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

July 18, 2019
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 announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

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

BOARD MEMBER ABSENT: None.

OTHERS PRESENT: Carrie Jacobson, Tony Wagner, Mike Lees, Eric Holm, Lucy Blocker, Tom Cline, and Roberta Hudson, DENR; Charlie McGuigan, Attorney General's Office; Bob Mercer, Keloland News; and Sarah Mearhoff, Forum News Service.

APPROVAL OF MINUTES FROM MAY 15, 2019, MEETING: Motion by Blumhardt, seconded by Karpen, to approve the minutes from the May 15, 2019, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:28:21:01; 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; 74:28:30:01; AND 74:28:33:01: 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; 74:28:21:02; 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; 74:28:30:01; and 74:28:33:01.

The effect of the rules will be to update the state's existing hazardous waste rules by incorporating updated, codified, and final federal regulations by reference. The state's proposed rules reflect changes made to the federal hazardous waste regulations from July 1, 2016 through June 30, 2018, as well as final rules published on November 30, 2018 and February 22, 2019. Once these updates are made, the state's rules will be substantially the same as the federal hazardous waste regulations.

Changes to the rules include increasing regulatory flexibility and understandability of rules applicable to hazardous waste generators; establishing a methodology for the use of electronic manifests (e-Manifests); establishes procedures for managing and disposing of defective airbag inflators; provides healthcare facilities and pharmacies practical management and disposal options for hazardous waste pharmaceuticals; includes revisions to requirements involving imports and exports of hazardous wastes; and incorporates technical and typographical corrections that were made in the federal regulations.

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 and ensures safe, expeditious management of defective airbags, hazardous waste pharmaceuticals, and increased efficiency using the e-Manifest system. The proposed updates also enable the state to keep pace with changes made in the federal hazardous waste regulations.

Notice of public hearing was published on May 31, 2019, in the following daily newspapers: Aberdeen American News, Brookings Register, Huron Plainsman, Madison Daily Leader, Mitchell Daily Republic, Pierre Capitol Journal, Rapid City Journal, Sioux Falls Argus Leader, Spearfish Black Hills Pioneer, Watertown Public Opinion, and Yankton Daily Press and Dakotan.

Copies of the public notice and proposed rules were available electronically through a link on the state's hazardous waste program's website as well as through the department's One-Stop public notice site. Individuals could also contact the department directly for copies of the rules.

In addition, on June 18, DENR Waste Management Program staff provided an informational slide show presentation via the Digital Dakota Network (DDN) regarding the proposed rules. The presentation was conducted in Pierre and broadcast at DDN sites located in Aberdeen, Brookings, Rapid City, Sioux Falls, Watertown, and Yankton. Approximately 30 people attended the presentation.

The draft rules were reviewed by the Legislative Research Council (LRC) for form and style. The changes recommended by LRC were incorporated into the draft made available for public notice.

During the public comment period the department received written comments from the Environmental Protection Agency (EPA). EPA's comments were made with a focus on whether the rules would meet authorization/delegation standards. EPA recommended adding references to the Pharmaceutical Waste Federal Register notice within additional sections in the draft rule. The department updated the draft rule to accommodate those recommendations, and the change is reflected in the version presented to the board prior to the hearing. No other written or oral comments were received. The department did receive eight positive inquiries from the regulated community and industry associations. Those inquiries included requests for copies of the draft rules; questions regarding the rules' anticipated effective date; and requests for clarifications regarding applying the rules once they are in place.

The purpose of the proposed rules is to continue to ensure all businesses who generate, transport, treat, store, or dispose of hazardous waste manage the waste in compliance with the hazardous

waste requirements. This ensures that hazardous waste is managed in a way that is protective of human health and the environment.

Carrie Jacobson, DENR Waste Management Program, provided a PowerPoint presentation discussing the history of the Hazardous Waste Program and providing a summary of the proposed amendments. The proposed rules are:

- Generator Improvement Rule (GIR) - Consolidate and clarify existing regulations for hazardous waste generators and provide greater flexibility for hazardous waste generators to manage their waste in a cost-effective and protective manner, make technical corrections and conforming changes to address inadvertent errors, and remove obsolete reference to programs that no longer exists (e.g. Performance Track facilities). One aspect of this update includes renaming Conditionally Exempt Small Quantity Generators (CESQG) as Very Small Quantity Generators (VSQG).
- Imports and Exports of Hazardous Waste - Amend existing regulations regarding the export and import of hazardous wastes from and into the United States. Because these rules involve international shipments and the movement of materials among members of the Organization for Economic Cooperation and Development (OECD), the Environmental Protection Agency (EPA) retains its authority for these types of shipments. In light of the ability to ship wastes using the new national Electronic Manifesting system, the rule update includes provisions for using that process. Although EPA retains its enforcement authority regarding foreign imports and exports of hazardous waste, EPA asks states to incorporate these rules in order to help companies understand their responsibilities. South Dakota does not have any facilities that import or export hazardous wastes.
- Hazardous Waste Electronic Manifest System - Beginning June 30, 2018, the EPA launched a national electronic manifest (e-manifest) system by which hazardous waste generators, transporters, and permitted treatment, storage and disposal facilities (TSDFs) document and track hazardous waste shipments. The national electronic system was developed in order to meet the 2012 Hazardous Waste Electronic Manifest Act (P.L. 112-195). Funding to support the system will be imposed on the permitted treatment, storage and disposal facilities using the methods provided in these regulations. The payment process is set up and maintained solely by EPA. Regulations adopted with this rule update involves the use of e-manifests, including how to make changes to shipping information while wastes are in transit, and submitting paper/e-manifest hybrids.
- Airbags Rule - Formalize guidance EPA put together in July 2018 to address the safe management of recalled Takata airbag inflators. In consultation with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) who regulates explosive devices in commerce, the agencies agreed unstable Takata inflators removed from vehicles should not be reused; as a waste, they are considered an ignitable and reactive hazardous waste. The final rule published in November 2018 was designed to expedite removal of defective Takata airbag inflators for safe and environmentally sound disposal by exempting the collection of airbag waste as long as certain conditions are met (accumulation of no more than 250 airbag modules or inflators for 180 days or less; safely package the items within a container labeled "Airbag Waste – Do Not Reuse"; and ensure the waste is sent to a vehicle

manufacturer or their representative, or a permitted TSDF; waste must be shipped in accordance with DOT requirements; and records of the shipment must be maintained.)

- P075 Listing Amendment for Nicotine - Finalized in conjunction with the Pharmaceutical Waste Rule, the amendment to the P075 listing criteria allows FDA-approved over-the-counter nicotine replacement products (nicotine gums, lozenges, and patches) to be disposed as a nonhazardous solid waste by pharmacies and healthcare facilities.
- Pharmaceutical Waste Rule - Applicable to healthcare facilities (human and animal), pharmacies, and reverse distributors that generate hazardous waste pharmaceuticals, the rule provides management standards in lieu of the existing hazardous waste generator requirements. The rule is intended to facilitate compliance among healthcare facilities and improve the management and disposal of hazardous waste pharmaceuticals at healthcare facilities. Key provisions include reducing confusion involved with hazardous waste determinations for pharmaceutical wastes, including empty containers; eliminates dual regulation of hazardous waste pharmaceuticals that are also Drug Enforcement Administration (DEA) controlled substances; prohibits disposal of hazardous waste pharmaceuticals down the drain; codifies the household waste exemption for pharmaceuticals collected through drug take-back programs while ensuring their proper disposal; and codifies EPA's policy regarding nonprescription pharmaceuticals managed through reverse logistics.
- Incorporates corrections of typographical and internal reference errors made in the federal regulations.

Following her presentation, Ms. Jacobson answered questions from the board.

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

Motion by Landguth, seconded by Scheetz, to adopt amendments to Hazardous Waste Rules, ARSD 74:28:21:01; 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; 74:28:30:01; and 74:28:33:01. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

Consent Calendar: Prior to the meeting, the board received a table listing the department recommendations for transfer of liability and releases of liability (see attachment).

Responding to a question from Chairman Hagg regarding the Spencer Quarries, Inc. transfer to Kingsbury County Highway Department, Tom Cline stated that Spencer Quarries put up a stockpile of material for the county. The county will take over the reclamation liability underneath the stockpile. As the county removes the stockpile, they will put the topsoil back to cover that

footprint. Generally, the company will reclaim the pit area, but the stockpile is left for future county use.

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

SPYGLASS CEDAR CREEK, LP'S REVOKED PERMITS - STATUS OF SPYGLASS WELLS, SUMMARY OF ENFORCEMENT OPTIONS FOR ADDRESSING UNPLUGGED WELLS:

Chairman Hagg stated that Rich Williams could not be present at the meeting, but he submitted a letter providing an update to the litigation against Spyglass Cedar Creek, LP. The letter stated that Spyglass Cedar Creek, LP was served on May 20, 2019. March Kimmel was served on May 25, 2019. The process servers were not able to personally serve Kevin Sellers; however, the Attorney General's Office was contacted by an attorney representing Mr. Sellers admitting service on behalf of Mr. Sellers on June 27, 2019. Mr. Sellers will have 30 days from June 27, 2019, to file and answer.

Since that time, Spyglass Cedar Creek, LP and March Kimmel have contacted local counsel. Brett Koenecke and Douglas Abraham from May Adam Law Firm in Pierre will be representing them. Pursuant to an agreement with that firm, they will have until August 1, 2019, to file their answer.

Bob Morris stated that he would continue recusal over any quasi-judicial discussion regarding Spyglass, but he would participate in any future bonding and policy discussion.

Chairman Hagg stated that the letter from Mr. Williams will be entered into the record.

Chairman Hagg said he would like to know the direction the board members would like to take regarding whether or not to adopt plans, potential options for funding, and prioritization of looking at one of the plans presented by DENR. He asked for board discussion on proceeding with or without using the Quartz bond as a viable source of assisting with the plan.

Bob Morris asked that the record reflect that he continues recusal over any quasi-judicial discussion regarding Spyglass, but will participate in any future bonding and policy discussions.

Mr. Landguth said the board should move ahead and use the Quartz bond for this project. If it is not legal to use the Quartz bond for this project, the legislature should make changes to ensure that bond money is available for the board to use for oil and gas reclamation.

Doyle Karpen stated that bonds are set for specific projects, and he is opposed to using the Quartz bond for the Spyglass project. The board should request funding from the legislature for this project.

John Scheetz said he agrees that something needs to be done, but the problem is the legislature. The money is not there to properly fix the problem, even if the Quartz bond money were used. The funds need to be requested from the legislature.

Glenn Blumhardt stated that he agrees that something needs to be done, but is very leery about setting a precedence by using the Quartz bond for Spyglass.

Daryl Englund said the board has not heard from the Attorney General's Office regarding whether or not it is legal to use the Quartz bond for Spyglass. The legislature needs to confirm whether the board can or cannot use the Quartz bond for this project.

Gregg Greenfield suggested not using the Quartz bond until there is clarification on whether it is appropriate to do so. He stated that he knows there is a problem that needs to be fixed. The board should wait for a long-term solution.

Jessica Peterson said she agrees that a long-term solution is needed.

Chairman Hagg stated he is not sure that using the \$130,000 Quartz bond is going to change anything. Even if the legislature does not appropriate money, it can certainly pass a bill to directly instruct how monies can be used in these situations. Chairman Hagg said he is reluctant to use the Quartz bond for Spyglass without that authority.

Chairman Hagg stated that Ryan Maher, chairman of the Government Operations and Audit Committee, had an issue with the length of time it is taking the board to address some of these issues. On June 19, 2019, Chairman Hagg sent a letter to Chairman Maher and the committee letting them know what the board is up against and what the board has done in reaction to the Spyglass situation. The letter also reflected some of the board's concerns. Chairman Hagg said he has not received a response from the committee.

Chairman Hagg requested board action regarding using the Quartz bond.

Motion by Karpen, seconded by Greenfield, not to use the Quartz bond to address the Spyglass issue.

Mr. Landguth said clarification is needed regarding whether or not it is legal to use the Quartz bond for Spyglass, so the board has some direction on how to handle these matters, so he will vote in favor of the motion.

Mr. Scheetz asked Mike Lees how environmentally critical it is to plug the Spyglass wells and is there danger or any type of environmental harm in not plugging the wells? He asked if the \$130,000 Quartz bond would mitigate or eliminate the environmental harm that may be existing.

Mr. Lees stated that inspectors were onsite last month to verify that there currently is no significant environmental threat associated with the 40 Spyglass wells. Gas leaks, not occurring at this time, would be the only significant potential environmental threat associated with those wells. The department plans to continue periodically inspecting the wells to make sure none of the wells are leaking, and if a gas leak is discovered, that will be addressed.

Mr. Lees stated that during the 2019 legislative session, a bill that proposed special appropriations to pay for the Spyglass cleanup was opposed by the Bureau of Finance and Management. Mr. Lees

said a future attempt would probably also be opposed, so the department's position is still that the only money available for partially closing the Spyglass field is the Quartz bond.

Mr. Scheetz asked where the Quartz bond money will go if the board does not use it for Spyglass.

Mr. Lees answered that department does not need the \$130,000 bond, forfeited by Quartz Operations, to perform reclamation at the Quartz well site near Wasta. That well was permanently plugged and surface reclamation is complete.

Chairman Hagg said he is not opposed to using the Quartz bond if there is authority to use the bond

Chairman Hagg noted there are several federal private mineral interests at Spyglass. He asked if there is any federal program or federal money that could be used for this type of issue.

Mr. Lees said some of the wells do produce federal minerals. The department communicated with the Bureau of Land Management, which manages the minerals owned by the federal government. In order to be eligible for the federal orphaned well list, a well needs to penetrate federal mineral interests. The Bureau of Land Management indicated that none of the Spyglass wells will qualify for any type of federal funding for plugging and cleanup because none of them penetrate federal mineral interests.

Mr. Greenfield stated that the board has an obligation to exhaust its remedies against Spyglass and to do everything it can to make sure that Spyglass lives up to their obligations before the board uses money from other places.

Chairman Hagg agreed with Mr. Greenfield and noted that the board has acted aggressively and within its authority since it learned of this situation.

Chairman Hagg requested a vote on the motion not to use the Quartz bond for Spyglass.

A roll call vote was taken, and the motion carried with Blumhardt, Englund, Greenfield, Karpen, Landguth, Peterson, Scheetz and Hagg voting aye.

Chairman Hagg asked for input from the board regarding how to prioritize Plan Options 1, 2, 3, and 4 to address the Spyglass issues, as presented by the department at a previous board meeting.

Mr. Karpen stated he believes that the only way to address this is to direct the department to draft legislation requesting funding to plug the Spyglass wells.

Mr. Landguth said the board should strongly consider the recommendations of the department regarding a solution.

Mr. Englund agreed that the board should follow the recommendations of the department and also exhaust any legal issues with Spyglass. He said if the lawsuit ends in the state's favor, the board should be able to plug all of the wells.

Chairman Hagg stated that he is not certain whether the board should adopt a plan, and then look to see if it can be funded from the lawsuit, or if the board should wait to adopt a plan depending what may be received from the lawsuit. If there truly is not a major environmental issue, the board needs to decide which wells need to be addressed and which wells are potentially viable or non-viable. He noted that a certain group of people believe there is still hope that some of these wells may be viable, and not everyone is in agreement with plugging all of the wells because they believe there may be opportunity in the future.

Chairman Hagg noted that according to the presentation by the department, a public notice will be issued to try to gather from the local landowners what their feelings are, whether they have any opposition to plugging the wells, and whether they believe the wells are still viable. He is also concerned that if the legislature is not going to appropriate any funding for this, then those state wells, if they are not an environmental concern, should be put at the end of the list for the state to figure out. Whether it is School and Public Lands or somewhere else, they are mixed with the private citizens because they also have an interest in these wells. The board may not get a good response from the public if the board took them in any particular order and did state wells first versus private wells.

Mr. Landguth said the board has a lot to figure out before it decides on a plan.

Mr. Greenfield asked if anyone has looked at all of the leases to see if the leases outline specific responsibilities and who has those responsibilities.

Chairman Hagg stated that he believes the operators have the obligation of plugging the wells, which is why they come to the board for bonds and plugging and performance plans, and that is why it is part of the permit.

Chairman Hagg suggested moving forward with a public notice to get input from all of the landowners regarding the wells.

Mr. Karpen and Mr. Landguth agreed with Chairman Hagg regarding the public notice.

Chairman Hagg asked Mr. Lees to explain the public notice process.

Mr. Lees stated that the department will take input from all affected property owners, mineral and surface, then decide how to prioritize based upon what the property owners want. The critical issue is the money. Staff does not want to send out a public notice on this and get input from the affected landowners with no means of doing anything about it or paying for it. Mr. Lees said he believes the philosophical issue during the 2019 legislative session was who should pay for Spyglass' mess. The opposition that came from the state was based on whether it is the taxpayers' responsibility to pay for Spyglass' mess in Harding County, and that is why the proposed special appropriation was opposed. He reiterated that it would be problematic to issue a public notice and gather input knowing that there is no money to pay for anything that may be suggested.

Chairman Hagg said that information should be retrieved and the board is lacking information, so the public notice process should proceed forward. He also noted that he would like to foster communication between the Board of Minerals and Environment and School and Public Lands.

Motion by Greenfield, seconded by Landguth, to move forward with the public notice process as outlined in DENR's presentation given to the board at a previous board meeting, and to include a letter summarizing the Board of Minerals and Environment's position. A roll call vote was taken, and the motion carried with Blumhardt, Englund, Greenfield, Karpen, Landguth, Peterson, Scheetz, and Hagg voting aye.

Chairman Hagg requested board approval to send a letter to George Acton in response to his emails concerning the Spyglass issue.

Motion by Karpen, seconded by Englund, to approve sending a letter to Mr. Acton. A roll call vote was taken, and the motion carried with Blumhardt, Englund, Greenfield, Karpen, Landguth, Peterson, Scheetz, and Hagg voting aye.

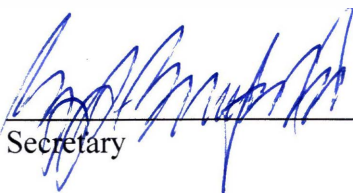
Bob Morris stated that he has recused himself from the Spyglass matter because of a conflict of interest, but he would like to be involved in future general policy discussions for oil and gas wells, not in a quasi-judicial capacity and not specific to Spyglass.

PUBLIC COMMENT PERIOD: There were no public comments.

NEXT MEETING: The next board meeting is August 15, 2019.

Chairman Hagg noted that the board plans to meet in the Lead/Deadwood area on September 18-19, 2019. Discussion took place regarding sites the board may tour. Possible tours may include the Brohm Superfund Site, Grizzly Gulch Tailings Dam, and the Wharf gold mine.

ADJOURN: Motion by Morris, seconded by Peterson, that the meeting be adjourned. A roll call vote was taken, and the motion carried unanimously.


Secretary _____
Date 8/14/19


Witness _____
Date 8/14/19

Consent Calendar

South Dakota Board of Minerals & Environment

July 18, 2019

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Liability:</u>					
Spencer Quarries, Inc. Spencer, SD	83-36		\$20,000	United Fire & Casualty Company	Transfer liability.
		36011	N1/2 NW1/4 Section 10; T110N-R56W, Kingsbury County		
Transfer to:					
Kingsbury County Highway Department DeSmet, SD	83-117		EXEMPT	NA	
<u>Releases of Liability:</u>					
Marty's Gary, SD	10-896		\$2,000	Reliabank Dakota, Watertown	Release liability.
		896002	SE1/4 Section 20; T115N-R48W, Deuel County		
Codington County Highway Department Watertown, SD	83-169		EXEMPT	NA	Release liability.
		169015	SE1/4 Section 12; T118N-R54W, Codington County		

Consent Calendar

South Dakota Board of Minerals & Environment

July 18, 2019

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Releases of Liability:</u>					
Pennington County Highway Department Rapid City, SD	83-45		EXEMPT	NA	Release liability.
		45021	SW1/4 Section 34; T1N-R14E, Pennington County		
Spink County Highway Department Redfield, SD	83-115		EXEMPT	NA	Release liability.
		115016	NW1/4 Section 28; T115N-R65W, Spink County		
Stanley County Highway Department Ft. Pierre, SD	83-190		EXEMPT	NA	Release liability.
		190006	NW1/4 Section 36; T8N-R24E, Haakon County		