of Deposit. Certificates of deposit are subject to the following requirements:

- (1) The board may accept as financial assurance an assignment of a certificate of deposit in a denomination not in excess of \$100,000, or the maximum insurable amount as determined by FDIC and FSLIC, whichever is less. The board may not accept a combination of certificates of deposit for one operator from one institution in excess of that limit.
- (2) The board may accept only automatically renewable certificates of deposit from a United States bank insured by the Federal Deposit Insurance Corporation, or a United States credit union insured by the National Credit Union Administration.

ARSD 74:29:12:06 CONT'D

- 3) The certificate of deposit shall not constitute an asset of the operator and may not be canceled, assigned, revoked, disbursed, replaced, or allowed to terminate without board approval. The certificate of deposit may not be assigned for the benefit of creditors, attached, garnished, levied, or executed on, or subject to process issued from any court except for the purpose of enabling the state of South Dakota to effectuate reclamation and environmental cleanup.
- 4) The board shall require that each certificate of deposit be made payable to or assigned to the state of South Dakota/Department of Agriculture and Natural Resources, both in writing and in the records of the bank issuing the certificate. The board shall require banks issuing these certificates to waive all rights of setoff or liens against these certificates.
- 5) The original certificate of deposit shall be submitted to the Department and held by the Department until released by the Board of Minerals and Environment.

ARSD 74:29:12:06 CONT'D

- 6) The operator must provide evidence that the bank issuing the certificate of deposit is in good financial standing and condition, as evidenced by its rating by an appropriate rating system on an annual basis.
- 7) The board shall require the operator to deposit sufficient amounts of certificates of deposit, to ensure the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of financial assurance required.
- 8) In addition to the financial assurance amount, the certificate of deposit must include the amount of the maximum early withdrawal penalty rounded up to the next higher hundred dollars.

ARSD 74:29:12:06 CONT'D

- 9) The operator shall have the option of rolling any accrued interest back into the certificate of deposit principal to cover any increases in the face value due to any financial assurance increases. Otherwise, any accrued interest may be deposited into the operator's individual account and is free of encumbrance by financial assurance liability.
- 10) In the event of forfeiture of a certificate of deposit, the face value of the certificate plus any accrued interest that has been rolled back into the certificate's principal will be subject to bond liability and expenditure in the performance of reclamation.

ARSD 74:29:12:07

74:29:12:07. Irrevocable Letters of Credit. Irrevocable letters of credit are subject to the following requirements:

- (1) The letter of credit must be irrevocable and automatically extended for additional periods of one year from the expiration date unless the bank notifies the Department in writing at least one hundred fifty days prior to the expiration date that it elects not to renew the letter of credit. If the letter of credit has not been replaced by suitable financial assurance at least ninety days prior to the expiration date, the letter of credit shall be forfeited to the Department and collected upon by the Department.
- (2) The irrevocable letter of credit must be issued by a FDIC insured bank organized and authorized to do business in the United States and located in the state of South Dakota, except that the bank need not be located in the state of South Dakota if the irrevocable letter of credit can be exercised at an affiliate or subsidiary located in the state of South Dakota, or is confirmed by a bank located in the state of South Dakota, or at the Board's discretion is determined to be an acceptable letter of credit. 39

ARSD 74:29:12:07 CONT'D

- 3) The irrevocable letter of credit shall be executed on the issuing bank's letterhead using the language provided by the Department. The Department is required to be listed as the beneficiary on the letter of credit.
- 4) The irrevocable letter of credit must be payable to the Department in full upon demand and receipt from the Department of a notice that the operator has failed to comply with the provisions of Chapter 45-6B, the rules adopted thereunder, or the mine permit, the failure of which authorizes forfeiture of the letter of credit.
- 5) The operator must provide evidence that the bank issuing the irrevocable letter of credit is in good financial standing and condition, as evidenced by its rating by an appropriate rating system.

ARSD 74:29:12:07 CONT'D

- 6) The irrevocable letter of credit must provide that, upon expiration, if the Department has not notified the bank in writing that substitute financial assurance has been provided or is not required, the bank will immediately pay the Department the full amount of the irrevocable letter of credit less any previous drafts.
- 7) The board shall not accept an irrevocable letter of credit in excess of 10 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.
- 8) The board shall not accept irrevocable letters of credit for any operator, on all permits held by that operator, in excess of 30 percent of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

ARSD 74:29:12:07 CONT'D

- 9) Using the balance sheet referenced in (7) and a certified income and revenue sheet, the bank must meet the three following criteria:
- a. The bank must be earning at least a one percent rate of return on total assets (net income/total assets = 0.01 or more);
 - b. The bank must be earning at least a 10 percent return on equity (net income/total stockholders' equity = 0.10 or more); and
 - c. Capital or stockholder's equity must be at least 5.5 percent of total assets ((total stockholder's equity [capital stock + retained earnings])/total assets = 0.055 or more).
- ~~10) The board may not accept irrevocable letters of credit from a bank for any operator, on all permits held by that operator, in excess of three times the company's maximum single obligation.~~[Duplicative subsection deleted]

ARSD 74:29:12:07 CONT'D

- 11) The bank's qualifications must be reviewed annually prior to the time the letter of credit is renewed.
- 12) The irrevocable letter of credit shall provide that:
 - a. The bank will give prompt notice to the operator and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank or operator, or alleging any violations of regulatory requirements which could result in suspension or revocation of the bank's charter or license to do business; and
 - b. In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the operator and the Department.

INDUSTRY COMMENT AND DANR RESPONSE

- Industry had concern on the timeline for submittal and review of a replacement ILOC prior. (ARSD 74:29:12:07(1))
 - DANR agreed to extend the deadline for bank notification from 120 to 150 days and allow for 90 days to submit a replacement ILOC rather than the originally proposed 60 days
 - This still gives DANR 60 days to proceed with letter of credit forfeiture in the event a replacement surety is not submitted

ARSD 74:29:12:08

74:29:12:08. Cash Deposits. Cash deposits shall be subject to the following requirements:

- (1) The operator may meet financial assurance obligations by establishing a cash account with the state of South Dakota.
- (2) The Department will only accept cash in the form of a cashier's check in the name of the operator. Individuals may not submit a cashier's check on behalf of a corporation.
- (3) Any interest earned on the state account shall be payable to the state.

ARSD 74:29:12:09

74:29:12:09. Government Securities. Government securities shall be subject to the following requirements:

- (1) Government securities are backed by the full faith and credit of the United States Government shall be purchased from a United States bank or broker.
- (2) The Government Securities shall have an approximate minimum initial maturity of 5 years from date of the Board's acceptance of the security
- (3) Government Securities shall be registered to a custody agent (bank or broker) approved by the Board of Minerals and Environment and pledged to the Board of Minerals and Environment and held in a joint account with the banker or broker.
- (4) All interest shall be paid to the operator.
- (5) The Board shall accept the value of the Government Securities at one hundred percent applied to the lower of the face value or the market value of the Government Securities on an annual basis.

ARSD 74:29:12:09 CONT'D

- 6) The only authorized signatory on the account is the chairman of the Board of Minerals and Environment.
- 7) The operator shall provide to the Board a Book Entry receipt and an assignment of the Government securities to the Board.
- 8) Fees associated with the purchase and maintenance of the Government securities are the responsibility of the operator.
- 9) The custody agent shall provide monthly statements of the account to the Department.
- 10) If the market value of the Government securities drops below the required ninety percent of face value, the operator will submit additional funds or post additional financial assurance up to the required financial assurance amount.

INDUSTRY COMMENT AND DANR RESPONSE

- Industry expressed concern on original version where we had denoted that we would only accept 90% of the face value of a Government Security. (ARSD 74:29:12:09(5))
 - Department reviewed the comment and discussed concern with the South Dakota Investment Council which suggested the current proposed language
- 5) The Board shall accept the value of the Government Securities at one hundred percent applied to the lower of the face value or the market value of the Government Securities on an annual basis.

ARSD 74:29:12:10

74:29:12:10. Authorized Signers. A certificate of deposit, surety bond, or letter of credit shall only be signed by a person or persons authorized by the operator. A notarized letter with the operator's letterhead shall be submitted to the Department which lists the person or persons authorized to sign financial assurance documents on behalf of the operator. In the event that authorized signers change, the operator shall submit a letter listing the new authorized signers within 30 days after the change.

ARSD 74:29:12:11

74:29:12:11. Insolvency or bankruptcy of surety company or bank. If the Department determines that a surety company or bank, by reason of bankruptcy, insolvency, or suspension or revocation of its license, has become unable to fulfill its obligations, the operator shall be deemed to be without financial assurance. The Department shall notify the operator in writing of the absence of financial assurance and specify a reasonable period, not to exceed ninety days, to replace financial assurance coverage. If adequate financial assurance is not posted by the end of the period allowed, the Department shall issue the operator a cease and desist order. The operator shall immediately begin reclamation of the mine in accordance with this act, the regulations promulgated thereunder, and the reclamation plan. Mining operations shall not resume until the Department has determined that acceptable financial assurance has been posted.

ARSD 74:29:12:12

74:29:12:12. Provisions for recovery of forfeiture costs. The board shall recover the costs involved, including attorney's fees, in the forfeiture of financial assurance. Estimated forfeiture costs shall be included in the calculated reclamation surety and/or postclosure financial assurance amount.

ARSD 74:29:12:13

74:29:12:13. Provisions for refusal for board to accept financial assurance.

The board may refuse to accept any form of financial assurance if the value of the financial assurance is dependent upon the success, profitability, or continued operation of the mine or the board determines that the financial assurance offered cannot be reasonably converted to cash within one hundred eighty days of forfeiture.

ARSD 74:29:12:14

74:29:12:14. Provisions for large scale heap leach gold mine holding costs.

Large scale heap leach gold mines shall submit a cash bond which complies with the requirements of ARSD 74:29:12:08 to cover holding costs for a period of time until proceeds from a forfeited reclamation financial assurance instrument surety are received by the Department. Holding costs shall include costs for the Department to conduct necessary water treatment, water sampling and analysis, and mine site maintenance. The calculation for these holding costs shall be part of the reclamation financial assurance calculation, and the cash bond shall be submitted at the same time as the reclamation financial assurance.

ARSD 74:29:12:15

74:29:12:15. Net present value calculations for postclosure financial assurance. The Board shall use a net present value calculation for postclosure financial assurance. The Board may utilize inflation and discount rate projections provided by the South Dakota Investment Council. The inflation and discount rate projections shall be reviewed at least once every five years.

ARSD 74:29:12:16

74:29:12:16. Recovery of reclamation and postclosure costs. In the event the amount of financial assurance forfeited is insufficient to pay for the full cost of reclamation or postclosure care and maintenance, the operator shall be liable for the remaining costs. The Department may recover from the operator all reasonably incurred reclamation and postclosure costs in excess of the amount forfeited.

ARSD 74:29:12:17

74:29:12:17. Water treatment equipment cost and availability - first priority lien on equipment. Costs of acquiring and installing any water treatment equipment that may be removed by creditors prior to or during bankruptcy proceedings shall be included in the reclamation and postclosure financial assurance calculations. The Department may, at its discretion, accept a first priority lien on any water treatment equipment that must remain in order for the Department to conduct required water treatment during final reclamation and postclosure care and maintenance in lieu of the calculations. An operator providing a lien on such equipment shall file an annual report with the Department in sufficient detail to fully describe the condition, value, and location of all pledged equipment. The operator shall also immediately notify the department of any other interest that arises in the pledged equipment.

INDUSTRY COMMENT AND DANR RESPONSE

- Concern on rule was that the first statement in the rule creates unnecessary burdens that outweigh the utility
 - Title 11 of the US Code calls for an automatic stay which prevents creditors from acting on debts during a bankruptcy proceeding. It also allows an exception for government entities if needed to conduct actions necessary to regulate a site, such as, requiring continuing water treatment and equipment maintenance to prevent an accidental discharge of water from a site that doesn't meet state water quality standards
 - Additionally, the comment was made that the rule also deprives a compliant non-bankrupt operator of significant capital in the unlikely event a bankruptcy court allows a creditor's interests to supersede the department

INDUSTRY COMMENT AND DANR RESPONSE CONT'D

- Requested change to have the Department hold the first priority lien in lieu of additional financial assurance
- Department response noted several other states have experienced the loss of pumps or other water treatment equipment after taking over a mine site from a bankrupt operator
- This rule was the attempt to establish a protocol to ensure water treatment equipment is not removed from the site by creditors or other parties in the event of bankruptcy

INDUSTRY COMMENT AND DANR RESPONSE CONT'D

- Second industry comment mentioned lienholders have the right to take possession of collateral upon default of lien which can happen prior to bankruptcy being filed. In this instance, the proposed rule did not address the department's concerns. There was also a question on how to determine which equipment could be removed by creditors
- Department explained “removable” equipment could be defined as any water treatment equipment which could easily be removed and maintains some value. The department also proposed modifying the first sentence of the rule to state:

Costs of acquiring and installing any water treatment equipment that may be removed by creditors prior to or during bankruptcy proceedings shall be included in the reclamation and postclosure financial assurance calculations.

ARSD 74:29:12:18

74:29:12:18. Review of calculated financial assurance amounts. The Department reserves the right to adjust financial assurance amounts at any time for changes to inflation or discount rate projections, unanticipated conditions, increases or decreases in disturbed or reclaimed acreage, and modifications made to the permit through permit amendments or technical revisions. Calculated financial assurance amounts may be evaluated during the review of annual reports for each mine permit to determine whether the calculated amount adequately covers current reclamation costs and if any adjustments are needed.



OFFICE OF ATTORNEY GENERAL

P.O. Box 70
Rapid City, South Dakota 57702
Phone (605) 394-2258
Fax (605) 394-5476
<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

April 15, 2025

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

Re: In re Matter of Small Scale Mine Permit Issued to Roy Schiefer and Fred Johnson (Mine Permit #404)

Dear Ms. Binegar:

Enclosed please find the below listed documents intended for filing in the above referenced matter:

- Petition to Revoke Small Scale Mine Permit & Petition for Forfeiture of Surety
- Request for Appointment of Hearing Chair

Copies of these documents have also been served upon the parties and Board Chair Blumhardt, as indicated in the attached Certificates of Service.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "SBL", followed by a horizontal line.

Steven R. Blair
Deputy Attorney General

Enclosures

Cc/encl: Mike Lees – DANR Minerals, Mining, & Superfund Program (via email only)

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF SMALL SCALE)	PETITION TO REVOKE SMALL
MINE PERMIT ISSUED TO ROY)	SCALE MINE PERMIT
SCHIEFER AND FRED JOHNSON)	&
)	PETITION FOR FORFEITURE OF
(Small Scale Mine Permit # 404))	SURETY

The Minerals, Mining, and Superfund Program of the Department of Agriculture and Natural Resources (Department), through the undersigned counsel of record, hereby petitions the Board of Minerals and Environment (Board) for a contested enforcement hearing regarding the potential revocation of the small scale mine permit issued to Roy Schiefer and Fred Johnson, and forfeiture of the surety associated with this permit. This petition is filed pursuant to South Dakota Codified Law (“SDCL”) chapters 1-26 and 45-6B, and the Administrative Rules of South Dakota (“ARSD”) article 74:09.

In support of this petition the Department states and alleges as follows:

1. The Department is the state agency, along with the Board, that regulates mining operations in the State of South Dakota, pursuant to SDCL ch. 45-6B.
2. The Board has been granted authority by the South Dakota Legislature to administer and enforce the provisions of SDCL ch. 45-6B.
3. The Legislature has authorized the Board to issue small-scale mine permits to any operation (other than an in-situ mining operation, or one employing

chemical or biological leaching) that affects less than ten acres and extracts less than twenty-five thousand tons of ore or overburden annually. SDCL 45-6B-53.

4. On October 20, 1983, the Board approved Small Scale Mine Permit no. 404, allowing Roy Schiefer to conduct placer mining for gold in the N1/2 of the NW1/4 of the NW1/4 of Section 28; T2N-R4E, in Pennington County, South Dakota.

5. Mr. Schiefer posted a two-thousand-five-hundred-dollar reclamation surety as required under SDCL 45-6B-55. Surety Bond no. 58058341 was issued by Western Surety Company on March 11, 1983. See attached Surety Bond no. 58058341.

6. On October 21, 2021, the Board approved the transfer of Small Scale Mine Permit 404 from Roy Schiefer to Roy Schiefer and Fred Johnson. Mr. Schiefer requested the permit transfer. Mr. Schiefer and Mr. Johnson agreed to assume all responsibility and liability under Small Scale Mine Permit 404 and follow all terms and conditions of the transferred mine permit.

7. On August 23, 2021, a Rider was added to Surety Bond no. 58058341 which made Roy Schiefer and Fred Johnson joint obligors on the bond. See attached Rider to Surety Bond no. 58058341.

8. Roy Schiefer died on October 2, 2023. Department staff did not become aware of Mr. Schiefer's death until early 2024.

9. Each small-scale operator is required to annually file a notice of intent to continue mining operations, along with an annual fee of fifty dollars. SDCL 45-6B-56.

10. Each small-scale operator is also required to comply with the annual reporting requirements of SDCL 45-6B-36. SDCL 45-6B-56.

11. On August 30, 2024, the Department mailed Fred Johnson an annual report form for Small Scale Mine Permit no. 404 required to be submitted on or before October 20, 2024. The annual report form included instructions for completing the form.

12. On September 5, 2024, the annual report form mailed to Mr. Johnson's DeSmet, South Dakota address was returned by the US Postal Service to the Department with a forwarding address in Elkhorn, Nebraska. That same day, the Department mailed the annual report form to the Elkhorn, Nebraska address.

13. On September 30, 2024, the annual report form mailed to Mr. Johnson at the Elkhorn, Nebraska address was returned to the Department with no forwarding address.

14. On September 6, 2024, while verifying the correct address for Fred Johnson, the Department discovered that Mr. Johnson died on April 15, 2024. Department staff were unaware of Mr. Johnson's passing until that time.

15. Mr. Johnson's obituary listed his daughter Sydney Johnson as a survivor. The Department also reviewed Mr. Schiefer's obituary which listed Beverly Schiefer as a surviving daughter. That same day, the Department mailed a letter to Sydney Johnson and Beverly Schiefer stating that it had learned of the passing of Roy Schiefer and Fred Johnson and requesting information on whether any family members or other parties were interested in taking over mine permit no. 404. Ms. Schiefer and Ms. Johnson were informed that if there was no interest in taking over the permit, the Department would proceed with forfeiture of the \$2,500 surety bond so

that the current disturbance at the mine site could be reclaimed and the mine permit closed.

16. Ms. Johnson's letter was sent to an Elkhorn, Nebraska address the Department discovered during an internet search. This address was the same address as the forwarding address previously used for Fred Johnson. However, on September 11, 2024, the US Postal Service returned Ms. Johnson's letter with a forwarding address in Omaha, Nebraska. Later that day, the Department mailed the letter to the Omaha, Nebraska address.

17. The Department received no response to the September 6, 2024, letter from either Ms. Johnson or Ms. Schiefer.

18. On October 21, 2024, the Department mailed Sydney Johnson the annual report form for Small Scale Mine Permit no. 404 and explained the attempts made to mail it to her late father. The Department asked Ms. Johnson to complete and return the annual report form with the required \$50 fee, and the Department again asked if any family members had interest in taking over the mine permit. Ms. Johnson was informed that if the annual report and fee were not returned, and if there was no interest in the mine permit, the Department would proceed with forfeiture of the surety bond so that the current disturbance at the mine could be reclaimed and the mine permit closed.

19. Ms. Johnson did not respond to the Department's October 21, 2024, letter.

20. On December 10, 2024, the Department mailed another copy of the annual report form to Sydney Johnson by certified mail, return receipt requested. Ms. Johnson was given 10 days after receipt of the letter to complete the annual report form and return it to the Department with the required fee. The Department again asked if any family members had interest in taking over the mine permit. Ms. Johnson was also informed that failure to submit the annual report and fee within the 10-day deadline may result in enforcement action against Small Scale Mine Permit no. 404, including revocation of the mine permit and forfeiture of the \$2,500 surety bond.

21. The certified letter was signed for on December 14, 2024, establishing a December 24, 2024, deadline for submitting the annual report and fee.

22. On December 10, 2024, the Department also mailed a letter by certified mail, return receipt requested, to Beverley Schiefer asking her if any family members were interested in taking over the mine permit, and asking if there was an executor of Mr. Schiefer's estate the Department could contact. The letter also explained that the Department planned to proceed with forfeiture of the \$2,500 surety bond so that the current disturbance at the mine could be reclaimed and the mine permit could be closed.

23. The certified letter sent to Ms. Schiefer was signed for on December 21, 2024.

24. As of February 14, 2025, the Department had not received the annual report form and fee for Small-Scale Mine Permit no. 404 as required by SDCL 45-6B-

56. Also, as of that date, the Department had received no response from Ms. Schiefer or Ms. Johnson concerning this matter.

25. The Secretary of the Department is authorized to submit Notices of Violation to any mine operator if there is reason to believe a violation of SDCL ch. 45-6B has occurred. SDCL 45-6B-48.

26. On February 14, 2025, the Secretary of the Department issued a Notice of Violation concerning Small-Scale Mine Permit no. 404. The Notice of Violation asked that the annual report form and fee be submitted within twenty days of receipt of the Notice, or that a transfer application for the permit be submitted within that time period. The Notice of Violation was directed to Sydney Johnson and Beverly Schiefer, as the identified surviving heirs of Mr. Johnson and Mr. Schiefer. The Notice indicated that a hearing before the Board could be requested. The Notice also indicated that the Department would initiate an enforcement action before the Board if no action were taken. A copy of the Notice of Violation is attached.

27. The Notice of Violation was sent to Ms. Schiefer and Ms. Johnson by certified return receipt mail.

28. Beverly Schiefer contacted the Department by telephone on February 24, 2025. She informed the Department that she and her sister were the only remaining family members for Roy Schiefer. Ms. Schiefer also indicated they had no interest in Small-Scale Mine Permit no. 404.

29. On March 17, 2025, the Notice of Violation sent to Sydney Johnson was returned to the Department as unclaimed.

30. To date, no action has been taken by any party to file the annual report form, along with the required fee for Small-Scale Mine Permit no. 404. Nor, to date, has any action been taken to transfer the permit to another operator.

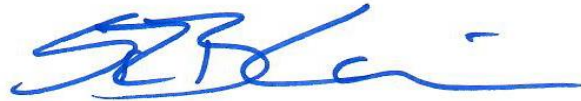
RELIEF REQUESTED

Due to the failure by any party to file the required annual report form, with the required fee, for Small-Scale Mine Permit no. 404, the Department respectfully requests the Board enter an Order stating the following:

1. Ordering that Small-Scale Mine Permit no. 404 be revoked for failure to comply with the terms and conditions of said permits and the applicable statutes and administrative rules of South Dakota; and

2. Declaring that the above-referenced surety, in an amount totaling two thousand five-hundred dollars (\$2,500) be forfeited to the State of South Dakota, and instructing the Department to carry out all activities necessary to transfer the proceeds to the Department.

Dated this 15th day of April, 2025.



Steven R. Blair
Deputy Attorney General
P.O. Box 70
Rapid City, South Dakota 57702
Telephone: (605) 394-2258
steven.blair@state.sd.us
*Counsel for Department of Agriculture
and Natural Resources – Minerals, Mining,
& Superfund Program*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the Department of Agriculture & Natural Resources' PETITION TO REVOKE SMALL-SCALE MINE PERMIT & PETITION FOR FORFEITURE OF SURETY was submitted electronically, and via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Dept. of Agr. & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501
brenda.binegar@state.sd.us
Secretary, Board of Minerals & Environment

Further, that a true and correct copy of the above referenced document(s) was served by United States Certified Mail, Return Receipt Requested, upon the following:

Beverly Schiefer
22722 Schiefer Pl.
Rochford, SD 57745-6034

Sydney Johnson
18927 Margo St.
Omaha, NE 68132-2160

Janice Ackerman
3910 Canyon Lake Drive
Rapid City, SD 57702-3150

Courtesy copies of the above referenced document(s) were served by electronic mail upon the following:

David McVey
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
david.mcvey@state.sd.us
Counsel – Brd. of Min. & Env.

Glenn Blumhardt
12205 Washington Loop
Sturgis SD 57785
gablum@abe.midco.net
Chair – Brd. Minerals & Env.

Ginger Barnes
Western Surety Company
101 S. Reid Street, #300
Sioux Falls, SD 57103
ginger.barnes@cnsurety.com

Dated this 15th day of April, 2025.



Steven R. Blair
Deputy Attorney General

RECEIVED

AUG 26 2021

MINERALS & MINING PROGRAM



Western Surety Company

RIDER

To be attached to and form part of Bond No. 58058341

It is hereby mutually agreed and understood by and between Western Surety Company
and ROY SCHIEFER

that instead of as originally written; the bond is changed or revised in the particulars checked below:

☒ **Principal Name changed to:** ROY SCHIEFER AND FRED JOHNSON

☐ **Principal Address changed to:**

☐ **Vehicle/Vessel/Hull Information changed to:**

☐ **Lost Instrument Information changed to:**

☐ **Identification Number changed to:**

☐ **Penalty Amount changed to:**

☐ **Additional or Event Location:**

☐ **Effective Date changed to:**

☐ **Expiration Date changed to:**

☐ **The following bond information changed:**

But in no event shall Western Surety Company's total liability for all locations exceed the aggregate amount set forth in the bond, regardless of the number of years this bond remains in force, the number of claims made, or the number of renewal premiums payable or paid.

It is further understood and agreed that all other terms and conditions of this bond shall remain

This Rider becomes effective on the 23rd day of August, 2021.

Signed this 24th day of August, 2021.

Acceptance:

[Signature]
Chairman, SD Board of Minerals &
Environment

October 21, 2021

WESTERN SURETY COMPANY

By

[Signature]
Paul T. Brufat, Vice President



Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls,
State of South Dakota, its regularly elected Vice President,
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One RECLAMATION

bond with bond number 58058341

for ROY SCHIEFER AND FRED JOHNSON

as Principal in the penalty amount not to exceed: \$2,500.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by
Vice President with the corporate seal affixed this 24th day of August,
2021.

ATTEST

P. Leitheiser, Assistant Secretary

WESTERN SURETY COMPANY

By

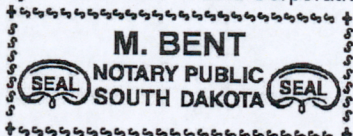
Paul T. Bruflat, Vice President



STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

On this 24th day of August, 2021, before me, a Notary Public, personally appeared
Paul T. Bruflat and P. Leitheiser

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the
voluntary act and deed of said Corporation.



My Commission Expires March 2, 2026

Notary Public

To validate bond authenticity, go to www.cnasurety.com > Owner/Obligee Services > Validate Bond



APPROVED FORM

STATE OF SOUTH DAKOTA
PIERRE, SOUTH DAKOTA 57501RECEIVED
AUG 4 1983

Bond Number: 58058341

Permit Number: 404

(check one)

Surface Mining ☒ Mineral Exploration _____ Underground Mining _____ Solution Mining _____ Milling _____

KNOW ALL MEN BY THESE PRESENTS, That we (I) Roy Schiefer

as Principal, and WESTERN SURETY COMPANY

a corporation organized and existing under the laws of the State of South Dakota

and duly authorized to transact business in the State of South Dakota as surety, are held and firmly bound unto the State of South Dakota, acting through the South Dakota Board of Minerals and Environment or the South Dakota Department of Water and Natural Resources, in the sum of Two Thousand Five Hundred and no/100 (\$ 2,500.00) dollars, for payment of which sum, well and truly to be made, we bind ourselves, and each of our legal representatives, heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has received a permit (No. 404), from the South Dakota Board of Minerals and Environment or the South Dakota Department of Water and Natural Resources to conduct Placer Mining on the following described premises, to wit:

T-2N R-4E Section 28

NOW, THEREFORE, The conditions of this obligation are such that if the above bounden Principal shall, in conducting the above described operations faithfully perform the requirements of the permit, reclamation plan, operating plan, S.D.C.L. Chapter 45-6A relating to exploration, mining, and reclamation, and the Rules and Regulations adopted pursuant thereto, then this obligation shall be exonerated and discharged and become null and void; otherwise it will remain in full force and effect.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof and provided by S.D.C.L. 56-2-12.

Signed, sealed and dated this 11th day of March, 19 83

(Surety's Seal)

Signature: Principal

Bond Approved:

Title

October 20, 19 83
South Dakota Board of Minerals and Environment/
South Dakota Dept. of Water and Natural Resources

Mailing Address

WESTERN SURETY COMPANY

Surety

By

101 S. Phillips Sioux Falls, SD
Mailing AddressBy: Rubel P. Swanson
Chairman, Board of Minerals and Environment/or
Secretary, Dept. of Water and Natural Resources

W. Swanson, Ass't. Sec.



Western Surety Company

POWER OF ATTORNEY

RECEIVED
AUG 4 1983

EXPLORATION AND
MINING PROGRAM

KNOW ALL MEN BY THESE PRESENTS:

That the WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the United States of America, does hereby make, constitute and appoint

W. Swanson

of

Sioux Falls

State of South Dakota, its regularly elected Ass't Secretary,
as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of documents to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; policies indemnifying employers against loss or damage caused by the misconduct of their employees; official, bail and surety and fidelity bonds. Indemnity in all cases where indemnity may be lawfully given; and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company, and to compromise and settle any and all claims or demands made or existing against said Company.

The Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the By-laws of the Western Surety Company duly adopted and now in force, to-wit:

Section 7: "All bonds, policies, undertakings or other obligations of the corporation shall be executed in the corporate name of the Company by the Chairman of the Board, President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The Chairman of the Board, President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, or other obligations of the corporation."

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its

President

with the corporate seal affixed this 11th day of March, 1983

ATTEST

WESTERN SURETY COMPANY

C. Schmidt

By

Assistant Secretary

Joe P. Kirby

Joe P. Kirby, President

STATE OF SOUTH DAKOTA

ss.

COUNTY OF MINNEHAHA

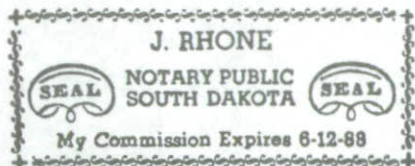
On this 11th day of March, 1983 before me, a Notary Public, personally appeared

Joe P. Kirby

and

C. Schmidt

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as President
and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.



J. Rhone

Notary Public

STATE OF SOUTH DAKOTA
SECRETARY OF THE
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

IN THE MATTER OF VIOLATIONS OF SMALL) NOTICE OF VIOLATION
SCALE MINE PERMIT 404 ISSUED TO ROY) AND
SCHIEFER AND FRED JOHNSON) CORRECTIVE ACTIONS

TO: Sydney Johnson 18927 Margo St. Omaha, Nebraska 68136-2160	Beverley Schiefer 3910 Canyon Lake Drive Rapid City, South Dakota 57702
---	---

The Secretary of the Department of Agriculture and Natural Resources ("DANR"), pursuant to South Dakota Codified Laws (SDCL) 45-6B-48, hereby gives notice that Small Scale Mine Permit 404 is in violation of the South Dakota Mined Land Reclamation Act, SDCL Chapter 45-6B, as specified below.

THE FACTS alleged to constitute this violation are as follows:

1. On October 20, 1983, the South Dakota Board of Minerals and Environment ("Board") approved Small Scale Mine Permit 404 which allows Roy Schiefer to conduct placer mining for gold in the N1/2 NW1/4 NW1/4 Section 28; T2N-R4E, Pennington County. Mr. Schiefer posted a two-thousand-five-hundred-dollar reclamation surety as required under SDCL 45-6B-55.

2. On October 21, 2021, the Board approved the transfer of Small Scale Mine Permit 404 from Roy Schiefer to Roy Schiefer and Fred Johnson. Mr. Schiefer requested the permit transfer. Mr. Schiefer and Mr. Johnson agreed to assume all responsibility and liability under Small Scale Mine Permit 404 and follow all terms and conditions of the transferred mine permit. A rider was added to the two-thousand-five-hundred-dollar reclamation surety bond originally posted by Mr. Schiefer which made Roy Schiefer and Fred Johnson joint obligors.
3. Roy Schiefer died on October 2, 2023. DANR staff did not become aware of Mr. Schiefer's death until early 2024.
4. **SDCL 45-6B-56** states;

Small-scale operation-Annual notice of intent to continue-Fee and reporting requirements. Except as provided in subsection 45-6B-3(6)(b), the operator shall annually file on the anniversary date of the permit a notice of intent to continue mining operations. The notice of intent shall contain an annual fee of fifty dollars and comply with the reporting requirements of section 45-6B-36.

5. **SDCL 45-6B-36** states;

Annual filing of map and fee. Within sixty days prior to the anniversary date of the permit each year, the operator shall submit a map on the scale provided for by

subdivision 45-6B-10(3) showing the reclamation accomplished and any deviations from the originally approved operating and reclamation plans....

6. On August 30, 2024, DANR mailed Fred Johnson an annual report form for Small Scale Mine Permit 404 which was required to be submitted on the anniversary date of October 20, 2024. The annual report form included instructions for completing the form. On September 5, 2024, the annual report form mailed to Mr. Johnson's DeSmet, South Dakota address was returned by the US Postal Service to DANR with a forwarding address in Elkhorn, Nebraska. That same day, DANR mailed the annual report form to the Elkhorn, Nebraska address. On September 30, 2024, the annual report form was returned to DANR by the US Postal Service with no forwarding address.
7. On September 6, 2024, while verifying the correct address for Fred Johnson, DANR discovered that Mr. Johnson died on April 15, 2024. DANR staff were unaware of Mr. Johnson's passing until that time. Mr. Johnson's obituary listed his daughter Sydney Johnson as a survivor. DANR also reviewed Roy Schiefer's obituary which listed Beverly Schiefer as a surviving daughter. That same day, DANR mailed a letter to Sydney Johnson and Beverly Schiefer stating it learned of the passing of Roy Schiefer and Fred Johnson and requested information on whether any family members or other parties were interested in taking over the mine permit so mine permit transfer paperwork could be mailed to them. DANR stated that if there was no interest, DANR would proceed with forfeiture of the \$2,500 surety bond so that the current disturbance at the mine could be reclaimed and the mine permit closed. Ms. Johnson's letter was sent to an Elkhorn, Nebraska address DANR found during a web search which was the same

address as the forwarding address for Fred Johnson. However, on September 11, 2024, the US Postal Service returned Ms. Johnson's letter to DANR with a forwarding address in Omaha, Nebraska. Later that day, DANR mailed the letter to the Omaha, Nebraska address.

8. DANR received no response to the September 6, 2024, letter from either Ms. Johnson or Ms. Schiefer.
9. On October 21, 2024, DANR mailed Sydney Johnson the annual report form for Small Scale Mine Permit 404 and explained the attempts made to mail it to her late father. DANR asked Ms. Johnson to complete and return the annual report form with the required \$50 fee and again asked if any family members had interest in taking over the mine permit. DANR stated that if the annual report and fee were not returned and if there was no interest, DANR would proceed with forfeiture of the \$2,500 surety bond so that the current disturbance at the mine could be reclaimed and the mine permit closed.
10. Ms. Johnson did not respond to DANR's October 21, 2024, letter.
11. On December 10, 2024, DANR mailed another copy of the annual report form to Sydney Johnson by certified return receipt mail and stated she had 10 days after receipt of the letter to complete the annual report form and return it to our office with the required \$50 fee, and DANR staff again asked if any family members had interest in taking over the mine permit. DANR also stated that failure to submit the annual report and fee within

the 10-day deadline may result in enforcement action against Small Scale Mine Permit 404, which may include the revocation of the mine permit and forfeiture of the \$2,500 surety bond issued by Western Surety. The certified letter was signed for on December 14, 2024, which set a December 24, 2024, deadline for submitting the annual report and fee.

12. On December 10, 2024, DANR mailed a letter by certified return receipt mail to Beverley Schiefer again asking her if any family members are interested in are interested in taking over the mine permit or if there is an executor of the estate DANR staff could contact. The letter also explained that DANR staff plans to proceed with forfeiture of the \$2,500 surety bond so that the current disturbance at the mine could be reclaimed and the mine permit could be closed. The certified letter was signed for on December 21, 2024.

13. As of February 14, 2025, no party has submitted the annual report and fee for Small Scale Mine Permit 404 as required by SDCL 45-6B-56.

14. As of February 14, 2025, DANR staff have not received a response from either Sydney Johnson or Beverly Schiefer.

15. Based on the foregoing facts, the provisions of SDCL 45-6B-36 and 45-6B-56 have been violated.

16. **SDCL 45-6B-48** states;

***Violation-Notice to operator.** If the secretary of agriculture and natural resources has reason to believe that a violation of an order, permit, notice of intent, or rule under the authority of this chapter has occurred, written notice shall be given to the operator of the alleged violation. The notice shall be served personally or by registered mail upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and shall recommend possible corrective action.*

CORRECTIVE ACTIONS

WHEREFORE, as a result of these FACTS and VIOLATIONS, and pursuant to SDCL ch. 45-6B, the Secretary of DANR developed the following CORRECTIVE ACTIONS to be taken by Sydney Johnson and Beverley Schiefer:

1. Submit the completed annual report form and fee required by SDCL 45-6B-56 and 36 within 20 days of receipt of this Notice.
2. Submit a Transfer of Small Scale Mine Permit 404 application within 20 days of receipt of this Notice.

NOTICE IS HEREBY GIVEN that if Sydney Johnson and Beverley Schiefer dispute the facts and violations detailed above, Sydney Johnson and Beverley Schiefer may request a hearing before the Board of Minerals and Environment. If Sydney Johnson and Beverley Schiefer request a hearing before the Board on these allegations, a Notice of Hearing will be sent to Sydney Johnson and Beverley Schiefer designating the date, time, and location of the hearing. This written request for hearing must be filed with DANR by delivery to: Secretary, Department of Agriculture and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501-3182. The written request for hearing must be filed with the DANR before the expiration of thirty days from service of this Notice.

NOTICE IS ALSO HEREBY GIVEN that if Sydney Johnson and Beverley Schiefer do not take the corrective actions listed above within **the prescribed deadlines**, DANR will initiate an enforcement hearing before the Board of Minerals and Environment. DANR may seek any and all appropriate enforcement measures including but not limited to the revocation of Small Scale Mine

Permit 404 and forfeiture of the financial assurance. If DANR initiates a violation hearing before the Board, a Notice of Hearing will be sent to Sydney Johnson and Beverley Schiefer designating the date, time, and location of the hearing.

THIS NOTICE does not constitute a waiver or an election by the State to forego civil or criminal action to seek penalties or other relief as the State may deem appropriate under the provisions of SDCL Chapter 45-6B and other applicable laws.

Dated this 14th day of February, 2025

A handwritten signature in dark ink, appearing to read "Hunter Roberts", is written over a horizontal line.

Hunter Roberts, Secretary


Department of Agriculture and Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF SMALL SCALE)	REQUEST FOR
MINE PERMIT ISSUED TO ROY)	APPOINTMENT OF HEARING
SCHIEFER AND FRED JOHNSON)	CHAIR
)	
(Small Scale Mine Permit # 404))	

The Minerals, Mining, and Superfund Program of the Department of Agriculture and Natural Resources, pursuant to ARSD § 74:09:01:08, hereby requests that a member of the Board of Minerals and Environment be appointed to sit as hearing chair for any proceedings involving the above captioned matter.

Dated this 15th day of April, 2025.



Steven R. Blair
Deputy Attorney General
P.O. Box 70
Rapid City, South Dakota 57702
Telephone: (605) 394-2258
steven.blair@state.sd.us
*Counsel for Department of Agriculture
and Natural Resources – Minerals, Mining,
& Superfund Program*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the Department of Agriculture & Natural Resources' REQUEST FOR APPOINTMENT OF HEARING CHAIR was submitted electronically, and via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Dept. of Agr. & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501
brenda.binegar@state.sd.us
Secretary, Board of Minerals & Environment

Further, that a true and correct copy of the above referenced document(s) was served by United States Certified Mail, Return Receipt Requested, upon the following:

Beverly Schiefer
22722 Schiefer Pl.
Rochford, SD 57745-6034

Sydney Johnson
18927 Margo St.
Omaha, NE 68132-2160

Janice Ackerman
3910 Canyon Lake Drive
Rapid City, SD 57702-3150

Courtesy copies of the above referenced document(s) were served by electronic mail upon the following:

David McVey
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
david.mcvey@state.sd.us
Counsel – Brd. of Min. & Env.

Glenn Blumhardt
12205 Washington Loop
Sturgis SD 57785
gablum@abe.midco.net
Chair – Brd. Minerals & Env.

Ginger Barnes
Western Surety Company
101 S. Reid Street, #300
Sioux Falls, SD 57103
ginger.barnes@cnsurety.com

Dated this 15th day of April, 2025.



Steven R. Blair
Deputy Attorney General



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

May 2, 2025

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

Re: In the Matter of Small Scale Mine Permit Issued to Roy Schiefer
and Fred Johnson (Small Scale Mine Permit #404)

Dear Ms. Binegar:

Enclosed please find the original Notice of Appointment of Hearing Chair and Certificate of Service intended for filing in the above referenced matter. True and correct copies have been sent to those individuals listed in the attached Certificate of Service.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "David M. McVey".

David M. McVey
Assistant Attorney General

DMM/mn
Enclosures

cc/encl: Parties on Attached Certificate of Service

BOARD OF MINERALS AND ENVIRONMENT

NOTICE OF APPOINTMENT OF HEARING CHAIR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the Department of Agriculture & Natural Resources' NOTICE OF APPOINTMENT OF HEARING CHAIR was served electronically, and via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Department of Agriculture and
Natural Resources
523 E. Capitol Ave.
Pierre, SD 57501
brenda.binegar@state.sd.us
Secretary, Board of Minerals & Environment

Further, the undersigned certifies that a true and correct copy of the above referenced document(s) was served via United States Mail, First Class, Postage Prepaid upon the following:

Beverly Schiefer
22722 Schiefer Pl.
Rochford, SD 57745-6034

Sydney Johnson
18927 Margo St.
Omaha, NE 68132-2160

Janice Ackerman
3910 Canyon Lake Drive
Rapid City, SD 57702-3150

Steven R. Blair
Deputy Attorney General
P.O. Box 70
Rapid City, SD 57702
Counsel for Department of
Agriculture & Natural Resources -
Minerals, Mining, & Superfund
Program

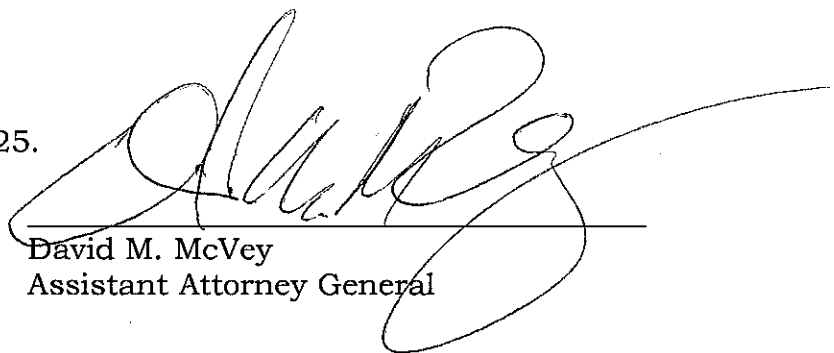
Courtesy copies of the above referred document were served by electronic mail upon the following:

Glenn Blumhardt
12205 Washington Loop
Sturgis SD 57785
gablum@abe.midco.net
Chair - Board of Minerals
And Environment

Gregg Greenfield, Vice Chair
4820 E 57th Street, Suite B
Sioux Falls, SD 57108
ggreenfield@grlaw.us

Ginger Barnes
Western Surety Company
101 S. Reid Street, #300
Sioux Falls, SD 57103
ginger.barnes@cnasurety.com

Dated this 2nd day of May 2025.



David M. McVey
Assistant Attorney General

MAY 02 2025

Department of Agriculture
and Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF SMALL SCALE)	
MINE PERMIT ISSUED TO ROY)	
SCHIEFER AND FRED JOHNSON)	ORDER
)	APPOINTING HEARING CHAIR
(Small Scale Mine Permit # 404))	
)	
)	
)	

In accordance with ARSD § 74:09:01:08, the Chairman of the Board of Minerals and Environment, Glenn Blumhardt, hereby appoints Board member Gregg Greenfield as Hearing Chair in the above-captioned matter. Mr. Greenfield's address and contact information are as follows:

Gregg Greenfield
4820 E. 57th Street, Suite B
Sioux Falls, SD 57108
Telephone: 605-906-0000
Email: ggreenfield@grlaw.us

The Hearing Chair is responsible for conducting any prehearing conference and for conducting the hearing before the Board. The Hearing Chair may rule on all prehearing motions. Any prehearing decision made by the Hearing Chair is a final decision of the Board unless the Board overrules said decision.


A prehearing telephone conference, as set forth in ARSD § 74:09:01:10, may be scheduled upon the motion of a Party.

In accordance with ARSD § 74:09:01:07, the original of all pleadings, motions, and other documents filed in this contested case proceeding shall be filed with Brenda Binegar, Secretary of the Board, Department of Agriculture & Natural Resources, 523 E. Capitol Ave., Pierre, SD 57501-3182.

A copy of all pleadings, motions, and other documents filed in this matter shall be served upon the Hearing Chair at the address noted above, the Department by and through its counsel as noted below, and upon all Parties to the proceeding. Pursuant to ARSD § 74:09:01:15 service must be made by first class mail, personal service, or fax.

Dated this 29th day of April, 2025

BOARD OF MINERALS & ENVIRONMENT

By: 
Glenn Blumhardt, Board Chair

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

P.O. Box 70
Rapid City, South Dakota 57702
Phone (605) 394-2258
Fax (605) 394-5476
<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

June 27, 2025

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

Re: In re Matter of Small Scale Mine Permit Issued to Roy Schiefer and Fred Johnson (Mine Permit #404)

Dear Ms. Binegar:

Enclosed please find the Department's Notice of Enforcement Hearing intended for filing in the above referenced matter:

Copies of these documents have also been served upon the parties and Hearing Chair Greenfield, as indicated in the attached Certificates of Service.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRL", followed by a horizontal line.

Steven R. Blair
Deputy Attorney General

Enclosures

Cc/encl: Eric Holm – DANR Minerals, Mining, & Superfund Program (via email only)

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF MINERALS & ENVIRONMENT

IN THE MATTER OF SMALL SCALE)	
MINE PERMIT ISSUED TO ROY)	NOTICE OF ENFORCEMENT
SCHIEFER AND FRED JOHNSON)	HEARING
)	
(Small Scale Mine Permit No. 404))	

TO ALL PARTIES OF RECORD:

Notice is hereby given that the Board of Minerals and Environment (Board) has scheduled a contested enforcement hearing in the above referenced matter to be held on **Thursday, July 17, 2025**, at the **Matthew Environmental Education and Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501**. The hearing is scheduled to begin at **10:00 a.m. CDT**, or as soon thereafter as the matter may be heard.

The hearing will be held pursuant to the authority and jurisdiction granted to the Board by SDCL chs. 1-26 and 45-6B, and any applicable administrative rule of South Dakota, specifically including ARSD ch. 74:09.

Roy Schiefer and Fred Johnson hold Small Scale Mine Permit No. 404 located in the N1/2 of the NW1/4 of the NW1/4 of Section 28; T2N-R4E, in Pennington County, South Dakota. This enforcement hearing will be held to consider the Petition to Revoke Small Scale Mine Permit & Petition for Forfeiture of Surety submitted by the Department and concerning the above listed mine permit. The Department's Petition is based upon the Notice of Violation issued by the Department on February 14, 2025, to Sydney Johnson and Beverly Schiefer, as the identified

surviving heirs of Mr. Johnson and Mr. Schiefer. The Board may consider other civil or administrative remedies at the hearing.

This matter is considered an enforcement proceeding initiated by the Department under the provisions of ARSD § 74:09:01:05. Mr. Johnson and Mr. Schiefer are both deceased. The parties to this proceeding are Sydney Johnson and Beverly Schiefer, as the representatives of the estates of Roy Schiefer and Fred Johnson and the Department. According to ARSD § 74:09:01:06, no other party may intervene in a contested hearing held in an enforcement action.

Pursuant to SDCL ch. 1-26 the hearing will be an adversarial proceeding at which the parties will have the right to be present and represented by legal counsel; as well as the right to introduce evidence, present testimony, call witnesses, cross examine all witnesses present, and to submit appropriate written argument. If any party does not exercise these and other due process rights they will be forfeited.

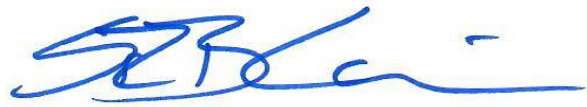
The hearing will be conducted before a quorum of the Board by a hearing chair appointed by the Chair of the Board. The Board, after examining the testimony and evidence presented may take action to 1.) revoke Small Scale Mine Permit No. 404 issued to Roy Schiefer and Fred Johnson, 2.) forfeit the \$2,500 reclamation surety currently held, and/or 3.) seek other civil or administrative remedies available under State law.

Due to the contested nature of this application, prior to this hearing, the parties should not communicate directly with Board members, including the hearing chair, unless all parties to the case are given notice and an opportunity to participate in the communication(s).

If the amount in controversy in this matter exceeds two thousand five hundred dollars, or if a property right may be terminated, any party to the contested action may require the agency to use the Office of Hearing Examiners by giving notice of that request to the agency no later than ten days after service of this Notice of Hearing.

Any final decision entered by the Board may be appealed to circuit court or the state Supreme Court as provided by law.

Dated this 27th day of June, 2025.



Steven R. Blair
Deputy Attorney General
P.O. Box 70
Rapid City, South Dakota 57702
Telephone: (605) 394-2258
steven.blair@state.sd.us
*Counsel for Department of Agriculture
and Natural Resources – Minerals, Mining,
& Superfund Program*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the Department of Agriculture & Natural Resources' NOTICE OF ENFORCEMENT HEARING was submitted electronically, and via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Dept. of Agr. & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501
brenda.binegar@state.sd.us
Secretary, Board of Minerals & Environment

Further, a true and correct copy of the above referenced document(s) was served by United States Mail, First Class, Postage Prepaid, upon:

Beverly Schiefer
22722 Schiefer Pl.
Rochford, SD 57745-6034

Janice Ackerman
3910 Canyon Lake Drive
Rapid City, SD 57702-3150

Thomas J. Linngren
Green Oviatt Law Firm
P.O. Box 1600
Watertown, SD 57201-6600
Counsel for Sydney Johnson


Courtesy copies of the above referenced document(s) were served by electronic mail upon the following:

David McVey
Assistant Attorney General
1302 E. Highway 14, Suite 1
Pierre, SD 57501
david.mcvey@state.sd.us
Counsel – Brd. of Min. & Env.

Gregg Greenfield
4820 E. 57th Street, Suite B
Sioux Falls, SD 57108
ggreenfield@grlaw.us
Hearing Chair – Brd. Min. & Env.

Ginger Barnes
Western Surety Company
101 S. Reid Street, #300
Sioux Falls, SD 57103
ginger.barnes@cnsurety.com

Dated this 27th day of June, 2025.



Steven R. Blair
Deputy Attorney General