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

July 20, 2023
10:00 a.m. Central Time

CALL TO ORDER: The meeting was called to order by Chairman Rex Hagg. The roll was called, and a quorum was present.

Chairman Hagg thanked John Scheetz for serving on the board. His term expired on June 30, 2023, and the Governor appointed Laurie Schultz to the board.

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Doyle Karpen, Bob Morris, Jessica Peterson, and Gregg Greenfield attended in person. Gary Haag attended via telephone.

BOARD MEMBER ABSENT: Laurie Schultz.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM MAY 18-19, 2023, MEETING: Motion by Blumhardt, seconded by Greenfield, to approve the minutes from the May 18-19, 2023, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:28, HAZARDOUS WASTE: PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:28:21:01; 74:28:21:01.01; 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01; 74:28:25:03; 74:28:25:04; 74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:28:03; 74:28:28:04; 74:28:28:05, 75:28:30:01; AND 74:28:33:01- HAZARDOUS WASTE

Hearing Officer/Board Chair: Rex Hagg

Chairman Hagg opened the hearing at 10:05 a.m. Central Time.

The purpose of the hearing was to consider the adoption and amendment of proposed rules numbered ARSD 74:28:21:01; 74:28:21:01.01; 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01; 74:28:25:03; 74:28:25:04; 74:28:25:05; 74:28:26:01; 74:28:27:01;

74:28:28:01; 74:28:28:03; 74:28:28:04; 74:28:28:05; 75:28:30:01; and 74:28:33:01, adopted under the authority of SDCL 34A-11-9.

The effect of the rules will be to update the state's existing hazardous waste rules by incorporating updated codified federal regulations by reference. The state's proposed rules reflect changes made to the federal hazardous waste regulations from July 1, 2018, through June 30, 2022. Once these updates are made, the state's rules will then be substantially the same as the federal hazardous waste regulations. Changes to the rules include the addition of waste aerosol cans to the universal waste regulations; updates to the flash point test method, cross reference corrections, and removal of obsolete information in the ignitability regulation; and conforming reference updates that pertain to imports and exports of waste to and from Canada.

The reason for updating the state's hazardous waste rules is to continue to ensure that companies generating, transporting, treating, storing, or disposing of hazardous waste in South Dakota manage those wastes in a way that is protective of human health and the environment. These proposed rules offer clarified requirements for the state's hazardous waste generators by ensuring a clear, protective system for managing discarded aerosol cans, eases regulatory burdens regarding the management of those materials; updates test methodologies and information regarding the ignitability characteristic; and updates references to certain Canada-specific operational codes and descriptions on import-export documents.

Notice of public hearing was published on May 31, 2023, in the following daily newspapers: Aberdeen News, Argus Leader, Black Hills Pioneer, Brookings Register, Daily Press & Dakotan (Yankton), Huron Plainsman, Madison Daily Leader, Mitchell Republic, Pierre Capital Journal, Rapid City Journal, and Watertown Public Opinion. Affidavits of Publication are on file at DANR.

The public notice and proposed rules were available electronically through a link on the DANR Hazardous Waste Program's website, DANR's public notice website, and on the state's RULES.SD.GOV website. Individuals could also contact the department directly for copies of the rules.

No amendments, data, opinions, or arguments for or against the proposed rules were received during the 45-day comment period. DANR received one request for clarification of the amendments and one request for a copy of the proposed rules.

The proposed rules were sent to the Bureau of Finance and Management (BFM) and the Legislative Research Council (LRC).

The draft rules were reviewed by the Legislative Research Council (LRC) for form and style. The changes made by LRC were incorporated into the draft rules and made available to the board and on the Boards and Commissions Portal prior to the hearing.

Carrie Jacobson, DANR Waste Management Program, provided a summary of the following proposed changes to the rules.

- Adding Aerosol Cans as a Universal Waste (ARSD 74:28:33:01 incorporating 40 CFR 273 by reference): Under the existing Universal Waste provisions, the hazardous waste rules provide a conditional exemption for certain hazardous wastes that may be commonly generated by a variety of operations and are generally readily recyclable. The regulations allow generators of these wastes to not have to include them in their monthly hazardous waste totals as long as they: 1) intend to send the materials to a recycling facility; 2) ensure the wastes are safely stored while they are accumulating; 3) ensure the materials are stored no longer than one year; and 4) maintain some records. Materials currently included in the Universal Waste Rule are certain waste batteries; hazardous waste pesticides collected as part of a waste pesticide collection and/or recall program; mercury-containing equipment; and spent standard fluorescent bulbs. With this rule update, waste aerosol cans will be included in this category.
- Updating Test Methods Used to Determine the Hazardous Waste Characteristic for Ignitability, a.k.a. Modernizing Ignitable Liquids Determinations (ARSD 74:28:21:02 incorporating 40 CFR 260.11 by reference): This rule finalizes updates to the flash point test methods from the years 1978, 1979 and 1980, to include current ASTM International standards. [Note: Established in 1902, ASTM was the acronym for the "American Society for Testing Materials". In 1961 it became the "American Society for Testing and Materials", and in 2001 changed its name to ASTM International.] This rule also finalizes existing guidance in order to define "aqueous" as "50 percent water by weight" which is another criterion in the ignitability characteristic definition. This update also corrects cross references to the U.S. Department of Transportation regulations and removes obsolete information in the ignitability regulation.
- References to Canada's Import/Export Recovery and Disposal Code Changes (ARSD 74:28:23:01, 74:28:21:01(20) incorporating by reference portions of 40 CFR 262.81, 262.83 and 262.84): This rule makes conforming changes to regulations specifically related to import/export recovery and disposal operations regarding Canada. The changes in the federal rules were made to correspond to changes Canada made in their import/export recovery and disposal documents. EPA retains authority for these provisions but requires states to incorporate them should an entity in the state have wastes sent to or from Canada.

Written Testimony: None.

Oral Testimony: None.

Chairman Hagg requested public comments regarding the proposed amendments. There were no public comments.

Summary of Changes to Proposed Rules on Account of Public Hearing: No changes were made to the proposed rules during the public hearing.

Motion by Greenfield, seconded by Karpen, to adopt amendments to Hazardous Waste Rules, ARSD 74:28:21:01; 74:28:21:01.01; 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01;

74:28:25:01; 74:28:25:03; 74:28:25:04; 74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:28:03; 74:28:28:04; 74:28:28:05; 75:28:30:01; and 74:28:33:01. A roll call vote was taken, and the motion carried unanimously.

Chairman Hagg closed the hearing at 10:20 a.m.

MINING ISSUES CONSENT CALENDAR: Prior to the meeting the board received the consent calendar, which is a table listing the department recommendations for releases of liability and release of surety, transfers of liability, and releases of liability. (See attachment)

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

Motion by Morris, seconded by Peterson, to accept the department recommendations for releases of liability and release of surety, transfers of liability, and releases of liability. A roll call vote was taken, and the motion carried with Blumhardt, Greenfield, Karpen, Morris, Peterson, and Hagg voting aye. Gary Haag's vote was not heard due to issues with the phone connection.

ACCEPTANCE OF POST-CLOSURE BOND CHANGE RIDER AND ACCEPTANCE OF POST-CLOSURE BOND FOR WHARF RESOURCES (USA), INC.: Eric Holm reported that Wharf Resources (USA), Inc. requested board approval to decrease a portion of United States Fire Insurance Company's bond, which serves as part of Wharf's post-closure financial assurance, and accept a new bond issued by Ascot Surety and Casualty Company for the reduced amount of \$9,267,077.

On June 26, 2023, Wharf submitted a new surety bond from Ascot Surety and Casualty Company in the amount of \$9,267,077. Wharf also submitted a rider to United States Fire Insurance Company's bond, which reduces the existing \$16,800,000 bond amount by the same amount of the Ascot bond, for a new bond amount of \$7,532,923.

Information on Ascot Surety and Casualty Company was included in the board packet.

Mr. Holm stated that the department has reviewed the ratings for Ascot Surety and Casualty Company which are: AM Best – Financial strength A, long term A+ (excellent, stable); S&P – Not rated; Moody's – Not rated; and Fitch – Not rated.

Ascot Surety and Casualty Company is also a certified company listed on the US Department of Treasury Circular.

This surety exchange does not increase the current \$38,396,200 post-closure financial assurance. Mr. Holm stated that if the board approves the \$4,289,400 increase in the post-closure financial assurance amount for the Boston expansion mine permit application, it will be covered by another surety bond which will be submitted for approval by the board at its next meeting.

The department recommended that the board accept the rider to Surety Bond No. 612408648, United States Fire Insurance Company, decreasing the financial assurance amount to \$7,532,923

and accept Surety Bond No. SURU2210000161, Ascot Surety and Casualty Company, in the amount of \$9,267,077.

Mr. Blumhardt asked if Ascot Surety and Casualty Company is a new company. Mr. Holm answered that it is a fairly new company. It was not rated by S&P, Moody's and Fitch, but AM Best gave it an excellent rating, and Ascot Surety and Casualty Company's ultimate parent, Canada Pension Plan Investment Board, received a AAA rating (extremely strong, stable) from S&P and a Aaa rating (highest quality, stable) from Moody's.

Mr. Holm stated that Stephanie Kuntz with Wharf's bond broker, Marsh, had intended to call into the meeting to answer any questions the board may have on the exchange, but was unable to do so due to technical difficulties.

Mr. Holm noted that he will continue monitoring Ascot Surety and Casualty Company, and if he sees a negative change he will let Wharf know right away, and the bond will be exchanged for a different surety bond.

Chairman Hagg asked if there are any issues with United States Fire Insurance Company, given the fact that they want to reduce their portion of the surety bond. Mr. Holm stated that United States Fire Insurance Company has good ratings. He asked Mr. Zietlow to explain the reason for the reduction in bond and acceptance of a new surety.

Matt Zietlow, Wharf Resources, stated that Marsh identifies entities that may be better suited to issue the surety bonds.

In response to a question from Mr. Greenfield, Mr. Holm stated that some of the surety companies have several bonds with the department. With regard to a company's other bonds, he does not know how to look at their overall health; he relies on the ratings. Mr. Holm said he is open to suggestions on how he could better evaluate these bonding companies.

In response to a question from Chairman Hagg, Mr. Holm said he does not know why some companies are rated and others are not, other than they may be newer companies.

Motion by Morris, seconded by Karpen, to accept the rider to Surety Bond No. 612408648, United States Fire Insurance Company, decreasing the financial assurance amount to \$7,532,923. A roll call vote was taken, and the motion carried Blumhardt, Greenfield, Karpen, Morris, Peterson and Hagg voting aye. Gary Haag's vote was not heard due to issues with the phone connection.

Motion by Morris, seconded by Karpen, to accept Surety Bond No. SURU2210000161, Ascot Surety and Casualty Company, in the amount of \$9,267,077. A roll call vote was taken, and the motion carried with Blumhardt, Greenfield, Karpen, Morris, Peterson and Hagg voting aye. Gary Haag's vote was not heard due to issues with the phone connection.

REQUEST FOR FIVE-YEAR EXTENSION OF TEMPORARY CESSATION FOR DAKOTA STONE, INC., PERMIT 318: Mr. Holm stated that, as required under SDCL 45-6B-3(8)(c),

Dakota Stone Inc. (formerly Dakota Granite) has requested that the board grant a five-year extension of the period of temporary cessation for its granite quarry operation covered under Large Scale Mine Permit 318.

The quarry is located approximately six miles east of Milbank, SD. Dakota Stone's request to the board was included in the board packet. The original five-year period of temporary cessation was issued by the department on December 18, 2018, since it was uncontested as required under ARSD 74:29:09:06.

As stated in the request, Dakota Stone is not currently marketing the granite at the quarry since there is no demand for the type available at this site. Mining will resume once there is a demand for the granite. All maintenance activities at the mine will continue during the five-year extension period.

The period of temporary cessation cannot continue for more than 10 years. Under SDCL 45-6B-3(8) (c), if Dakota Stone does not resume production by December 18, 2028, the mine permit will be terminated, and Dakota Stone will be required to reclaim the quarry area.

DANR recommended that the board approve the extension of the temporary cessation period for Mine Permit 318 for another five years, to expire on December 18, 2028.

Mr. Morris asked to what level Dakota Stone would have to engage in mining activities to begin the process of mining again. Mr. Holm stated that the department would like to see them remove granite blocks from the quarry to show that they are producing granite that can be reported in their annual report. They currently have granite blocks in storage, but removing those blocks would not constitute production at the mine site. Mr. Holm said there would have to be active mining at the site, to the satisfaction of the department, in order to reset any requests for another extension.

Chairman Hagg asked if Dakota Stone has had any violations in the past. Mr. Holm stated that Dakota Stone has had no violations.

In response to a question from Mr. Greenfield, Mr. Holm stated that if Dakota Stone intended to begin actively mining before the five-year temporary cessation period, the company would send a letter to the department stating that it intends to resume production, and mining would resume under terms and conditions of Permit 318.

Motion by Blumhardt, seconded by Greenfield, to approve the five-year extension for Dakota Stone Inc., extending the period of temporary cessation to December 18, 2028. A roll call vote was taken, and the motion carried with Blumhardt, Greenfield, Karpen, Morris, Peterson, and Hagg voting aye. Gary Haag's vote was not heard due to issues with the phone connection.

TRANSFER LIABILITY AND RELEASE OF SURTY FOR PETE LIEN & SONS, INC., PERMIT 57: Mike Gollither, Pete Lien & Sons, had intended to join the meeting via telephone, but the connection issues had still not been resolved, so he was unable to participate.

Mr. Holm reported that during the November 2020 meeting, the Board of Minerals and Environment released 148.24 acres of reclaimed land from reclamation liability under Pete Lien's Mine Permit 57.

On February 23, 2021, Pete Lien & Sons obtained Mine License 21-1091 from the Minerals, Mining, and Superfund Program. In March 2021, the Minerals, Mining, and Superfund Program transferred 253.16 acres from the mine permit to the mine license. This left 6.65 acres of reclaimed land that did not meet release criteria and 11.51 acres undergoing final reclamation remaining under Mine Permit 57, for a total of 18.16 acres.

Mr. Holm inspected the remaining Permit 57 acreage on June 1, 2023. The 6.65 acres of previously reclaimed land now meet release criteria. Of the 11.51 acres undergoing reclamation in 2020, 3.36 acres are not reclaimed at this time. One of the areas is being used as a storage area for Prestressed/Precast Concrete Wall tables. Two of the areas reclaimed in 2020 meet release criteria. The southern-most reclaimed area in 2020 currently has a noxious weed infestation and does not meet release criteria. However, since these areas could be redisturbed in the future for Prestressed/Precast Concrete Wall production and other uses, Pete Lien & Sons has requested that these areas be transferred to Mine License 21-1091.

The department recommended the board transfer the remaining 18.16 acres from Large Scale Mine Permit 57 to Mine License 21-1091 and release Surety Bond No. 30097848, Western Surety Company, in the amount of \$204,300.

In response to questions from Mr. Morris, Mr. Holm stated that all the mining has been done in the quarry, so there is nothing left to mine under Permit 57. It is being used now as a support area for the Mine License mining on the other side of the road in the Black Hawk Quarry. Mr. Holm is satisfied that Pete Lien & Sons will reclaim the areas that are not reclaimed at this time and that there is sufficient surety to take care of any reclamation if they fail to do so. The surety for the mine license is \$20,000, which will cover the reclamation, and Pete Lien & Sons has committed to getting the noxious weed infestation under control under the mine license.

Ms. Hudson noted that Mr. Gollhofer was now available via cell phone.

Gary Haag was also available via phone at this time.

Chairman Hagg asked if the department has any concerns regarding the \$20,000 surety after releasing the \$204,300 surety bond.

Mr. Holm stated that it is concerning, but the \$20,000 is the maximum allowed for mine licenses under the law. He stated that mining is complete under this mine permit. The mine permit post-mine land use is pastureland, which won't be met for a long time since Pete Lien & Sons is still using the area. Under the mine license, the post-mine land use is industrial.

Mr. Morris asked if there is a deadline for completing the reclamation.

Mr. Holm stated that there was a definite completion date under the mine license in the notice of intent, which was published in the Rapid City Journal.

Mr. Gollither stated that the air quality, water quality, and solid waste permit that Pete Lien & Sons has for this area will remain in place. The post-mine land use falls into place with Rapid City and Pennington County plans for this area. Part of that area is being used for precast concrete, which is a new part of Pete Lien & Sons' business, so some of the land will be dedicated to that. A large portion of the land is ready for release. Once released it was probably going to be dedicated toward industrial use anyway, so the transfer from the permit to the mine license makes sense.

Chairman Hagg requested board action.

Motion by Blumhardt, seconded by Morris, to transfer the remaining 18.16 acres from Large Scale Mine Permit 57 to Mine License 21-1091 and release Surety Bond No. 30097848, Western Surety Company, in the amount of \$204,300.

Mr. Karpen stated that he will vote in favor of the motion, but it is concerning that there is such a big difference in the amount of the \$204,300 surety bond versus the \$20,000 surety bond.

In response to a question from Mr. Greenfield, Mr. Holm stated that the green cross-hatched areas shown on the map that was included in the board packet are areas that have been reclaimed. The only two areas still need to be reclaimed are in the blue cross-hatched. One of those areas is being used to store the Precast Concrete Wall tables.

In response to questions from Chairman Hagg, Mr. Holm stated that \$204,300 was the original surety amount, but some of the risk has been removed because approximately 50 percent of the site has been reclaimed.

In response to a question from Mr. Morris regarding the surety amount, Mr. Holm stated that the law requires a surety in the amount of \$500 per acre of affected land or a \$20,000 statewide surety. In this case, the \$20,000 surety covers only this one site.

A roll call vote was taken, and the motion carried unanimously.

RENEWAL OF THE MEMORANDUM OF UNDERSTANDING WITH THE US FOREST SERVICE FOR MINERAL OPERATIONS ON FOREST SERVICE LANDS: Roberta Hudson stated that the Memorandum of Understanding (MOU) with the U.S. Forest Service was last signed by the board in 2018.

A copy of the MOU showing changes to the document was included in the board packet. The changes are shown below:

- Department of ~~Environment~~ Environment Agriculture and Natural Resources (pages 1 and 2);
- Minerals, ~~and~~ and Mining, ~~and~~ and Superfund Program (page 2);
- Division of ~~Agriculture and~~ Agriculture and Environmental Services (page 2);

- ~~Jonathan Manning~~~~Gary Haag~~ (page 6);
- ~~Jonathan.manning2@usda.gov~~~~ghaag@fs.fed.us~~ (page 6);
- ~~ddavid.graham@usda.gov~~~~graham@fs.fed.us~~ (page 6);
- ~~STEVEN M. PIRNER~~~~HUNTER ROBERTS~~ (page 9)
- ~~MARK E VAN EVERY~~~~CARL PETRICK~~~~TONI STRAUSS~~, Acting Forest Supervisor (page 9)

Ms. Hudson stated that the MOU is an agreement between the Department of Agriculture and Natural Resources and the U.S. Forest Service. The MOU deals with financial assurance requirements, prevents double bonding, determines which party will hold financial assurance, or portions thereof. The MOU also covers cooperation between the parties, including notifying the other party of submissions of notices of intent, plans of operation, mine permit applications, mine license applications, and hearings. In addition, the parties are to notify each other concerning problems at mining operations including reclamation problems. The MOU addresses the coordination of inspections and enforcement actions.

Ms. Hudson answered questions regarding the MOU, mineral exploration, bonding and reclamation on Forest Service property.

Motion by Karpen, seconded by Peterson, to approve the Memorandum of Understanding between the South Dakota Department of Agriculture and Natural Resources and the USDA, Forest Service, Region 2, Black Hills National Forest, as presented. A roll call vote was taken, and the motion carried unanimously.

CONTINUE HEARING AND CONSIDER CHAIRMAN HAGG'S DECISION REGARDING THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IN THE MATTER OF WHARF RESOURCES (USA), INC. LARGE SCALE MINE PERMIT APPLICATION FOR WHARF'S BOSTON EXPANSION: A court reporter was present for the hearing and a copy of the transcript may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

Chairman Hagg, who was the hearing chair for this matter, opened the hearing at 11:25 a.m. Central Time.

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

Kellen Willert, Bennett, Main, Gubbrud & Willert, Belle Fourche, SD, represented Wharf Resources.

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

Chairman Hagg stated that South Dakota statute allows for board members that were not present for the hearing to read the transcript and participate in the vote.

Chairman Hagg asked Mr. Greenfield and Ms. Peterson, who were not presented for the hearing on May 18, 2023, if they read the transcript for this matter. Both Mr. Greenfield and Ms. Peterson stated that they had read the transcript.

Chairman Hagg asked to hear from the parties any argument or record they would like to make regarding his proposed recommendation.

Mr. Willert stated that Wharf would rely on the documents that have been filed with the board and the hearing in May. He said no objections or proposed findings and conclusion have been filed by Ms. Marshall, and it appears that she agrees with the department's proposed findings and conclusions.

Mr. Blair stated that the department has reviewed Chairman Hagg's proposed findings and decision, and the department has no objection to entry of the same.

Ms. Marshall stated that her intervention in this matter was based on water contaminations that have happened in the past. She stated that the finding of contamination in False Bottom Creek should be considered in making the decision on whether or not to approve the permit for Wharf's Boston Expansion until the contamination is cleaned up.

Chairman Hagg said he believes that, based on the evidence that was presented by the parties, Wharf has fulfilled its requirements in the application for the Boston Expansion. The board heard from Wharf and its witnesses, and the department and its witnesses. The testimony was credible by the parties and favored approval of the application, and to grant the permit subject to certain conditions that have been presented to the board. The conditions are incorporated in Exhibit A, which is attached to Chairman Hagg's proposed Findings of Fact, Conclusions of Law, and Order.

Chairman Hagg stated that the primary concern presented was dealing with the current selenium issue at False Bottom Creek, and that there are certain findings that exceed the federal Clean Water Act, which the state acknowledges in SDCL 45-6B-87. This matter was addressed by the parties. The board heard testimony from Ms. Hudson and Ms. Buscher, DANR, of their concerns in that those findings of the selenium were findings that exceed those allowed by the Clean Water Act, therefore, Wharf is technically in violation of the statute. Chairman Hagg stated that during the proceedings no one disagreed as to the fact that there are excess findings of selenium. Wharf may not be in complete agreement that they are in violation, but there were no objections to the testimony and the exhibits, of that characterization of it. Chairman Hagg does not believe there was any intent or any negligence by Wharf on how the selenium arrived in the creek. It was historically something that happened, the department brought it to Wharf's attention, and everybody has stepped up and agreed to address it. Chairman Hagg said he feels comfortable that the state's interest is being served by that.

Chairman Hagg said his recommended decision is ruled by SDCL 46-6B-32, which states that the Board of Minerals and Environment shall grant a permit to an operator if the application complies with the requirements of this chapter and all applicable local, state, and federal laws. The board may not deny a permit, except for one or more of the following reasons:

- (1) The application is incomplete, or the surety has not been posted;
- (2) The applicant has not paid the required fee;
- (3) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this state or the United States;
- (4) The mining operation will adversely affect the stability of any significant, valuable, and permanent man-made structures located within two hundred feet of the affected land, except where there is an agreement between the operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the operator;
- (5) The mining operation would be in violation of any county zoning or subdivision regulations;
- (6) The proposed mining operation and reclamation cannot be carried out in conformance with the requirements of §45-6B-35;
- (7) The operator is currently found to be in violation of the provisions of this chapter with respect to any mining operation in this state; or
- (8) The land is unsuitable for a mining operation, as determined pursuant to §45-6B-33.

Chairman Hagg stated that based on the evidence presented, and the method of mitigating and addressing the selenium issue, he does not see it as a major concern or a major reason to deny the permit. Chairman Hagg said his Findings of Fact and Conclusions of Law attempt to address this matter from a board discretionary finding, and while the technical violation does exist, it is adequately being addressed under a plan agreed to between Wharf Resources and the Department of Agriculture and Natural Resources.

Chairman Hagg turned the gavel over to Vice Chairman Blumhardt.

Motion by Morris, seconded by Haag, to adopt Hearing Chairman Hagg's recommended Findings of Fact, Conclusions of Law and Order.

Mr. Morris stated that although he attended the hearing in person, he also read the transcript. One of the things he noted throughout the hearing was the issue of a violation of the selenium standards. He questioned Mr. Zietlow, on page 112 through 117 of the transcript, regarding the selenium issue. Throughout the hearing even the department's witnesses essentially corroborated that this is something that happened. The levels started to become measurable, and no one really knew what caused that to come about. Mr. Morris said he believes that the department feels that Wharf is working toward resolution. The department appeared to be satisfied, and even though there was no formal notice of violation, there was a recognition that there was an issue and that there was no willfulness or gross negligence that caused this problem. It is now recognized, and the department and Wharf have been working together to address the mitigation issue.

Mr. Morris stated that he found it very compelling that the hearing chairman determined that all witnesses were credible on both sides. Ms. Marshall should be congratulated, and although her focus was on the past, she, along with the department and Wharf, brought to the forefront the

selenium issue. Mr. Morris said he intended to vote to adopt Hearing Chairman Hagg's recommended Findings of Fact, Conclusions of Law, and Order.

Mr. Karpen said he agreed with the hearing chairman's recommended Findings of Fact, Conclusions of Law, and Order. He suggested that the Department of Agriculture and Natural Resources or Wharf Resources provide a quarterly report on the selenium values in False Bottom Creek.

Mr. Haag agreed with the other board members. He suggested that Wharf or the department keep the board updated on the schedule for implementing a treatment system.

Ms. Peterson agreed that the department or Wharf should keep the board updated.

Hearing Chairman Hagg stated that part of the reason he wanted to echo the department's finding of the technical violation, but also making sure everyone understands that the problem is being addressed. Exhibit A is included with the Findings of Fact, Conclusions of Law, and Order so there is an ongoing record for addressing the selenium. It is important to have the transcript from the hearing and understand that the selenium issue exists even though it was not something intentionally caused by Wharf Resources. The term was used throughout the hearing by the department as being a technical violation.

Mr. Greenfield said he does not believe this is res judicata on any type of violation or causation issue. He believes that there are still remedies available beyond the conditions set forth in the permit under CERCLA for owners and operators and many other things that do not need to be addressed and are not addressed in findings of fact and conclusions of law. Mr. Greenfield stated that to the extent that those other remedies are available and to the extent that this is not res judicata as it relates to findings on those issues, he would support the hearing chairman's Findings of Fact, Conclusions of Law, and Order.

Mr. Blair noted that the conditions imposed, if the permit is approved, do require Wharf Resources, in regard to the selenium issue, to submit monthly updates to the department regarding the development of plans to remediate the elevated selenium concentrations. The department will cooperate in any way the board wishes in providing further information regarding that issue.

Mr. Zietlow stated that there are criteria, not only in the mine permit, but also in the draft NPDES permit. The reporting is a requirement for both of those permits, and anything else the board would like to see would not be an issue for Wharf Resources to present, whether it is in person or through the department.

Ms. Marshall stated that in the future the data from reports submitted by Wharf Resources or any other mining company should be included in the DANR's website database, and so the public knows what units were spilled and how much was spilled. Regarding the selenium, Ms. Marshall said she did not find anything of that nature on the DANR website spills map. She would like to see the mining companies and the state work together to make sure that any type of toxic spill is transparent, so the public has a better understanding of what is happening.

Mr. Morris called for the question on the motion to adopt the hearing chairman's recommended Findings of Fact, Conclusions of Law, and Order in the matter of Wharf Resources (USA), Inc.'s large-scale mine permit application for Wharf's Boston Expansion.

A roll call vote was taken, and the motion carried unanimously.

Vice Chairman Blumhardt turned the gavel back over to Chairman Hagg.

Chairman Hagg closed the hearing.

Chairman Hagg asked Mr. Holm about the recommended bonding amounts associated with the mine permit application. Mr. Holm said he talked to Steve Blair before the meeting, and since the bond amounts are listed in the findings, the department assumes the board approved the bond amounts at the same time it approved the findings. Chairman Hagg agreed with the department's assumption and asked if the mine permit would be issued after the bonding instruments were approved. Mr. Holm said the permit would be issued after the bond instruments were approved by the board at its next meeting.

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 2022 and plans for 2023. The annual oral mining presentations are required by statute. Mark Tieszen presented the annual reports for LAC Minerals (Richmond Hill Mine) and Homestake Mining Company. Matt Zietlow presented the annual report for Wharf Resources.

Mr. Tieszen and Mr. Zietlow answered questions from the board.

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.

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

Chairman Hagg had to step out of the meeting for a short time, so he turned the gavel over to Vice Chairman Blumhardt.

ELECTION OF OFFICERS: Motion by Morris, seconded by Karpen, to maintain the status quo and re-elect the same slate of officers – Rex Hagg, Chairman; Glenn Blumhardt, Vice Chairman, and Gregg Greenfield, Secretary. A roll call vote was taken, and the motion carried with Blumhardt, Greenfield, Haag, Karpen, Morris and Peterson voting aye. Chairman Hagg was absent for the vote.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: Carla Marshall stated that in 2009 at Homestake's Grizzly Gulch there was a 633,000-gallon cyanide solution

spill, and she questioned why that has not been reported as a CERCLA spill. She said it is very important that the Brohm Superfund site is cleaned up and kept from being re-mined because she believes the same problems will occur if it is re-mined. Ms. Marshall stated that Agnico Eagle does have some violations in Canada.

Chairman Hagg re-entered the meeting.

NEXT MEETING: The next meeting is scheduled for August 17, 2023.

Mr. Morris stated that Chairman Hagg appointed him as hearing chairman for the Rapid City Landfill permit amendment contested case hearing scheduled for August 17.

Mr. Holm noted that at the August 17 meeting the board will consider acceptance of increases to reclamation and post closure bonds for Wharf Resources (USA), Inc., Mine Permits 356, 434, 435, 464, 476, & 490.

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

Secretary, Board of Minerals and Environment	Date	Witness	Date
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South Dakota Board of Minerals & Environment

July 20, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
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Release of Liability & Surety:

Teklham Inc. dba Eureka Ready Mix Forbes, ND	03-763		\$2,000	Great Plains Bank, Eureka	Release liability and \$2,000.
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763002 SW1/4 Section 1; T125N-R73W, McPherson County

Transfer of Liability:

AP & Sons Construction Inc. Summit, SD	14-972		\$1,500	Peoples State Bank, Summit	Transfer liability.
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972001 SW1/4 Section 28; T112N-R51W, Roberts County

Transfer to: AP & Sons Construction Inc. Summit, SD	23-1125		\$3,500	Old Republic Surety Company	
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Consent Calendar

South Dakota Board of Minerals & Environment

July 20, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability:</u>					
Asphalt Paving & Materials Company Huron, SD	83-159		\$20,000	United Fire & Casualty Company	Transfer liability.
Transfer to: Raymond Johnson Sand & Gravel Huron, SD	83-139	159028		SE1/4 Section 4; T113N-R65W, Beadle County First National Bank, Pierre	
<u>Release of Liability:</u>					
Central Specialties, Inc. Alexandria, MN	02-733		\$20,000	Ohio Farmers Insurance Company	Release liability.
Morris Inc. Pierre, SD	83-2	733004		Section 5; T95N-R53W, Clay County United Fire & Casualty Company	Release liability.
		2032		W1/2 Section 23; T2S-R25E, Jackson County	
		2052		N1/2 SW1/4 Section 25; T42N-R33W, Mellette County	

Consent Calendar

South Dakota Board of Minerals & Environment

July 20, 2023

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Release of Liability:</u>					
City of Aberdeen Aberdeen, SD	98-638		EXEMPT	NA	Release liability.
		638001	E1/2 NE1/4 Section 6;	T124N-R63W, Brown County	
Day County Highway Department Webster, SD	83-34		EXEMPT	NA	Release liability.
		34015	W1/2 SW1/4 & SE1/4 SW1/4 Section 1;	T120N-R57W, Day County	
		34026	NW1/4 SE1/4 Section 11;	T120N-R57W, Day County	
City of Huron Huron, SD	83-128		EXEMPT	NA	Release liability.
		128002	SW1/4 NE1/4 Section 17;	T111N-R61W. Beadle County	
Lyman County Highway Department Kennebec, SD	83-215		EXEMPT	NA	Release liability.
		215001	SW1/4 Section 23;	T103N-R76W, Lyman County	

Consent Calendar
South Dakota Board of Minerals & Environment

July 20, 2023

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

Release of Liability:

Perkins County Highway
 Department
 Bison, SD

83-91

91005

SW1/4 NW1/4 Section 20; T21N-R16E, Perkins
 County

EXEMPT

NA

Release liability.

South Dakota Board of Minerals & Environment

July 20, 2023

DANR Recommendation

Surety Company or Bank

Surety Amount

Permit No.

Permit Holder

Acceptance of Change Rider to Post Closure Financial Assurance and Acceptance of Post Closure Financial Assurance for Wharf Resources (USA), Inc.:

Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$16,800,000	United States Fire Insurance Company	Accept rider to Bond No. 612408648, United States Fire Insurance Company, decreasing the Financial Assurance amount to \$7,532,923.
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Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$9,267,077	Ascot Surety & Casualty Company	Accept Bond No. SURU2210000161, Ascot Surety & Casualty Company, in the amount of \$9,267,077.
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Request for Five-Year Extension of Temporary Cessation:

Dakota Stone Inc. Milbank, SD	318	\$69,900	Platinum Bank, Oakdale, MN	Approve the five-year extension for Dakota Stone Inc., extending the period of temporary cessation to December 18, 2028.
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Consent Calendar

South Dakota Board of Minerals & Environment

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability and Release of Surety:</u>				
Pete Lien & Sons Inc. Rapid City, SD	57	\$204,300	Western Surety Company	Transfer liability and release Bond No. 30097848, Western Surety Company, in the amount of \$204,300.
Portions of Sections 20 & 21; T2N-R7E, Pennington County				
Transfer to: Pete Lien & Sons Inc. Rapid City, SD	License 21-1091	\$20,000	Western Surety Company	
<u>Application for Large Scale Mine Permit:</u>				
Wharf Resources (USA), Inc. Lead, SD	490	Reclamation Bond: \$72,152,900 Post Closure Bond: \$42,685,600	Portions of Sections 2 & 3; T4N-R2E, Lawrence County	Conditionally approve large scale mine permit 490 and approve the reclamation bond amount of \$72,152,900 and the post closure bond amount of \$42,685,600.

July 20, 2023