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

August 16, 2018
10:00 a.m. CDT

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

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

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

BOARD MEMBER ABSENT: Daryl Englund.

OTHERS PRESENT: See attached attendance sheet.

ELECTION OF OFFICERS: Motion by Morris, seconded by Scheetz, that the current slate of officers continue for another year – Rex Hagg, chairman, Glenn Blumhardt, vice chairman, and Gregg Greenfield, secretary. A roll call vote was taken, and the motion carried unanimously.

APPROVAL OF MINUTES FROM MAY 17, 2018, MEETING: Motion by Landguth, seconded by Blumhardt, to approve the minutes from the May 17, 2018, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

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

In response to a board question, Bret Graves, DENR Minerals and Mining Program, stated that mining activity in the gravel pits varies from new mining to previously existing mining.

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

REQUEST FOR EXTENSION OF TEMPORARY CESSATION FOR NEW ENGLAND STONE INDUSTRIES, LARGE SCALE MINE PERMIT 224: Eric Holm reported that, as required under SDCL 45-6B-3(8)(c), New England Stone Industries has requested that the board grant a five-year

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extension of the period of temporary cessation for its granite quarry located six miles east of Milbank, SD. Prior to the meeting, Mr. Holm distributed copies of New England Stone Industries' request.

The original five-year period of temporary cessation was issued by DENR on September 11, 2013, since it was uncontested, as required under ARSD 74:29:09:06.

New England Stone Industries is not currently marketing the stone mined at the quarry since there is no demand for it. Mining will resume once there is a demand for the granite. All maintenance activities at the quarry 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 New England Stone Industries does not resume production by September 11, 2023, the operation will be terminated and the site will be required to be reclaimed.

The department recommended board approval of the extension of the temporary cessation period for another five years, to expire in September 2023.

Responding to questions from the board, Mr. Holm stated that, in accordance with the statutes, New England Stone Industries is required to notify the department when they resume production. During the cessation period, the department has done annual inspections of the site. The surety bond remains in place during the temporary cessation period. The bond is adjusted for inflation.

Motion by Greenfield, seconded by Landguth, to approve extension of the temporary cessation for another five-year period to expire in September 2023 for New England Stone Industries, Inc., Smithfield, RI, Permit No. 224. 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: Prior to the meeting, the board received a copy of the Memorandum of Understanding.

Mike Cepak reported that the state and US Forest Service both have mandates to regulate mineral development within their jurisdictions and those jurisdictions overlap in the Black Hills. The Memorandum of Understanding (MOU) is a cooperative agreement for joint mineral development regulation between the state and the US Forest Service on Black Hills Forest Service lands. The state issues mining permits and licenses on federal, state, and private land within the state. The Forest Service also issues operating plans for mining on Black Hills Forest Service lands. The MOU is designed to eliminate duplication of reclamation and financial assurance requirements by the two agencies in regulating mineral development in the Black Hills.

In 1986 and again in 1988, DENR and the Board of Minerals and Environment signed MOUs with the Forest Service regarding mineral development in the Black Hills. One MOU covered mine permits (SDCL 45-6B) and exploration notices of intent (SDCL 45-6C) and the other MOU covered mine licenses including sand and gravel, construction aggregate, pegmatite mines (SDCL 45-6). For the past 30 years, these MOUs helped maintain good cooperation between DENR and the US Forest regarding mine regulation in the Black Hills.

Because the MOUs were 30 years old, the Forest Service requested the MOUs be updated and renewed. DENR and the Forest Service combined the two old MOUs into a single MOU covering mine permits, exploration notices of intents, and mine licenses.

Like the old MOUs, the new MOU deals with financial assurance requirements, prevents double bonding, determines which party will hold financial assurance, or portions thereof. The new 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, hearings, etc. 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. The MOU allows construction aggregate sites to remain unreclaimed for Forest Service use to manage and maintain Forest Service lands and roads.

The new MOU includes new provisions as required by federal rules, including provisions regarding use of the Forest Service insignia and text messaging during driving. The new MOU will now have term of five years. Secretary Pirner has signed the document, and the Forest Service will need to sign before the MOU is effective.

Mr. Cepak stated that if the board accepts the MOU, Chairman Hagg will sign and date three originals of the document, and these copies will be forwarded to the Forest Service for their signatures.

In response to questions from the board, Mr. Cepak stated that the state/federal MOU pertains to only Forest Service land, not Bureau of Land Management land. The state has total jurisdiction on private land. The MOU contains a section regarding financial assurance.

Mr. Cepak answered questions regarding the state and federal procedures for issuing mining permits and bond amounts. He noted that if the state denies a permit, the Forest Service has the ability to grant the permit. However, the company would not be able to start mining until it obtained a state mining permit.

Mr. Cepak said the MOU was reviewed by the Attorney General's Office and Forest Service attorneys.

Motion by Blumhardt, seconded by Morris, to renew the Memorandum of Understanding with the US Forest Service for mineral operations on Forest Service lands. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO FINALIZE AND APPROVE SOUTH DAKOTA'S VOLKSWAGEN BENEFICIARY MITIGATION PLAN: Chairman Hagg opened the hearing at 10:25 a.m. Central Time.

The purpose of the hearing was to consider revisions and to approve South Dakota's Volkswagen (VW) Beneficiary Mitigation Plan.

Barb Regynski, DENR Air Quality Program, provided a PowerPoint presentation regarding the plan.

In 2016, a lawsuit was filed against VW for manufacturing and selling diesel vehicles in the United States, which allowed nitrogen oxide pollution (NOx) to exceed levels allowed by the Clean Air Act.

The settlement consisted of three major parts: VW must buy back or repair non-compliant vehicles; VW must invest in zero emission vehicle (ZEV) infrastructure and awareness, for example, electric cars; and VW must fund an Environmental Mitigation Trust to be used to offset the excess pollution emitted by the non-compliant vehicles. The settlement breakdown is as follows: 11.2 billion dollars is allocated for vehicle buyback and repair, \$2 billion is allocated for ZEV investment, and \$2.925 billion is allocated for the Environmental Mitigation Trust.

The allocations were based on the number of impacted VW vehicles in each state; and South Dakota's allocation is \$8.125 million. The trust will support projects that reduce NOx emissions. DENR has been designated by the Governor to be the lead agency in South Dakota to administer the state's trust allocation.

Funds are to be disbursed within 10 years. Up to one-third of the state's allocation may be requested during the first year and up to two-thirds of the allocation during the first two years. DENR intends to extend the funding through the entire 10 years.

The state must develop and submit a Beneficiary Mitigation Plan, which is a high-level summary of how the state intends to spend the trust funds. The plan must be submitted at least 30 days before the first funding request. States may adjust their goals and spending plans, but must provide the trustee with updates to their plan.

The trust stipulates that the plan shall address the overall goals for use of the funds, categories of eligible mitigation actions including the percent of funds anticipated to be used for each category, the potential beneficial impact on air quality in areas that bear a disproportionate share of the air pollution burden, the expected ranges of emission benefits, the extent to fund projects in accordance with the Diesel Emissions Reduction Act (DERA) Program, and the process by which the state shall seek and consider public input on its plan.

The overall goal is to facilitate the improvement and protection of the ambient air quality throughout South Dakota, to fund projects throughout the state and in areas of the state that bear a disproportionate share of the impact of NOx emissions, to achieve reductions in ground level ozone for which nitrogen oxide is a precursor in areas of the state where levels are approaching the federal National Ambient Air Quality Standards, to maximize the use of funds in reducing nitrogen oxide emissions, and to award funds through a public process.

Nitrogen Oxides (NOx) are harmful compounds released by combustion processes, including diesel engines. NOx reacts with Carbon Monoxide (CO) and Volatile Organic Compounds (VOCs) in sunlight to form ground-level ozone, the major component of smog, which is a significant air pollution problem in the U.S. NOx and particulate matter from diesel emissions and other sources are linked to serious health effects including asthma, respiratory system irritation, allergen sensitivity, respiratory infections, and premature death.

Eligible mitigation actions are:

1. Class 8 local freight trucks and port drayage trucks (eligible large trucks)
2. Class 4-8 school bus, shuttle bus, or transit bus (eligible buses)
3. Freight switchers
4. Ferries/tugs
5. Ocean going vessels (OGV) shorepower
6. Class 4-7 local freight trucks (medium trucks)
7. Airport ground support equipment
8. Forklifts and port cargo handling equipment
9. Light duty zero emission vehicle supply equipment
10. Diesel Emissions Reduction Act (DERA) options

These categories are aimed at getting vehicles and equipment that do not have the newest air emission standards off the road and decreasing pollution. The one exception is Category 9, light duty zero emission vehicle supply equipment.

In South Dakota, the major source of NOx emissions is from mobile sources. The plan proposes distributing the funds as follows:

- Categories 1 and 6 – Class 8 (large) and 4-7 (medium) eligible local freight trucks – 50%;
- Categories 2 and 10 – Class 4-8 eligible school bus, shuttle bus, or transit bus and Diesel Emission Reduction Act (DERA) options – 35%;
- Category 9 – Light duty zero emission vehicle supply equipment – 5%.

The department proposes to use the remaining 10% to cover administrative expenses.

The potential beneficial impacts and expected emissions benefits are:

- Heavy duty highway vehicles may provide up to a 96% reduction in NOx emissions per vehicle, based on replacing a model year 1992 engine with a vehicle having the newest emissions standards.
- Decreasing unhealthy diesel emissions will improve ambient air quality in areas that bear a disproportionate share of the air pollution burden. This is especially true for school buses, since children are more vulnerable to the effects of diesel exhaust.
- Tons of pollution reduced over the lifetime of the vehicles, specifically NOx.
- Reduced public exposure to diesel particulate matter, which EPA has classified as a likely human carcinogen.

Currently the DERA Program funds are used to help schools replace old school buses. The department plans to extend the same program to also include transit buses, since more funds will be available. The trust funds will be used to meet the state's non-federal voluntary match. In meeting the voluntary match equal to the base allocation offered by EPA, EPA will provide a bonus equal to 50% of the base allocation.

The public input process consisted of the following:

- Develop a website to provide information and to request public input – Completed last September
- Draft the plan – Completed in early May

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- Request public input on the draft plan – Public comments were accepted through June 15
- Hold public input meetings in Rapid City and Sioux Falls – Held early June
- Consider the comments received and make any needed revisions to the plan – Response to comments put out July 10
- Public notice another comment period and a hearing on the revised plan in front of the Board of Minerals and Environment – Public Noticed July 13
- The Board to consider any new comments received, finalize and approve the plan – BME hearing August 16
- The approved plan to be submitted to the trustee

The department received 14 comments during the public notice period for the draft plan. The comments received resulted in no change to the draft plan.

There were three main topics on which comments were submitted:

- Comments supporting one fuel type over another.
The department responded that several fuel types are available in the draft plan, but the applicant has the choice of which best meets their needs.
- Comments requesting adjustments to category percentages.
The department responded that the draft plan does allow the percentage in each category to be adjusted depending on the number and type of requests DENR receives, so percentages may be adjusted in the future.
- Comments on how to set-up guidelines and ranking of applicants.
The department responded that guidelines and ranking criteria were not part of the requirements to be included in the plan. The department will work on the guidelines after the plan is approved and submitted to the trustee.

Following DENR's response to comments, the Rapid City Regional Airport submitted a comment requesting that the department reconsider including the airport category.

Ms. Regynski noted that all of the information she discussed today is located on the department website.

Notice of the public hearing as published on July 13, 2018, in the Aberdeen American News, Brookings Daily Register, Huron Plainsman, Madison Daily Leader, Mitchell Daily Republic, Pierre Capital Journal, Rapid City Journal, Sioux Falls Argus Leader, Spearfish Black Hills Pioneer, Watertown Public Opinion, and the Yankton Daily Press & Dakotan. Affidavits of publication are on file at the DENR Air Quality Program office.

Ms. Regynski answered questions from the board regarding the eligible categories, the process that the department will follow in accepting funding applications and distributing the funds, the Trustee, and the percentage of funds that will be allocated for the eligible categories.

Chairman Hagg requested public comments.

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Erica Fitzhugh, East River Electric Cooperative, requested that the department allocate a higher percentage of the funds for public electric vehicle charging infrastructure.

Ms. Regynski stated that one part of the settlement was specifically for ZEV infrastructure in the amount of \$2,000,000,000.

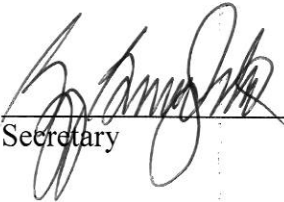
Motion by Karpen, seconded by Morris, to approve South Dakota's Volkswagen Beneficiary Mitigation Plan, as presented. A roll call vote was taken, and the motion carried unanimously.

The board requested that the department provide periodical updates on this matter.

NEXT MEETING: The next meeting is scheduled for September 20, 2018.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: No one offered public comments.

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


Secretary _____ Date 12/16/18


Witness _____ Date 10/1/18

***South Dakota Board of Minerals & Environment
Consent Calendar***

						<i>August 16, 2018</i>
<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfers of Liability:</u>						
Dakota Earthworks, Inc. Sioux Falls, SD	05-809	809002	\$20,000	2074857	North American Specialty Insurance Company	Transfer liability.
Transfer to:			E1/2 SW1/4, SW1/4 SE1/4, & NW1/4 Section 6; T101N-R50W, Minnehaha County			
Myrl & Roy's Paving, Inc. Sioux Falls, SD	83-95		\$20,000	0404434	Great American Insurance Company	
TF Luke & Sons, Inc. Kimball, SD	83-11	11003	\$20,000	929211763	Western Surety Company	Transfer liability.
Transfer to:			NE1/4 Section 23; T103N-R61W, Davison County			
Joy Bollock Mitchell, SD	17-1031		\$1,500	70054941826	First National Bank, Mitchell	
<u>Releases of Liability:</u>						
Boom Concrete, Inc. Newell, SD	92-442	442003	\$1,000	09104	First National Bank, Newell	Release liability.
			\$500	800009938	First National Bank, Newell	
			\$4,500	8010134	First National Bank, Newell	
			\$500	206424	First National Bank, Newell	
			\$5,500	206448	First National Bank, Newell	
		S1/2 NW1/4 Section 2; T7N-R7E, Meade County				

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<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<i>August 16, 2018</i> <u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Croell, Inc. Sundance, WY	96-604	604009	\$20,000	2092148	North American Specialty Insurance Company	Release liability.
			NE1/4 NE1/4 Section 24; T8N-R6E, Butte County			
Jason Fischer Lesterville, SD	08-862	862002	\$500 \$1,000 \$1,000	2115854626 7000306997 7000313750	First National Bank, Yankton First Dakota National Bank, Yankton First Dakota National Bank, Yankton	Release liability.
			W1/2 NE1/4 Section 34; T95N-R57W, Yankton County			
Eugene Hanson Faulkton, SD	96-596	596001	\$500 \$1,000 \$500 \$3,000	106625 5239668 5527386 5542291	Dacotah Bank, Cresbard Dacotah Bank, Faulkton Dacotah Bank, Faulkton Dacotah Bank, Faulkton	Release liability.
			SW1/4 Section 26; T116N-R70W, Hand County			

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<u>Releases of Liability:</u>						
Pro Crush, LLC Olivet, SD	14-975		\$500	57340	Farmers & Merchants Bank, Scotland	Release liability.
			\$2,000	57397	Farmers & Merchants Bank, Scotland	
			\$1,000	57424	Farmers & Merchants Bank, Scotland	
		975001	NE1/4 Section 2; T97N-R59W, Hutchinson County			
		975003	SW1/4 SW1/4 Section 9; T98N-R62W, Douglas County			
Rechnagel Construction, Inc. Hurley, SD	83-135		\$20,000	55-122632	United Fire & Casualty Company	Release liability.
		135027	Section 22; T99N-R53W, Turner County			
Custer State Park Custer, SD	89-385		EXEMPT	NA	NA	Release liability.
		385001	NE1/4 Section 34 & W1/2 Section 35; T4S-R6E, Custer County			

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<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<i>August 16, 2018</i> <u>DENR Recommendation</u>
<u>Releases of Liability:</u>						
Custer County Highway Department Custer, SD	83-90		EXEMPT	NA	NA	Release liability.
		90018	NE1/4 NW1/4 Section 16; T4S-R1E, Custer County			
		90019	NE1/4 SE1/4 Section 29; T2S-R10E, Custer County			
Tripp County Highway Department Winner, SD	83-89		EXEMPT	NA	NA	Release liability.
		89027	NW1/4 Section 9; T95N-R77W, Tripp County			
Ziebach County Highway Department Dupree, SD	83-246		EXEMPT	NA	NA	Release liability.
		246013	W1/2 Section 3; T14N-R21E, Ziebach County			

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<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety No.</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Request for Extension of Temporary Cessation:</u>					
New England Stone Industries Inc. Smithfield, RI	224	\$48,100 \$39,000	29011 149424	First National Bank, Pierre First National Bank, Pierre	Approve extension of temporary cessation for another five-year period to expire in 2023.