



Board of Minerals and Environment

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
(605)773-3151 Fax: (605)773-4068

AGENDA

Live audio of the meeting can be heard at <http://www.sd.net/mtc>

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. Central Time

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items.

10:00 a.m. Call to order and roll call

Election of officers

Approval of minutes from May 17, 2018, meeting

Mining issues

- Consent Calendar – Tom Cline
- Request for Extension of Temporary Cessation for New England Stone Industries, Large Scale Mine Permit 224 – Eric Holm
- Renewal of the Memorandum of Understanding with the US Forest Service for mineral operations on forest service lands – Mike Cepak

10:15 a.m. Public hearing to finalize and approve South Dakota's Volkswagen Beneficiary Mitigation Plan – Barb Regynski

Next meeting

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

Adjourn

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible place. Please notify the Department of Environment and Natural Resources by calling (605) 773-4216 at least 48 hours before the meeting if you have a disability for which special arrangements must be made.

Board members are reminded that members are subject to SDCL 3-23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

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
Matthew Environmental Education and Training Center
523 East Capitol Avenue
Pierre, South Dakota

May 17, 2018
10:00 a.m. CT

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, Daryl Englund, Bob Morris, and John Scheetz.

BOARD MEMBER ABSENT: Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM APRIL 19, 2018 MEETING: Motion by Blumhardt, seconded by Karpen, to approve the minutes from the April 19, 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 surety, transfers of liability, and release of liability (see attachment).

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

FINANCIAL ASSURANCE INCREASE FOR WHARF RESOURCES (USA), INC.: Eric Holm, Minerals and Mining Program, presented an adjustment to 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' \$37.4 million reclamation bond and \$26.8 million post closure bond.

The department adjusted the financial assurance for inflation and calculated a revised amount of \$669,200, which is an increase of \$19,500 from the 2017 update.

To cover the increase, Wharf has submitted a rider to the surety bond that currently serves as financial assurance. The rider increases the amount of the surety bond to \$669,200.

The department recommends the board accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond to \$669,200.

Motion by Morris, seconded by Englund, to accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond to \$669,200, for Wharf Resources (USA), Inc., Lead, SD, Permits 356, 464, and 476. A roll call vote was taken, and the motion carried unanimously.

TRANSFER OF LARGE SCALE MINE PERMIT 467 FROM PACER CORPORATION TO PACER MINERALS, LLC: Mr. Holm reported that Pacer Minerals, LLC has requested transfer of Large Scale Mine Permit No. 467 from Pacer Corporation. The reason for the transfer is that in November 2017, Pacer notified the Minerals and Mining Program it wanted to convert from a corporation to a limited liability company. The general location of the operation is six miles northwest of Custer, SD.

Under SDCL 45-6B-47, any mine permit can be transferred from one operator to another, with the successor operator assuming all reclamation liability.

On March 29, 2018, the department received an amendment to Bank of America Irrevocable Letter of Credit No. 68127108, which changed the name on the Irrevocable Letter of Credit from Pacer Corporation to Pacer Minerals LLC. The department received the \$100 transfer fee and transfer application on April 9, 2018. The application was deemed complete on April 30, 2018.

The department's recommendation to transfer the permit was prepared on April 30, 2018. The notice was published in the Custer County Chronicle on May 9 and 16, 2018. The department had not yet received the Affidavit of Publication; however, staff verified that the notice was published on those two dates. No public comments regarding the transfer were received.

Under SDCL 45-6B-47, the board cannot deny a mine permit transfer unless the operation is not or cannot be brought into compliance with all applicable federal, state, or local laws or the successor operator is in violation of state mining laws or mine permit conditions for any mining operation in the state. The current mine permit and Pacer Minerals, LLC are in compliance with all federal, state, and local laws and regulations. With the application, Pacer Minerals, LLC submitted a Certification of Applicant form and disclosed no violations. The company is working on the name change for other state permits as well as the US Forest Service operating plan.

The department recommended that the board transfer Large Scale Mine Permit 467 from Pacer Corporation to Pacer Minerals, LLC, and transfer Irrevocable Letter of Credit No. 68127108 to Pacer Minerals, LLC and accept Amendment No. 1 changing the name on Irrevocable Letter of Credit No. 68127108 to Pacer Minerals, LLC.

Responding to questions from the board, Mr. Holm stated that \$348,000 is the original amount of the reclamation bond. The US Forest Service also holds a bond for this site. The two bonds for

this site total approximately \$1,000,000. The bonds cover reclamation of about 16 acres of surface disturbance with close to five acres currently being reclaimed. Pacer Corporation registered to conduct business in South Dakota in 1970. Pacer Minerals, LLC registered on January 11, 2017. Mr. Holm stated that the officers of both companies are the same and that the company is up to date on all of its required annual reports.

Motion by Morris, seconded by Blumhardt, to transfer Large Scale Mine Permit 467 from Pacer Corporation to Pacer Minerals, LLC, and transfer Irrevocable Letter of Credit No. 68127108 to Pacer Minerals, LLC and accept Amendment No. 1 changing the name on Irrevocable Letter of Credit No. 68127108 to Pacer Minerals, LLC. A roll call vote was taken, and the motion carried unanimously.

UPDATE ON NOTICE OF VIOLATION FOR EXPLORATION NOTICE OF INTENT, EXNI-419, VMC, LLC: Roberta Hudson, Minerals and Mining Program, provided a PowerPoint presentation updating the board on the Notice of Violation for EXNI-419.

Exploration Notice of Intent EXNI-419 was issued to VMC, LLC on December 5, 2012. No exploration activity occurred under the permit from 2012 through 2016. Drilling and trenching activities were performed during the spring and fall of 2017.

When VMC, LLC applied for the Exploration Notice of Intent, the operator defined a vertical depth limit of 100 feet. When the department issued the restriction letter to the company, two conditions were included at the request of Game, Fish, and Parks. The conditions were that VMC was to provide the locations of historic mine workings and to not work within 100 feet of a historic mine shaft in the area of the exploration for the protection of potential bat habitat.

During an on-site inspection on September 21, 2017, the department's inspector was informed that the company planned to drill to a depth of 800 feet. The contract geologist was informed of the 100-foot limitation. The senior geologist contacted Ms. Hudson to confirm the depth limits. That individual then contacted Don Valentine, who contacted Mike Cepak at DENR on September 22, 2017, to confirm that they would not be able to drill deeper holes. During an inspection of the drilling area on September 27, 2017, department inspectors were informed that an 800-foot drill hole had just been completed.

The department confirmed that Game, Fish, and Parks had not been provided any information regarding the historic mine workings, and also nine holes were determined to exceed the 100-foot depth limit.

Ms. Hudson concluded that the department determined there had been a miscommunication between the driller and the operator, and that there was no environmental damage from the drilling activities as the holes were plugged immediately.

The Notice of Violation was issued on December 5, 2017, with VMC, LLC signing a Settlement Agreement and paying an \$11,000 fine in March 2018. As part of the Settlement Agreement, VMC, LLC is required to complete reclamation by June 1, 2018. An inspection of the site is scheduled for the last week of May. If reclamation has been completed, EXNI-419 will be

considered to have been brought back into compliance with state laws, and VMC, LLC may continue exploration activities.

Ms. Hudson answered questions from the board.

ORAL MINING REPORTS: The annual large-scale gold mine oral reports were presented to the board by LAC Minerals (Richmond Hill Mine), Homestake, Wharf Resources, VMC, LLC (Deadwood Standard Project), and by DENR for the Gilt Edge Superfund Site. The mine operators reported on water treatment, production, and reclamation activities during 2017 and discussed plans for 2018. The annual oral mining presentations are required by statute.

LAC Minerals – Mark Tieszen

During 2017, LAC continued water treatment, discharging 18.2 million gallons. LAC plans to continue water treatment in 2018.

Homestake Mining Company – Mark Tieszen

In 2017, Homestake continued water treatment at its Blacktail Plant in Central City and made upgrades to its Yates Plant near Pluma. In January 2018, the Board of Minerals and Environment approved the release of reclamation liability for 41.77 acres at Homestake.

Mr. Tieszen answered questions from the board regarding water treatment and reclamation.

Wharf Resources – Matt Zietlow

During 2017, Wharf produced 95,372 ounces of gold and 63,535 ounces of silver. Wharf continued mining in the Green Mountain Pit and completed mining in the Harmony (Golden Reward) Pit. In 2018, Wharf plans to continue mining the Green Mountain Pit and backfilling and reclaiming pits at Golden Reward at the base of Terry Peak.

Mr. Zietlow answered questions from the board regarding current mining activities and reclamation.

VMC, LLC – Don Valentine (via telephone conference call)

VMC, LLC (Deadwood Standard Project) reported there was no mining activity on its proposed operation on the rim of Spearfish Canyon and none planned for 2018.

Gilt Edge Superfund Site – Mike Cepak

In 2017, DENR staff reported 34.6 million gallons of acid water was treated at the site. Remediation work at Gilt Edge included the construction of a new 23 million-gallon capacity sludge impoundment, road building, laying of approximately six miles of pipeline, and the dewatering, sludge removal, and partial backfilling of the Sunday Pit. DENR also completed its foreclosure of Brohm Mining Corporation (Gilt Edge Mine) property and acquired 644 acres of land in a Sheriff sale.

Mr. Cepak answered questions from the board about water treatment, reclamation, the foreclosure procedure, mineral rights, surface rights, and possible future mining at the site.

DENR OIL AND GAS UPDATE: Brian Walsh, DENR Groundwater Quality Program, reported that Mike Lees is now the Minerals and Mining Program administrator. Former administrator Bob Townsend retired in April.

Mr. Walsh stated that due to recent staffing changes, the Underground Injection Control (UIC) Class II Well responsibilities are being transferred from the Groundwater Quality Program to the Minerals and Mining Program. Mr. Walsh will be completing the UIC activities he is responsible for, and once those few projects are complete, staff from the Minerals and Program will take over those duties in the future.

Mr. Walsh reported that a contested case hearing in the matter of the application of Peter K. Roosevelt for a permit to inject production water into an existing well is anticipated to be scheduled for the board's October 18, 2018, meeting. Following the department's Notice of Recommendation for a permit to inject, several people intervened with concerns about impacts to groundwater quality. The intervenors include the Eckard Water Company, the Quinto Ranch, LLC, the Fall River County Commission, and Susan Henderson.

Responding to questions from the board, Mr. Walsh stated that all of the injection wells associated with oil and gas are Class II injection wells. The Safe Drinking Water Act regulates the underground injection of fluids through wells through several classes. For example, Class II wells are specific to oil and gas activities. A Class III well is specific to mining activities for insitu mines. These programs can be delegated to states for primary enforcement authority, and DENR has been delegated the Class II Underground Injection Control Program.

CERCLA 108(b) FINANCIAL ASSURANCE RULES BRIEFING: Mr. Holm provided a PowerPoint presentation discussing the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), also known as Superfund. Section 108(b) of CERCLA directs EPA to develop financial assurance rules for certain facilities. In 2009, U.S. District Court ordered EPA to identify classes of industries for which it would develop financial assurance rules. Hard rock mining industry was the first one selected.

Environmental groups were not happy with EPA's progress, so they went back to the District Court, and the District Court issued a Writ of Mandamus in which they required EPA to issue proposed rules. The court did allow EPA to retain discretion to decline to promulgate a rule.

EPA began work on developing the proposed rules. Since the rules could potentially preempt existing state programs, EPA was required to do a federalism consultation. EPA consulted with the DENR Minerals and Mining Program other states, the Interstate Mining Compact Commission, and the Western Governors Association. EPA indicated their intent was not to preempt existing state regulatory programs, CERCLA liabilities were separate from state reclamation requirements, and the rules would create financial incentives for improved mining practices.

During the process, EPA invited states to submit pre-publication comments. DENR commented that South Dakota's post closure and cyanide spill bonding programs would be preempted and duplicated and that EPA had a faulty assumption that state programs do not address hazardous releases. For post closure and spill bonds, DENR does address long-term water treatment and hazardous releases such as cyanide spills. The department also pointed out risk reduction practices already in place. There are several operating water treatment plants constructed by mining companies, and the bonding practices have been changed over the years to cover long-term water treatment and treating hazardous materials.

DENR was asked to provide information to the Small Business Advocacy Review Panel, which was assembled pursuant to requirements of the Small Business Regulatory Enforcement Fairness Act to assess impacts to small business. DENR generated charts and information on what is covered with the bonds. Before the proposed rules were published, the department also presented its concerns to the Office of Information and Regulatory Affairs, which is part of the White House Office of Management and Budget. They do regulatory analysis of any proposed or final rules.

Mr. Holm provided a chart showing the growth of South Dakota financial assurance amounts for mining operations from 2005 to 2018. In 2005, the department was holding \$44.2 million in bonds, and in 2018, the department is holding \$162.5 million in bonds.

EPA issued proposed rules on December 1, 2016, with an original comment deadline of March 13, 2017. The rules were 125 pages long with an additional 2,000 support documents consisting over 69,000 pages. South Dakota, as well as other states, requested additional time to review all of the information, so EPA extended the deadline to July 11, 2017.

Mr. Holm provided slides discussing the new rules.

South Dakota's response to the proposed rules was that EPA should adopt a "no rule" option. The rules duplicate and pre-empt South Dakota's existing financial assurance programs. South Dakota has also taken steps to significantly reduce CERCLA risks. The department pointed out faulty assumptions used in EPA's one size fits all formula and corrected errors in South Dakota's Financial Responsibility Summary produced by EPA.

Mr. Holm stated that prior to the final rules being issued, the department was able to meet with EPA officials and President Trump's transition team and the Office of Information and Regulatory Affairs to discuss South Dakota's comments regarding the proposed rules.

EPA made its final decision on December 1, 2017, and determined that financial assurance rules for the mining industry are not necessary. EPA felt that the rules, as proposed, would duplicate and preempt the state financial assurance programs. EPA found that certain risks have been reduced from existing robust state and federal financial assurance programs. EPA also noted the protective practices of modern mining operations; steps are taken to reduce releases, treating water, etc. EPA also noted that concerns from financial markets and the mining industry, not only the availability but the affordability of additional financial assurance instruments.

EPA's final decision was published in the Federal Register in February 2018. Parties are allowed to file challenges to EPA's decision in US Circuit Court 90 days after publication of EPA's decision in the Federal Register. The deadline is May 22, 2018. Mr. Holm stated that on May 16, 2018, Earthjustice filed an appeal on behalf of the environmental groups that filed the original lawsuits.

Mr. Holm said that going forward, it is important that DENR recommends and the Board accepts realistic financial assurance amounts that will pay the costs for reclamation, cleanups, and long-term water treatment so future CERCLA listings are avoided.

Mr. Holm answered questions from the board regarding CERCLA.

DRAFT VOLKSWAGEN BENEFICIARY PLAN: Barb Regynski, DENR Air Quality Program, provided a brief overview of the Volkswagen Settlement and the resulting South Dakota Mitigation Trust.

In 2016, EPA and California filed a lawsuit against Volkswagen for installing a system that allowed nitrogen oxide pollution, also referred to as NOx, to exceed levels allowed by the Clean Air Act.

Volkswagen agreed to a settlement consisting of three major parts:

- Volkswagen must buy back or repair non-compliant vehicles.
- Volkswagen must invest in zero emission vehicle infrastructure and awareness. An example of this would be electric cars.
- Volkswagen must fund an Environmental Mitigation Trust to be used to offset the excess pollution emitted by the non-compliant vehicles.

Under the Trust, South Dakota was allocated approximately \$8 million dollars to use for NOx reduction projects. The agreement requires South Dakota to develop and submit a Mitigation Plan to the Trustee at least 30 days before any funds may be dispersed.

One of the requirements is to explain the process by which the state will seek and consider public input on the plan. The proposed public input process is as follows:

- DENR develops a website to provide information and to request public input. This was completed in September 2017.
- DENR drafts the plan. This was completed in early May 2018.
- DENR requests public input on the draft plan. Public comments are being accepted through June 15, 2018.
- DENR holds public input meetings in Rapid City and Sioux Falls. The meetings are scheduled for early June 2018.
- DENR considers the comments received and makes needed revisions to the plan.
- DENR publishes notice of another comment period and a hearing on the revised plan in front of the board.
- The board considers new comments received and finalizes and approves the plan.
- The approved plan will be submitted to the trustee.

Ms. Regynski noted that this information, the draft plan, and the comments received are available on the following website: <http://denr.sd.gov/des/aq/aaVW.aspx>.

Ms. Regynski requested that the board set a hearing date of August 16, 2018, to finalize and approve the plan.

Motion by Morris, seconded by Greenfield, to hold the public hearing on August 16, 2018, at 10:15 a.m. Central Time in Matthew Training Center in Pierre, SD, to finalize and approve the Volkswagen Beneficiary Mitigation Plan. A roll call vote was taken, and the motion carried unanimously.

DISCUSSION ON HB 1172, AN ACT TO REVISE CERTAIN PROVISIONS REGARDING MEETINGS OF CERTAIN PUBLIC BODIES: The 2018 Legislature passed HB 1172, which amends SDCL 1-25-1 by adding the following paragraph:

The chair of the public body shall reserve at every official meeting by the public body a period for public comment, limited at the chair's discretion, but not so limited as to provide for no public comment.

Mr. McGuigan requested guidance from the board as to where on the meeting agenda to place the public comment period.

Chairman Hagg suggested holding the public comment at the end of the meeting, because getting the board's official business done is the first priority.

Doyle Karpen suggested holding the public comment period for 10 minutes prior to calling the meeting to order.

Gregg Greenfield suggested that holding the public comment period at the beginning of the meeting may potentially preempt the issues on the meeting agenda. Mr. Greenfield said he would prefer to hold the comment period at the end of the meeting.

Bob Morris asked if the Legislature is aware that the Board of Minerals and Environment is a quasi-judicial board.

Mr. McGuigan stated that the Board of Minerals and Environment has traditionally allowed for public comments prior to officially opening a contested case hearing, so he does not see that as being an issue. The main thing the board and the commenters will need to be cautious of is ex parte communication regarding current contested cases or potential contested cases. This is something the board chair will need to be aware of, and the chair will need to ensure that evidentiary-type information is not being presented through this open public comment period. The board needs to be careful to preserve its record for all contested cases.

Dennis Landguth stated that he would prefer to hold the public comment period for 10 minutes at the end of each meeting.

John Scheetz stated that he likes the idea of being flexible and not set a specific time for public comment.

Mr. McGuigan said he would not advise that the board hold the public comment period at the beginning of one meeting, then at the end of the next meeting. The board should hold the public comment period at same time each meeting.

Chairman Hagg said the board would take this matter under advisement, and he will make a decision regarding where to place the public comment period on the agenda by the July meeting.

Mr. Karpen reiterated that he would like to have the public comment period for 10 minutes prior to calling the meeting to order.

Mr. Morris noted that the statute states that a public comment period shall be reserved at every official meeting. He said an official meeting only convenes upon the taps of the gavel.

NEXT MEETING: The next meeting is scheduled for July 19, 2018. Depending on agenda items for July, the meeting may be held via telephone conference call.

Chairman Hagg noted that he is unable to attend the July meeting.

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

Secretary

Date

Witness

Date

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

May 17, 2018

<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>Release of Surety:</u>						
Victor Martinmaas Orient, SD	05-362		\$1,000	500556	American Bank & Trust, Miller	Release \$1,000.
<u>Transfer of Liability and Release of Surety:</u>						
Duane Emmett Brookings, SD	02-741		\$1,000 \$3,000 \$2,500 \$1,000	56302 9536 9682 9822	First National Bank, Pierre Richland State Bank, Bruce Richland State Bank, Bruce Richland State Bank, Bruce	Transfer liability. Release \$7,500.
		741001	SW1/4 Section 8; T111N-R47W, Brookings County			
Transfer to:						
Sterzinger Crushing Inc. Taunton, MN	15-997		\$4,500 \$7,000	13984 14044	First Security Bank, Hendricks, MN	
<u>Transfer of Liability:</u>						
James T. Goetz Estate Yankton, SD	83-187		\$20,000	2116504726	First National Bank, Yankton	Transfer liability.
		187001	SE1/4 & SE1/4 SW1/4 Section 36; T98N-R63W, Douglas County			
Transfer to:						
Grosz Sand & Gravel LLC Delmont, SD	18-1032		\$20,000	RC-0029	Sun Surety Insurance Company	

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

May 17, 2018

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<u>Release of Liability:</u>						
Leola Township South Shore, SD	86-330		EXEMPT	NA	NA	Release liability.
		330001	SE1/4 NW1/4 Section 1; T119N-R51W, Codington County			

DRAFT

South Dakota Board of Minerals & Environment

May 17, 2018

<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>Acceptance of Financial Assurance Increase for Wharf Resources (USA), Inc.:</u>					
Wharf Resources (USA), Inc. Lead, SD	356, 464, & 476	\$649,700	SU27832	Aspen American Insurance Company	Accept rider to Bond No. SU27832, Aspen American Insurance Company, increasing bond by \$19,500 to the new amount of \$669,200.
<u>Transfer of Large Scale Mine Permit 467:</u>					
Pacer Corporation Custer, SD	467	\$348,000	ILOC No. 68127108	Bank of America	Transfer Permit 467. Transfer Irrevocable Letter of Credit No. 68127108 to Pacer Minerals LLC and accept Amendment No. 1 changing the name on Irrevocable Letter of Credit No. 68127108 to Pacer Minerals LLC.
<p>Transfer to:</p> <p>Pacer Minerals LLC Custer, SD</p>			<p>Legal:</p> <p>SW1/4 & S1/2 NW1/4 Section 28; T2S-R4E; Custer County</p>		

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

<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>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				

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

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<u>Releases of Liability:</u>						
Croell, Inc. Sundance, WY	96-604		\$20,000	2092148	North American Specialty Insurance Company	Release liability.
		604009	NE1/4 NE1/4 Section 24; T8N-R6E, Butte County			
Jason Fischer Lesterville, SD	08-862		\$500	2115854626	First National Bank, Yankton	Release liability.
			\$1,000	7000306997	First Dakota National Bank, Yankton	
			\$1,000	7000313750	First Dakota National Bank, Yankton	
		862002	W1/2 NE1/4 Section 34; T95N-R57W, Yankton County			
Eugene Hanson Faulkton, SD	96-596		\$500	106625	Dacotah Bank, Cresbard	Release liability.
			\$1,000	5239668	Dacotah Bank, Faulkton	
			\$500	5527386	Dacotah Bank, Faulkton	
			\$3,000	5542291	Dacotah Bank, Faulkton	
		596001	SW1/4 Section 26; T116N-R70W, Hand County			

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

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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			

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

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<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			

South Dakota Board of Minerals & Environment

August 16, 2018

<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.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

MEMO TO: Board of Minerals and Environment

FROM: Minerals and Mining Program

SUBJECT: Renewal of Memorandum of Understanding (MOU) with U.S. Forest Service

DATE: August 2, 2018

Back in 1988, DENR and BME signed two MOUs with the Forest Service to eliminate duplication of reclamation and financial assurance requirements for mineral development on Forest Service lands. One MOU covered mine permits and exploration notices of intent, and the other MOU covered mine licenses (construction aggregate). For the past 30 years, these MOUs helped maintain good cooperation between DENR and US Forest regarding mine regulation in the Black Hills.

As the MOUs were 30 years old, the Forest Service requested the MOUs be updated and renewed. DENR and the Forest Service combined the two MOUs for permits, exploration notices of intents, and mine licenses into a single MOU. The new MOU includes new provisions as required by Federal rules. The renewed MOU will now have term of five years.

Like the former MOUs, the new MOU deals with financial assurance requirements, including which party will hold financial assurance. The MOU also covers cooperation between the parties, including notifying other party of submissions of notices of intent, plans of operation, mine permit applications, mine license applications, hearings, etc. The parties will notify each other in cases of mine operating or reclamation problems, and will coordinate inspections and enforcement actions.

Sec. Pirner has signed the document.

Board Action: If the Board accepts the MOU, Chairman Hagg will sign and date three copies of the document, and these copies will be forwarded to the Forest Service for their signatures.

MEMORANDUM OF UNDERSTANDING
Between The
STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
And The
USDA, FOREST SERVICE
REGION 2, BLACK HILLS NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING (hereafter “MOU”) is hereby made and entered into by and between the State of South Dakota by and through the South Dakota Department of Environment and Natural Resources, hereafter referred to as “State” and the United States Department of Agriculture (USDA), Forest Service, Region 2, Black Hills National Forest, hereafter referred to as the “U.S. Forest Service”.

Title: Reclamation & Financial Assurance Requirements for Mining Operations on National Forest System Lands

I. PURPOSE.

The purpose of this MOU is:

- A. To eliminate duplication of reclamation and financial assurance requirements that apply to reclamation of lands in the National Forest System incident to surface disturbing mineral operations under:
 - 1. The United States Mining laws;
 - 2. U.S. Forest Service involving locatable mineral resources;
 - 3. U.S. Forest Service-authorized operations by private parties involving mineral materials for private use or sale; and
 - 4. Operations involving privately owned minerals underlying lands administered as part of the National Forest System.

- B. To define the procedures to be used by the State to relieve an operator of obligations under South Dakota Codified Law (hereafter “SDCL”) Chapter 45-6 when a mineral operation located on National Forest System Lands is completed by an operator holding a state mining license, and the U.S. Forest Service requires that the operation (or a portion thereof) be left un-reclaimed so that the U.S. Forest Service can access and otherwise use the site for purposes of managing and maintaining U.S. Forest Service Lands.

This MOU does not apply to those operations authorized by mineral license, permits, or leases, including coal leases, issued by the U.S. Department of the Interior, and financial assurance

procedures administered for the United States by agencies of the United States Department of the Interior.

II. AUTHORITIES.

The authorities of the U.S. Forest Service to enter into and implement this MOU include, but are not necessarily limited to, the general statutory authorities of the Secretary of Agriculture to administer the National Forests (16 U.S.C. 478, 551), and regulations pertaining to mineral resources (36 C.F.R. 228).

The authorities of the State of South Dakota to enter into and implement this MOU include, but are not necessarily limited to, SDCL Chapters 34A-2, 34A-6, 34A-10, 45-6, 45-6B, 45-6C, and 45-6D.

III. AGREEMENT.

It is MUTUALLY AGREED AND UNDERSTOOD by and between the U.S. Forest Service and the State that:

A. Responsibility.

1. The U.S. Forest Service, as the Federal Agency responsible for the management of National Forest System lands, is responsible for the evaluation of proposals for surface-disturbing mineral operations on lands within the National Forest System to determine their compliance with applicable Federal statutes, regulations and policies, and U.S. Forest Service land management goals and objectives. The U.S. Forest Service regulates surface activities of mineral operations through the approval of operating plans which contain reclamation standards.
2. The Minerals and Mining Program, Division of Environmental Services, of the Department of Environment and Natural Resources (hereinafter "Department") is responsible for administering this agreement on behalf of the State. The State is responsible for issuing permits under the South Dakota Mined Land Reclamation Act, SDCL Chapter 45-6B and rules promulgated thereunder, and under the South Dakota Uranium Exploration Act, SDCL Chapter 45-6D, and for approving notices of intent to explore under the South Dakota Mineral Exploration Act, SDCL Chapter 45-6C, and for issuing mining licenses under SDCL Chapter 45-6 (License to mine construction aggregate, pegmatite minerals, and limestone, iron ore, sand, gypsum, shale, pozzolan, or other materials strictly used in the process of making cement or lime).
3. The U.S. Forest Service is a surface owner within the meaning of SDCL Chapters 45-6, 45-6B, 45-6C, and 45-6D.

4. The U.S. Forest Service is the Federal Agency responsible for management of National Forest System Lands and as such requires access to and use of the natural resources located on those lands for purposes of management and maintenance.

B. Financial Assurance.

1. Before U.S. Forest Service approval of an operating plan or the issuance of a State mine permit, mining license, uranium exploration permit, or exploration notice of intent, the operator will be required to post a financial assurance acceptable to both the U.S. Forest Service and the State, in an amount which the U.S. Forest Service and the State deem adequate to guarantee the reclamation required on lands within the National Forest System. The financial assurance will be issued and held in accordance with paragraph III (B) (3) below. In addition to the State requirements provided in paragraph III (B) (2) below, the financial assurance must meet the U.S. Forest Service financial assurance requirements listed in 36 C.F.R. 228.13, 228.51, and FSM 6506.
2. The State of South Dakota financial assurance amount requirements are based on the following:
 - a. Mine license financial assurance is set at \$500 per acre of affected land or \$20,000 for statewide operations;
 - b. Exploration notice of intent financial assurance is set at actual cost of reclamation up to the maximum \$20,000;
 - c. Uranium exploration permit financial assurance is set at the actual cost of reclamation with no maximum;
 - d. Small scale mine permit financial assurance is set at the actual cost of reclamation up to a maximum of \$2,500; and
 - e. Large scale mine permit financial assurance is set at the actual cost of reclamation with no maximum. Large scale mines that use chemical or biological leaching methods must also post a financial assurance to response for and remediation of spills up to a maximum of \$1,000,000. In addition, some large scale mines may be required to post a post closure financial assurance for long term care and maintenance including water treatment that is set at the actual cost of operation, maintenance, and capital replacement of equipment for water treatment with no maximum.
3. The Department will hold reclamation financial assurance up to the above mentioned maximums or the actual reclamation costs calculated for uranium exploration permits or large scale mine permits. If the U.S. Forest Service determines it needs reclamation financial assurance in excess of the above stated maximums, or if it determines additional reclamation financial assurance is needed in excess of the actual reclamation costs calculated by the state for uranium exploration or large scale mine permits, the additional amounts will be held by the

U.S. Forest Service. If, due to regulatory or statutory time deadlines, either agency is required to issue its approval or permit before the other's action, upon approval of an operating plan or a mine permit, mine license, uranium exploration permit, or exploration notice of intent application, the approving agency will notify the other and the operator. The notification to the operator will include a statement that the operator may not proceed with the operation until: (a) all approvals have been issued by both the U.S. Forest Service and Department; and (b) the operator files a financial assurance with the approving agency in an amount equal to or greater than that required by the approving agency.

4. The U.S. Forest Service and the Department will be jointly responsible for the administration of the reclamation. The U.S. Forest Service will notify the Department of any failure by the operator to meet U.S. Forest Service standards. If an operator fails to or refuses to perform the required reclamation, the U.S. Forest Service and the Department will ensure reclamation of the site is completed and will collect the costs therefore from the financial assurance.
5. The Department will not release the financial assurance for a reclaimed operation, in whole or in part, until the U.S. Forest Service and State have conferred and have reached consensus that reclamation has been satisfactorily completed. When an operator notifies either agency that reclamation of an operation has been completed, that agency will notify the other. The agencies will coordinate the date and time of the joint inspection to evaluate reclamation.
6. Nothing in this MOU prevents the U.S. Forest Service or the Department from requiring an operator to post an independent reclamation financial assurance with the U.S. Forest Service or the Department if at any time either agency determines the financial assurance posted with the Department is inadequate for the protection of lands within the National Forest System, or is inconsistent with State or U.S. Forest Service policies or regulations.
7. The U.S. Forest Service and Department will jointly review any amended plan or change that requires a modification of the financial assurance. If one agency refuses to release the financial assurance, it will be held for that agency pending satisfactory completion of reclamation.

C. Cooperation.

1. The U.S. Forest Service will notify the Department within five (5) working days of receipt of a Notice of Intent to Operate or submission of a plan of operations. Likewise, the State will notify the U.S. Forest Service within five (5) working days of receipt of a mining permit application, a mining license application, uranium exploration permit application or an exploration notice of intent on lands within the National Forest System. Notification will include the operator's name, location (township, range, section, and subsection), type of mineral operation, and the time

and date when officials of the U.S. Forest Service or the Department plan to visit the site, if applicable. The Department will notify other appropriate State agencies with the above information when notice is required by law.

2. For State exploration notices of intent, mining permits and mining licenses, the Department will notify the U.S. Forest Service of receipt of an operator's annual report when that report indicates potential operating or reclamation problems, within five (5) working days of receipt, will invite the U.S. Forest Service to review the annual report, and will offer the U.S. Forest Service the opportunity to accompany State officials on inspections.
3. The Department will notify the U.S. Forest Service of the date, time, and place of the hearing before the Board of Minerals and Environment on a State mining permit or uranium exploration permit, in writing at least ten (10) days before the scheduled hearing.
4. Upon the issuance of any State mining permit, mine license, uranium exploration permit or exploration notice of intent, the Department will forward a list of all conditions on the issuance/approval to the U.S. Forest Service. Upon the approval of an operating plan by the U.S. Forest Service, the U.S. Forest Service will forward a copy of the approved plan of operation.
5. The U.S. Forest Service and Department will jointly encourage the use of state-of-the-art mineral developments and reclamation practices. Reclamation standards will be determined on a case-by-case basis and made a condition of any operating plan approved by the U.S. Forest Service and any permit or exploration notice of intent issued by the Department, consistent with the authority of each agency.
6. The U.S. Forest Service and the Department will review the reclamation of ongoing mineral operations annually and adjust the financial assurance to reflect any changes in the reclamation requirements.

D. Inspections.

During routine inspections of mining or exploration operations by either the U.S. Forest Service or the State, the agency conducting the inspection will notify the other of any identified noncompliance. An operator found to be in noncompliance with an approved operating plan or state permit or license will be notified immediately of required corrective actions to be taken. If the specified corrective actions are not taken, the agencies may jointly pursue enforcement or may proceed with enforcement individually.

E. Procedures to Leave Mine Sites open for U.S. Forest Service Use

A site mined under a State mining license on Forest System Lands may be left partially or wholly un-reclaimed so that the site can be accessed by the U.S. Forest Service and used for purposes of managing Forest System Lands. When this occurs, the following procedures are agreed upon and will be adhered to:

1. When notified by either an operator or the Department that an operator is requesting release of liability for a mineral operation conducted under a State mining license and located on National Forest System Lands, the U.S. Forest Service will, within twenty (20) days, notify the Department in writing if the U.S. Forest Service intends to use the site.
2. If the U.S. Forest Service does not intend to further develop a completed mineral operation or a portion thereof on Forest System Lands, the operator will be required to reclaim the site in accordance with the requirements of SDCL Chapter 45-6 and the Plan of Operation, prior to release of liability.
3. If the U.S. Forest Service intends to further develop a completed mineral operation on U.S. Forest Service System Lands, the U.S. Forest Service will, with the written notification paragraph III (E) (1) above, identify by the use of a map or aerial photograph what portion of the mineral operation it is requiring the operator to leave un-reclaimed for U.S. Forest Service use.
4. Receipt by the Department of the affirmative notification described in paragraph III (E) (3) above will be sufficient justification for releasing an operator of liability for mineral operations located on U.S. Forest Service Lands that were conducted under a State mining license.

IV. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal State Contacts:

State Program Contact	State Administrative Contact
Eric Holm 523 East Capitol, Foss Building Pierre, SD 57501 Telephone: (605) 773-5606 FAX: (605) 773-5286 Email: eric.holm@state.sd.us	Michael Lees 523 East Capitol, Foss Building Pierre, SD 57501 Telephone: (605) 773-3779 FAX: (605) 773-5286 Email: michael.lees@state.sd.us

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Gary Haag 1019 N. 5 th Street Custer, SD 57730 Telephone: (605) 673-9314 FAX: (605) 673-9208 Email: ghaag@fs.fed.us	Dave Graham 8221 Mt Rushmore Rd Rapid City, SD 57702 Telephone: (605) 716-2119 FAX: (605) 343-7134 Email: dgraham@fs.fed.us

V. **NOTICES.** Any notice given by the U.S. Forest Service or State will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To State, at State's address shown in the MOU or such other address designated within the MOU.

VI. **PARTICIPATION IN SIMILAR ACTIVITIES.** This agreement in no way restricts the U.S. Forest Service or State from participating in similar activities with other public or private agencies, organizations, and individuals.

VII. **ENDORSEMENT.** Any of State's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of State's products or activities and does not by direct reference or implication convey the State's endorsement of the Forest Service products or activities.

VIII. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable laws.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

IX. **USE OF U.S. FOREST SERVICE INSIGNIA.** In order for State to use the U.S. Forest Service insignia on any published media, such as a webpage, printed publication, or

audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.

- X. **MEMBERS OF U.S. CONGRESS.** Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

- XI. **FREEDOM OF INFORMATION ACT (FOIA).** Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).

- XII. **TEXT MESSAGING WHILE DRIVING.** In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All recipients and sub recipients are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

- XIII. **TERMINATION.** Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.

- XIV. **DEBARMENT AND SUSPENSION.** State shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the State or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

- XV. **AMENDMENTS.** Amendments to this MOU may be proposed at any time by either agency, and amendments will become effective after written approval by both. Meeting between the agencies will be scheduled periodically to discuss the implementation of and any amendments necessary to the MOU.

- XVI. MODIFICATIONS.** Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- XVII. COMMENCEMENT/EXPIRATION DATE.** This MOU is executed as of the date of the last signature and is effective for a period of five (5) years from the date of the last signature at which time it will expire.
- XVIII. AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

STEVEN M. PIRNER, Secretary
 South Dakota Department of Environment and
 Natural Recourses

Date

REXFORD A. HAGG, Chairman
 South Dakota Board of Minerals & Environment

Date

MARK E. VAN EVERY, Forest Supervisor
 U.S. Forest Service, Black Hills National Forest

Date

The authority and format of this agreement have been reviewed and approved for signature.

DAVID GRAHAM
 U.S. Forest Service Grants Management Specialist

Date

South Dakota's Volkswagen Beneficiary Mitigation Plan Notice of Public Hearing to Approve Plan

The Board of Minerals and Environment will hold a public hearing on August 16, 2018, at 10:15 a.m. central time, to consider revisions and to approve South Dakota's Volkswagen Beneficiary Mitigation Plan. The hearing will be conducted at the Matthew Training Center, 523 East Capitol Avenue, Pierre, South Dakota.

In 2016, a lawsuit was filed against Volkswagen for manufacturing and selling diesel vehicles in the United States which allowed nitrogen oxide pollution to exceed levels allowed by the Clean Air Act. As part of the settlement, Volkswagen must fund an Environmental Mitigation Trust. The Trust would be used to offset the excess pollution emitted by the non-compliant vehicles. South Dakota's allocation from the Trust is a little over \$8 million. South Dakota must develop and submit a Beneficiary Mitigation Plan for the use of the funds to the trustee before any funding may be awarded. The reason for approving the plan is so it can be submitted to the trustee and South Dakota can receive funds to improve the air quality in the state.

Persons interested in presenting data, opinions, and arguments for or against the proposed plan may do so by appearing in person at the hearing or by submitting written comments to the South Dakota Department of Environment and Natural Resources, Air Quality Program, 523 East Capitol Avenue, Pierre, South Dakota, 57501. Electronic comments and those comments submitted by mail must reach the Department by the close of business on August 15, 2018, to be considered.

At the hearing, the board will consider all written and oral comments it receives on the proposed plan. The board may modify or amend the proposed plan 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. Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Department of Environment and Natural Resources at least 48 hours before the public hearing to make any necessary arrangements. The telephone number for making arrangements is (605) 773-3151.

Copies of the proposed plan may be obtained without charge by calling Barb Regynski at (605) 773-3151 or from the following website: <http://denr.sd.gov/des/aq/aaVW.aspx>.

The seal of the State of South Dakota is a circular emblem with a serrated outer edge. It features a central landscape scene with a river, a windmill, and a farm. The text "STATE OF SOUTH DAKOTA" is written in an arc across the top, and "GREAT SEAL" is written in an arc across the bottom. The year "1889" is at the very bottom. A banner across the middle of the seal reads "UNDER THE PEOPLES RULE".

**DENR'S RESPONSE TO COMMENTS
RECEIVED ON
South Dakota's
Draft Volkswagen
Beneficiary Mitigation Plan**

**South Dakota Department of
Environment and Natural Resources
July 10, 2018**

Table of Content

	Page
1.0 Introduction.....	1
2.0 Comments and Responses.....	2

1.0 Introduction

On January 24, 2016, the United States and the State of California filed a lawsuit against Volkswagen alleging it had manufactured diesel cars sold and operated in the U.S. beginning in 2009 with systems intended to defeat emissions tests. These systems allowed vehicles to emit nitrogen oxide (NO_x) pollution at levels that significantly exceeded the amounts allowed under the Clean Air Act.

As part of the settlement, Volkswagen (VW) is required to fund an Environmental Mitigation Trust in the amount of \$2.925 billion to be used to offset the lifetime excess air pollution emitted by the non-compliant vehicles. The fund is distributed among states, territories and federally-recognized tribes based on the proportion of affected VW diesel vehicles registered in each jurisdiction.

South Dakota's allocation from the Trust is \$8.125 million. A Beneficiary Mitigation Plan (Plan) must be developed that summarizes how the State allocation of mitigation funds will be distributed among the various eligible mitigation actions to reduce nitrogen oxide emissions. The Plan will be developed through a public process, with multiple opportunities for public comment.

DENR developed a website to provide information and to request public input for the Plan. Twenty-five comments were submitted and considered in developing the draft Plan. On May 3, 2018, DENR released the draft Beneficiary Mitigation Plan. The public comment period ran until June 15, 2018. Two public input meetings were also held. DENR received 14 comments during the public comment period.

This document contains DENR's responses to the comments received during the public notice period. The comments received resulted in no change to the draft Plan. A summary of the comments and DENR's responses follows.

The comments received prior to drafting the plan, the draft plan, the comments received in response to the draft plan, and this response to comments are available to all interested parties at the DENR office in Pierre and they may also be viewed on DENR's website at <http://denr.sd.gov/des/aq/aaVW.aspx>.

2.0 Comments and Responses

1. **Comment:** MedicAire is requesting the availability of funds for their product, the MediDock, under the DERA option. MediDocks are used to advance Ambulance/Emergency Vehicle idle reduction.

Response: South Dakota's draft Plan does not identify a specific technology that must be implemented and used in each category. Under the DERA category, DENR currently is using the funds to replace school buses and if any funds are available will use the funds to replace shuttle and transit buses. If funding in the future becomes available for MediDock's technology under the DERA category, the technology must be an EPA verified technology. DENR reviewed EPA's verified technologies and is unable to find MediDocks on the EPA verified listings. Therefore, MediDock must apply for and receive approval from EPA before it can be considered under the DERA category in the future. DENR is not recommending any changes at this time based on this comment.

2. **Comment:** CHS is requesting the availability of funds for replacing diesel school buses with autogas (propane) buses.

Response: South Dakota's draft Plan currently provides funds for propane buses under the Bus category and under the DERA category. In addition, under the DERA category, propane buses may be given an additional 10% rebate compared to diesel buses. DENR is not recommending any changes at this time based on this comment.

3. **Comment:** Dr. Sutliff supports the proposal to mitigate diesel fine particle emissions and the priority of protecting children.

Response: South Dakota's draft Plan proposes mitigating diesel fine particle emissions and protecting children by using the funds for school buses under the Bus category and the DERA category and appreciates the support provided by Dr. Sutliff.

4. **Comment:** MPCA suggests a change on page 22, Category 1 and 6. Change 'model year 2007' to 'model year 2010', since the NOx emission standards were federally mandated in 2010.

Response: In December 2000, EPA promulgated emission standards for model year 2007 and later for heavy-duty highway engines (e.g. 40 CFR § 86.007-11). The emission standard included a nitrogen oxide standard of 0.20 grams per brake horsepower-hour. The nitrogen oxide standard was phased-in for diesel engines between 2007 and 2010. The phase-in was defined on a percent-of-sales basis: 50% from 2007 to 2009 and 100% in 2010. On page 22 of the draft Plan, DENR used the nitrogen oxide standard for 1992 and compared it to the standard listed for 2007 and later model years. Therefore, for those diesel engines that met

the new standard in 2007 or later, there would be a 96% reduction in nitrogen oxide emissions from the standard in effect in 1992. Since the reference to 2007 matches the description in the federal rule and is used for emission comparison purposes, DENR does not recommend changing the date in the draft Plan.

5. **Comment:** KEW requests allocating 1/8 of the funds towards freight switcher locomotive projects.

Response: As shown in Figure 8 on page 18 of the draft Plan, only 8% of the nitrogen oxide emissions from the mobile sector are attributed to locomotives. At this time, DENR does not recommend funding freight switcher locomotive projects.

6. **Comment:** Proterra supports the use of funds to replace school, shuttle and transit buses with battery-electric buses. Proterra recommends South Dakota purchase zero-emission, battery electric buses and not buses fueled by propane or other alternative fuels. They also recommend increasing the bus category to 50% by reducing the large and medium truck and DERA option categories.

Response: South Dakota is a rural state and promoting one fuel type (e.g. electric, propane, diesel, etc.) over another may not be the best option for South Dakota. Therefore, DENR does not recommend limiting the draft Plan to just electric based vehicles but allows those purchasing the vehicle to choose the type of vehicle that best fits their needs. The draft Plan does allow under the DERA category to give an additional 20% rebate for electric buses compared to a diesel bus. In addition to school buses, shuttle and transit buses can be purchased under the Bus category and DERA category in the draft Plan. The total anticipated funding for these two categories is currently 35%. The draft Plan does allow the percentage in each category to be adjusted depending on the number and type of requests DENR receives each year. Therefore, DENR does not recommend any changes to the draft Plan at this time based on this comment.

7. **Comment:** North Star Energy supports the use of funds to replace school buses with propane autogas buses instead of clean diesel buses.

Response: As stated earlier, DENR does not recommend limiting the draft Plan to just one type of school bus, but allows those purchasing the bus to choose the type of bus that best fits their needs. DENR does provide for funds to be used for propane buses under both the Bus category and DERA category. Under the DERA category, propane buses may be given an additional 10% rebate compared to diesel buses. DENR does not recommend any changes to the draft Plan at this time based on this comment.

8. **Comment:** UPS recommends funding for government entities should be the same as those for non-government agencies. They also state, “While the VW Settlement states electric

vehicles can receive up to 75% reimbursement and 25% for natural gas, that doesn't mean it can't be negotiated."

Response: The draft Plan identifies for each category how much of the cost can be funded "up to" if the purchaser is a governmental or non-governmental agency. The "up to" percent is specified in the consent decree and cannot be exceeded but the final funding percentage can be lower. Once the Board of Minerals and Environment approves a Plan, DENR will develop guidelines on how to apply for funds and how DENR will select projects. The actual funding percentage will be based each year on how much of the funds will be allocated that year and the number and types of projects submitted that year. DENR does not recommend any changes to the draft Plan at this time based on this comment but will consider this comment when developing the guidance.

9. **Comment:** SemaConnect recommends increasing the allocation for light duty electric vehicle charging infrastructure from the proposed 5% to the maximum 15% allowable.

Response: The draft Plan allows the percentage in each category to be adjusted depending on the number and type of requests DENR receives each year. This flexibility could allow the allocation of funds for light duty zero emission supply equipment to increase depending on the proposals submitted each year.

In addition to the \$8.125 million set aside for South Dakota to allocate in its draft Plan, Volkswagen is required to invest \$2 billion in the zero emissions (electric) vehicle infrastructure, access, and awareness initiatives across the United States. DENR is hopeful some of these funds will be used to improve South Dakota's light duty electric vehicle charging infrastructure.

10. **Comment:** GM encourages SD to commit to the full 15% of funding for EV charging infrastructure, particularly DC fast-charging.

Response: DENR responded previously to a similar comment. Please review response to comment #9 for a more detailed response.

11. **Comment:** East River Electric supports the use of funds to replace diesel school buses with electric school buses and to provide funding to government and non-government entities. They also support the use of funds for light duty zero emission vehicle supply equipment, but would like the percent increased from 5% to 15%.

Response: DENR agrees the entity purchasing the bus should have the choice to purchase the type of bus that best fits their needs. In addition, funding in the draft plan is available for government and non-government entities. DENR responded previously to a comment similar to East River Electric's comment on increasing the light duty zero emission supply

equipment funding from 5% to 15%. Please review response to comment #9 for a more detailed response related to funding.

12. **Comment:** Natural Gas Vehicles for America (NGVAmerica) supports vehicle replacement with natural gas vehicles. They recommend providing a larger incentive and greater funding for natural gas medium- and heavy-duty vehicles. They recommend prioritizing funds for clean vehicles rather than fueling infrastructure. They recommend prioritizing projects that include partnerships that provide a match such as a CNG or LNG station being built in locations that will receive the VW funding. They recommend using the AFLEET and HDVEC tools for doing emissions measurements.

Response: The draft Plan does provide for funds to be used for propane buses under the Bus category and under the DERA category. Under the DERA category, propane buses may be given an additional 10% rebate compared to diesel buses. Once the Board of Minerals and Environment approves a Plan, DENR will develop guidelines on how to apply for funds and how DENR will select projects. At this time DENR has not determined which tools will be used in the guidelines to calculate nitrogen oxide emission reductions from approved projects and will look into the AFLEET and HDVEC tools. The draft Plan does allow the percentage in each category to be adjusted depending on the number and type of requests DENR receives each year. Therefore, DENR does not recommend any changes to the draft Plan at this time based on this comment.

13. **Comment:** ChargePoint supports the use of funds for electric vehicle charging infrastructure and recommends increasing the allocation to 15%. They recommend investing these funds into Level 2 charging stations at workplaces, multifamily dwellings, and publicly accessible locations throughout the state.

Response: DENR responded previously to a similar comment. Please review response to comment #9 for a more detailed response.

14. **Comment:** Greenlots encourages investment of the maximum 15% for light-duty EV charging infrastructure. They encourage development of a statewide EV charging infrastructure plan prior to deploying trust funds. They recommend greater funding for buses to be replaced by electric buses.

Response: DENR responded previously to similar comments. Please review response to comment #6 and #9 for a more detailed response.

Draft: May 3, 2018

Volkswagen Beneficiary Mitigation Plan



Table of Contents

Background	1
Available Funding	2
Eligible Mitigation Actions	2
Category 1. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks).....	2
Category 2. Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses).....	3
Category 3. Freight Switchers	4
Category 4. Ferries and Tugs.....	5
Category 5. Ocean Going Vessels Shorepower	5
Category 6. Class 4-7 Local Freight Trucks (Medium Trucks).....	6
Category 7. Airport Ground Support Equipment.....	7
Category 8. Forklifts and Port Cargo Handling Equipment.....	7
Category 9. Light Duty Zero Emission Vehicle Supply Equipment	8
Category 10. Diesel Emission Reduction Act (DERA) Option	9
South Dakota’s Overall Goal	10
National Ambient Air Quality Standards.....	10
Particulate Matter Concentrations in South Dakota	11
Ozone Concentrations in South Dakota.....	12
Nitrogen Dioxide Concentrations in South Dakota.....	13
Summary of Monitoring Data	14
Subject Volkswagen Diesel Vehicles Registered in South Dakota	15
Nitrogen Oxide Emissions in South Dakota	15
Nitrogen Oxide Emissions – County Distribution.....	16
Nitrogen Oxide Emissions – Sector Distribution	17
Nitrogen Oxide Emissions – Non-Road Diesel Equipment Distribution.....	18
Nitrogen Oxide Emissions – On-Road Heavy Duty Diesel Vehicle Distribution	19
Nitrogen Oxide Emissions – Locomotive Engine Distribution.....	20
Nitrogen Oxide Emissions – Area and Population	20
Funding Allocations for Eligible Mitigation Actions	22
Category 1 and 6 – Large and Medium Trucks.....	22
Category 2 – School, Shuttle, and Transit Buses.....	23

Category 3 and 7 – Freight Switches and Airport Equipment.....	23
Category 9 – Light Duty Zero Emission Vehicle Supply Equipment	23
Category 10 – The Diesel Emission Reduction Act (DERA) Option	23
Trust Funding Options.....	24
Anticipated Benefits from Eligible Actions	25
Administrative Expenditures.....	25
Public Input Process.....	26

List of Figures

Figure 1: South Dakota Air Monitoring Sites.....	11
Figure 2: PM _{2.5} Design Values in South Dakota	12
Figure 3: Ozone Design Values in South Dakota.....	13
Figure 4: Nitrogen Dioxide Design Values in South Dakota	14
Figure 5: Top 10 Counties – Subject VW Vehicles Registered in South Dakota.....	15
Figure 6: Top 10 Counties – Nitrogen Oxide Emissions in South Dakota	16
Figure 7: Source Distribution of Nitrogen Oxide Emissions in South Dakota.....	17
Figure 8: Distribution of Nitrogen Oxide Emissions from Mobile Sector.....	18
Figure 9: Top 10 Counties – Nitrogen Oxide Emissions from Non-Road Diesel Equipment.....	19
Figure 10: Top 10 Counties – NOx Emissions from On-Road Heavy Duty Diesel Vehicles	19
Figure 11: Top 10 Counties – Locomotive Engines	20
Figure 12: Top 10 Counties – Pounds of Nitrogen Oxide Emissions per Square Mile	21
Figure 13: Top 10 Counties – Pounds of Nitrogen Oxide Emissions per Population.....	22

List of Tables

Table 1: Eligible Mitigation Actions and South Dakota’s Anticipated Funding.....	24
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Background

On October 25, 2016, the first of three partial settlements was finalized between the Volkswagen Corporation and its subsidiaries (collectively “VW”), the United States, and the state of California regarding the installation and use of defeat devices in diesel-powered vehicles for model years 2009 through 2016. These defeat devices, in the form of computer software designed to cheat on federal emission tests, violated the Clean Air Act. Under normal driving conditions the emission control equipment was turned off, defeated, or rendered less effective allowing the emissions of nitrogen oxide (NO_x) to exceed up to 40 times the vehicle emission standard. Nearly 500,000 of the 2.0 liter diesel vehicles were sold or leased in the United States.

The settlement for the 2.0 liter vehicles is \$14.7 billion dollars including \$10 billion for vehicle buy-back and compensation to consumers, \$2.7 billion allocated to the states for mitigation of excess nitrogen oxide emissions and \$2 billion directed toward a national Zero Emission Vehicle (ZEV) plan to improve infrastructure, access and education to support and advance zero emission (e.g., fuel cell and electric) vehicles.

On May 17, 2017, a second partial consent decree was approved for the 3.0 liter diesel vehicles manufactured by VW that also had emission control defeat devices. The settlement for the 3.0 liter diesel vehicles is \$225 million for approximately 80,000 vehicles sold between 2008 and 2016 nationwide.

The first Partial Consent Decree established an “Environmental Mitigation Trust Agreement” or “Trust” to mitigate excess nitrogen oxide emissions resulting from the use of the emission control defeat devices on the VW light-duty diesel vehicles. The Trust requires states, not later than 30 days prior to submitting its first funding request, to make publicly available a “Beneficiary Mitigation Plan” or “Plan” that describes how the state will use the funds allocated to it under this Trust. The Trust stipulates the Plan shall address:

1. The State’s overall goals for use of the funds;
2. The categories of Eligible Mitigation Actions the State anticipates will be appropriate to achieve the stated goals and the preliminary assessment of the percentages of funds anticipated to be used for each type of Eligible Mitigation Actions;
3. A description of how the State will consider the potential beneficial impact of the selected Eligible Mitigation Actions on air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction;
4. A general description of the expected ranges of emission benefits the State estimates would be realized by implementation of the Eligible Mitigation Actions identified in the Beneficiary Mitigation Plan;
5. The extent to which the State intends to fund projects in accordance with the DERA Program; and
6. An explanation of the process by which the State shall seek and consider public input on its Beneficiary Mitigation Plan.

On November 21, 2017, Governor Dugaard signed and submitted South Dakota's Certification for Beneficiary Status form to the Trustee identifying the "South Dakota Department of Environment and Natural Resources" or "Department" as the Lead Agency. On January 29, 2018, the Trustee designated South Dakota as a beneficiary to the State Trust.

The Department is only providing the level of detail that is reasonably ascertainable at the time of submission of this Beneficiary Mitigation Plan. Nothing in this Plan is binding, nor does it create any rights in any person to claim an entitlement of any kind. The Department shall provide the Trustee with and make available on its Volkswagen Settlement webpage (<http://denr.sd.gov/des/aq/aaVW.aspx>) any updates to the Plan.

Available Funding

Of the \$2.925 billion in Trust funds, the Environmental Mitigation Trust Agreement has allocated South Dakota \$7.5 million and \$625,000 based on the number of 2.0 liter and 3.0 liter diesel vehicles registered in South Dakota, respectively. The combined allocation for South Dakota totals \$8.125 million. A state is limited to dispersing up to one third of its allocation during the first funding year, and up to two thirds by the end of the second year. The Trust will be in place for ten years from the Trust Effective Date, October 2, 2027, with provisions for an extension based on fund dispersal.

Both non-government and government entities are eligible to apply for funding to implement eligible mitigation projects. Project funding will be awarded through an open and competitive process that will comply with all applicable state and federal procurement requirements. The Department will maintain and make publicly available all documentation submitted in support of each funding request and all records of eligible mitigation project expenditures. The Department is proposing to have some of the information available on the website and the remaining information available upon request. The instructions on how to obtain information that is not on the website will be available on the website.

Eligible Mitigation Actions

The following 10 categories are eligible mitigation projects pursuant to Appendix D-2 of the first VW Partial Consent Decree:

Category 1. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks)

1. Eligible large trucks with 1992-2009 engine model year Class 8 local freight or drayage trucks.
2. Eligible large trucks must be scrapped.
3. Eligible large trucks may be repowered with any new diesel or alternate fueled engine or all-electric engine, or may be replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the eligible large trucks mitigation action occurs or one engine model year prior.

4. For non-government owned eligible Class 8 local freight trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 40% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 25% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.
 - d. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
5. For non-government owned eligible drayage trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 40% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 50% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.
 - d. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
6. For government owned eligible Class 8 large trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 100% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.
 - d. Up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

Category 2. Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses)

1. Eligible buses include 2009 engine model year or older, Class 4-8 school buses, shuttle buses, or transit buses.
2. Eligible buses must be scrapped.
3. Eligible buses may be repowered with any new diesel or alternate fueled or all-electric engine, or may be replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the eligible bus mitigation action occurs or one engine model year prior.

4. For non-government owned buses, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 40% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 25% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.
 - d. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
5. For government owned eligible buses, and privately owned school buses under contract with a public school district, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 100% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.
 - d. Up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

Category 3. Freight Switchers

1. Eligible freight switchers include pre-Tier 4 switcher locomotives that operate 1,000 or more hours per year.
2. Eligible freight switchers must be scrapped.
3. Eligible freight switchers may be repowered with any new diesel or alternate fueled or all-electric engine(s) (including generator sets), or may be replaced with any new diesel or alternate fueled or all-electric (including generator sets) freight switcher, that is certified to meet the applicable Environmental Protection Agency (EPA) emissions standards as published in the Code of Federal Regulations for the engine model year in which the eligible freight switcher mitigation action occurs.
4. For non-government owned freight switchers, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 40% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine(s) or generator sets, including the cost of installation of such engines(s).
 - b. Up to 25% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) freight switcher.

- c. Up to 75% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).
- d. Up to 75% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric Freight Switcher.
5. For government owned eligible freight switchers, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine(s) or generator sets, including the costs of installation of such engine(s).
 - b. Up to 100% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) freight switcher.
 - c. Up to 100% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).
 - d. Up to 100% of the cost of a new all-electric freight switcher, including charging infrastructure associated with the new all-electric freight switcher.

Category 4. Ferries and Tugs

1. Eligible ferries and/or tugs include unregulated, Tier 1, or Tier 2 marine engines.
2. Eligible ferry and/or tug engines that are replaced must be scrapped.
3. Eligible ferries and/or tugs may be repowered with any new Tier 3 or Tier 4 diesel or alternate fueled engines, or with all-electric engines, or may be upgraded with an EPA Certified Remanufacture System or an EPA Verified Engine Upgrade.
4. For non-government owned eligible ferries and/or tugs, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 40% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine(s), including the costs of installation of such engine(s).
 - b. Up to 75% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).
5. Government owned eligible ferries and/or tugs, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine(s), including the costs of installation of such engine(s).
 - b. Up to 100% of the cost of a repower with a new all-electric engine(s), including the costs of installation of such engine(s), and charging infrastructure associated with the new all-electric engine(s).

Category 5. Ocean Going Vessels Shorepower

1. Eligible marine shorepower includes systems that enable a compatible vessel's main and auxiliary engines to remain off while the vessel is at berth. Components of such systems

eligible for reimbursement are limited to cables, cable management systems, shore power coupler systems, distribution control systems, and power distribution. Marine shore power systems must comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 high voltage shore connection systems or the IEC/PAS 80005-3:2014 low voltage shore connection systems) and should be supplied with power sourced from the local utility grid. Eligible marine shorepower includes equipment for vessels that operate within the Great Lakes.

2. For non-government owned marine shorepower, Beneficiaries may only draw funds from the Trust in the amount of up to 25% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.
3. For government owned marine shorepower, Beneficiaries may draw funds from the Trust in the amount of up to 100% for the costs associated with the shore-side system, including cables, cable management systems, shore power coupler systems, distribution control systems, installation, and power distribution components.

Category 6. Class 4-7 Local Freight Trucks (Medium Trucks)

1. Eligible medium trucks with 1992-2009 engine model year Class 4-7 local freight trucks.
2. Eligible medium trucks must be scrapped.
3. Eligible medium trucks may be repowered with any new diesel or alternate fueled engine or all-electric engine, or may be replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the eligible large trucks mitigation action occurs or one engine model year prior.
4. For non-government owned eligible medium trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 40% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 25% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 75% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.
 - d. Up to 75% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.
5. For government owned eligible medium trucks, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost of a repower with a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) engine, including the costs of installation of such engine.
 - b. Up to 100% of the cost of a new diesel or alternate fueled (e.g. compressed natural gas, propane, hybrid) vehicle.
 - c. Up to 100% of the cost of a repower with a new all-electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new all-electric engine.

- d. Up to 100% of the cost of a new all-electric vehicle, including charging infrastructure associated with the new all-electric vehicle.

Category 7. Airport Ground Support Equipment

1. Eligible airport ground support equipment includes:
 - a. Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and
 - b. Uncertified or certified to 3 grams/boiler horsepower-hour or higher emissions, spark ignition engine powered airport ground support equipment.
2. Eligible airport ground support equipment must be scrapped.
3. Eligible airport ground support equipment may be repowered with an all-electric engine, or may be replaced with the same airport ground support equipment in an all-electric form.
4. For non-government owned eligible airport ground support equipment, Beneficiaries may only draw funds from the Trust in the amount of:
 - a. Up to 75% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.
 - b. Up to 75% of the cost of a new all-electric airport ground support equipment, including charging infrastructure associated with such new all-electric airport ground support equipment.
5. For government owned eligible airport ground support equipment, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.
 - b. Up to 100% of the cost of a new all-electric airport ground support equipment, including charging infrastructure associated with such new all-electric airport ground support equipment.

Category 8. Forklifts and Port Cargo Handling Equipment

1. Eligible forklifts includes forklifts with greater than 8,000 pounds lift capacity.
2. Eligible forklifts and port cargo handling equipment must be scrapped.
3. Eligible forklifts and port cargo handling equipment may be repowered with an all-electric engine, or may be replaced with the same equipment in an all-electric form.
4. For non-government owned eligible forklifts and port cargo handling equipment, Beneficiaries may draw funds from the Trust in the amount of:
 - a. Up to 75% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.
 - b. Up to 75% of the cost of a new all-electric forklift or port cargo handling equipment, including charging infrastructure associated with such new all-electric forklift or port cargo handling equipment.
5. For government owned eligible forklifts and port cargo handling equipment, Beneficiaries may draw funds from the Trust in the amount of:

- a. Up to 100% of the cost of a repower with a new all-electric engine, including costs of installation of such engine, and charging infrastructure associated with such new all-electric engine.
- b. Up to 100% of the cost of a new all-electric forklift or P port cargo handling equipment, including charging infrastructure associated with such new all-electric forklift or port cargo handling equipment.

Category 9. Light Duty Zero Emission Vehicle Supply Equipment

Each Beneficiary may use up to fifteen percent (15%) of its allocation of Trust funds on the costs necessary for, and directly connected to, the acquisition, installation, operation and maintenance of new light duty zero emission vehicle supply equipment for projects as specified below. Provided, however, that Trust funds shall not be made available or used to purchase or rent real estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (e.g. maintenance other than of the supply equipment).

1. Light duty electric vehicle supply equipment includes Level 1, Level 2 or fast charging equipment or analogous successor technologies that is located in a public place, workplace, or multi-unit dwelling and is not consumer light-duty electric vehicle supply equipment (e.g., not located at a private residential dwelling that is not a multi-unit dwelling).
2. Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 mega pascals (MPa) or analogous successor technologies that is located in a public place.
3. Subject to the 15% limitation above, each Beneficiary may draw funds from the Trust in the amount of:
 - a. Up to 100% of the cost to purchase, install and maintain eligible light-duty electric vehicle supply equipment that will be available to the public at a government owned property.
 - b. Up to 80% of the cost to purchase, install and maintain eligible light-duty electric vehicle supply equipment that will be available to the public at a non-government owned property.
 - c. Up to 60% of the cost to purchase, install and maintain eligible light-duty electric vehicle supply equipment that is available at a workplace but not to the general public.
 - d. Up to 60% of the cost to purchase, install and maintain eligible light-duty electric vehicle supply equipment that is available at a multi-unit dwelling but not to the general public.
 - e. Up to 33% of the cost to purchase, install and maintain eligible light-duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kilograms/day that will be available to the public.
 - f. Up to 25% of the cost to purchase, install and maintain eligible light-duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kilograms/day that will be available to the public.

Category 10. Diesel Emission Reduction Act (DERA) Option

Beneficiaries may use Trust funds for their non-federal voluntary match, pursuant to Title VII, Subtitle G, Section 793 of the DERA Program in the Energy Policy Act of 2005 (codified at 42 U.S.C. § 16133), thereby allowing Beneficiaries to use such Trust funds for actions not specifically stated under Eligible Mitigations Actions listed above, but otherwise eligible under DERA pursuant to all DERA guidance documents available through EPA.

The current Diesel Emission Reduction Act (DERA) funds the following projects:

1. Verified Exhaust Control Technologies: DERA will fund up to 100% of the cost (labor and equipment) of eligible verified exhaust control technologies.
2. Verified Engine Upgrades and Certified Remanufacture Systems: DERA will fund up to 40% of the cost (labor and equipment) of eligible EPA verified engine upgrades and certified remanufacture systems.
3. Verified/Certified Cleaner Fuel Use: DERA will not fund stand-alone cleaner fuels use. DERA will fund the cost differential between the eligible cleaner fuels and conventional diesel fuels if the cleaner fuels are used in combination, and on the same vehicles, with new eligible verified exhaust controls or eligible engine upgrades or eligible certified engine repowers or eligible certified vehicle/equipment replacements funded under this Plan.
4. Verified Idle Reduction Technologies:
 - a. Verified On-Highway Idle Reduction Technologies: Funding will cover up to 25% of the cost (labor and equipment) of verified idle reduction technologies on school buses and long-haul trucks.
 - b. Verified Locomotive Idle Reduction Technologies: DERA will fund up to 40% of the cost (labor and equipment) of eligible idle reduction technologies for locomotives.
 - c. Electrified Parking Spaces: DERA will fund up to 30% of the cost (labor and equipment) of eligible electrified parking space technologies, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment functional.
5. Verified Aerodynamic Technologies and Low Rolling Resistance Tires: DERA will not fund stand-alone aerodynamic technologies or low rolling resistance tires. DERA will fund up to 100% of the cost (labor and equipment) of verified aerodynamic technologies or verified low rolling resistance tires if the technology is combined on the same vehicle with a new eligible verified exhaust control technology funded under this Plan.
6. Certified Engine Repower: DERA will fund up to 40% of the cost (labor and equipment) of replacing a diesel engine with a diesel or alternative fueled engine (including hybrids) certified to EPA emission standards. DERA will fund up to 50% of the cost of replacing diesel engines with an engine certified to meet CARB's Optional Low-NOx Standards. DERA will fund up to 60% of the cost (labor and equipment) of replacing a diesel engine with an all-electric motor or electric power source.
 - a. Replacement of Drayage Trucks: DERA will fund up to 50% of the cost of a replacement drayage truck.
7. Certified Vehicle/Equipment Replacement: DERA will fund up to 25% of the cost of a replacement vehicle or piece of equipment powered by a diesel or alternate fueled engine (including hybrids) certified to EPA emission standards. DERA will fund up to 35% of

the cost of a replacement vehicle or equipment powered by an engine certified to meet CARB's Optional Low-NOx Standards. DERA will fund up to 45% of the cost of a replacement diesel vehicle or equipment powered by an all-electric motor or electric power source.

Trust funds shall not be used to meet the nonfederal mandatory cost share requirements, as defined in applicable DERA program guidance, of any DERA grant.

South Dakota's Overall Goal

The primary goal of the Federal Clean Air Act and/or South Dakota's Air Pollution Control is to achieve and maintain reasonable levels of air quality which will protect human health and safety, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the state. The goal of this Plan is to facilitate the improvement and protection of the ambient air quality throughout South Dakota. The Department will achieve this goal by implementing eligible mitigation projects that:

1. Achieve reductions in diesel engine emissions by providing funding for emission reduction projects throughout the state and in areas of the state that bear a disproportionate share of the impact of nitrogen oxide emissions;
2. 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;
3. Maximize the use of Trust funds in reducing nitrogen oxide emissions; and
4. Award funds through a public process.

The Department used data collected and compiled by the U.S. Environmental Protection Agency, U.S. Census Bureau, South Dakota's Department of Revenue, and South Dakota's Department of Environment and Natural Resources to guide how the funds from the Trust could be used to meet the primary goal of the Clean Air Act and how best to meet the needs of South Dakota.

National Ambient Air Quality Standards

The Department operates an ambient air quality monitoring network in South Dakota to determine compliance with federal National Ambient Air Quality Standards. The federal National Ambient Air Quality standards include maximum allowable pollution levels for particulate matter, sulfur dioxide, nitrogen dioxide, ozone, lead, and carbon monoxide. These federal National Ambient Air Quality Standards are designed to protect the public health and public welfare. Figure 1 shows a map of the general locations and cities with ambient monitoring sites for South Dakota's existing monitoring network.

Figure 1: South Dakota Air Monitoring Sites



The Trust was established to mitigate excess nitrogen oxide emissions. In the atmosphere, nitrogen oxide emissions are a mixture of gases composed of nitrogen and oxygen. Nitrogen oxides are highly reactive gases. Nitrogen oxides will react with other chemicals in the atmosphere to form nitrogen dioxide (NO₂), particulate matter, and ozone.

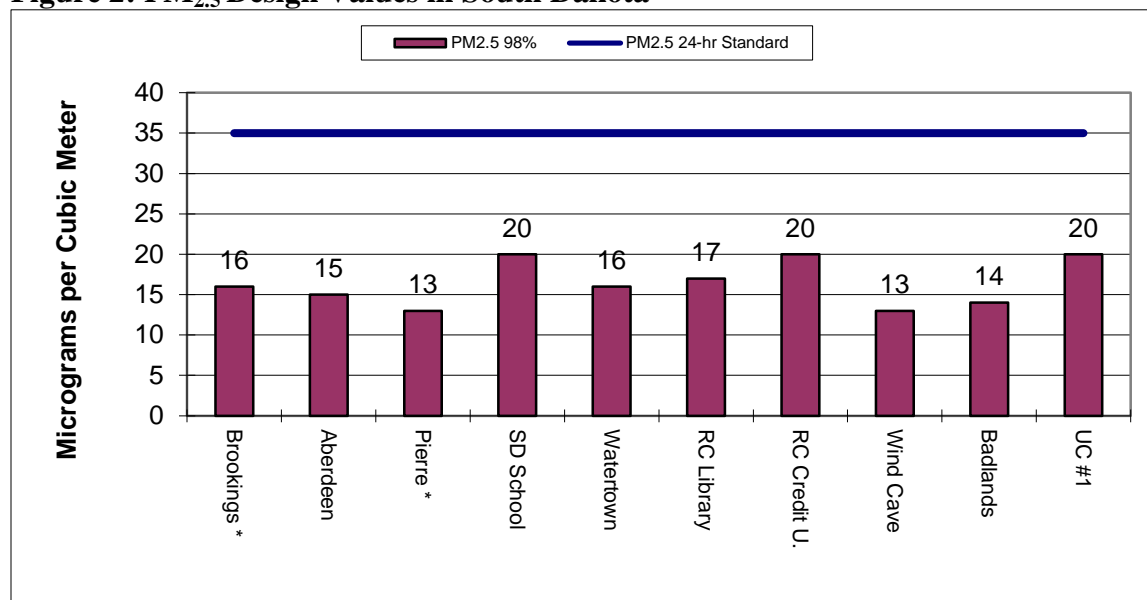
The Department reviewed its ambient air monitoring data for particulate matter, nitrogen dioxide, and ozone. Specific details on South Dakota’s ambient monitoring network are available on the Department’s webpage at <http://denr.sd.gov/des/daq/monitoring/state-mo.aspx>.

Particulate Matter Concentrations in South Dakota

The Department looked at particulate matter less than or equal to 2.5 microns in diameter (PM_{2.5}), since it primarily comes from on and off-road vehicle exhaust and other combustion sources. There were 10 ambient air monitoring sites operated in South Dakota that measured PM_{2.5} concentrations in 2017. The sampling locations were in Brookings, Aberdeen, Pierre, Sioux Falls, Watertown, Rapid City (Library), Rapid City (Credit Union), Wind Cave National Park, Badlands National Park, and Union County.

Figure 2 was derived from the 2017 South Dakota Ambient Air Monitoring Annual Plan and represents PM_{2.5} data for calendar year 2016. The 2017 South Dakota Ambient Air Monitoring Annual Plan is available on the Department’s website at <http://denr.sd.gov/des/daq/aqnews/Annual%20plan%202017.pdf>.

Figure 2: PM_{2.5} Design Values in South Dakota



The PM_{2.5} design value is the 98th percentile averaged over three years for each monitoring site. The PM_{2.5} design value in Figure 2 represent calendar year 2014, 2015, and 2016 and demonstrates each site is in compliance with the federal National Ambient Air Quality Standard for PM_{2.5}.

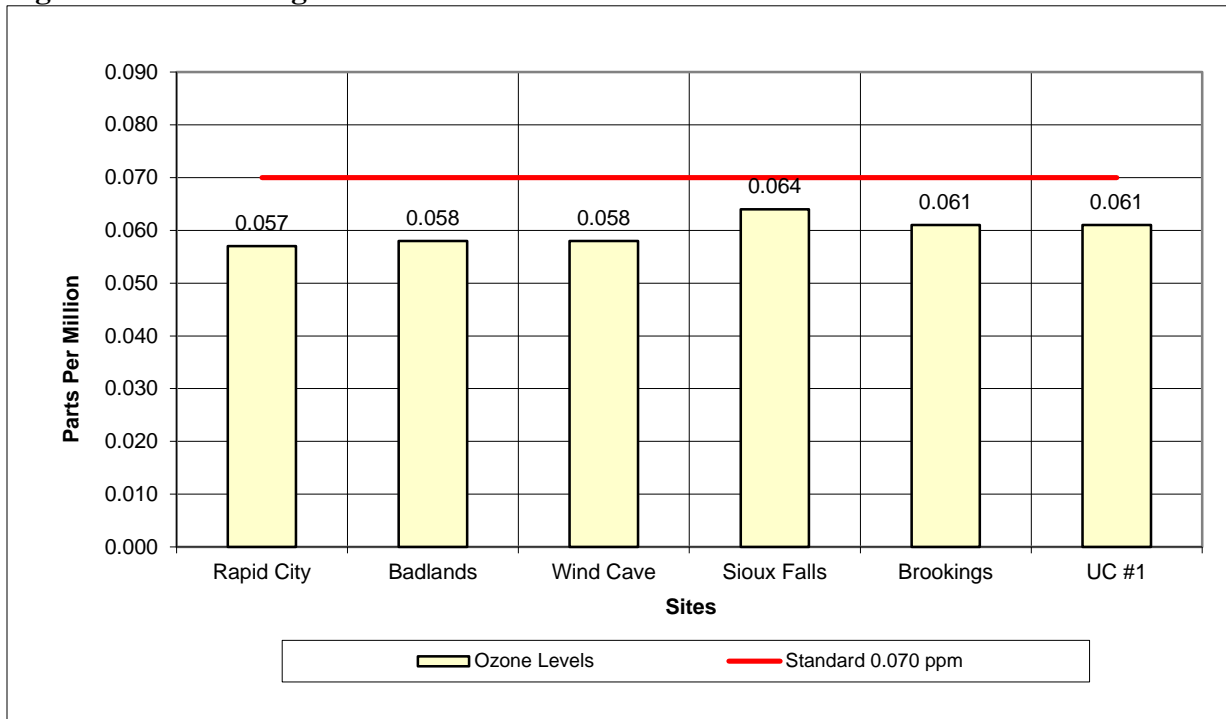
Even though the monitoring data shows compliance with the federal National Ambient Air Quality Standard for PM_{2.5}, the Department reviewed the high concentration days to see what types of sources may be the cause. In 2016, PM_{2.5} (24-hour) had three high concentration days. The Department could not identify any local sources to explain the high concentrations, but did identify smoke plumes originating from outside of South Dakota were occurring on all three days. Since nitrogen oxide is a precursor of PM_{2.5}, reducing nitrogen oxide emissions throughout the state may help reduce PM_{2.5} concentrations.

Ozone Concentrations in South Dakota

There were six ambient air monitoring sites operated in South Dakota that measured ozone concentrations in 2017. The sampling locations were in Sioux Falls, Brookings, Black Hawk, Badlands National Park, Wind Cave National Park, and Union County. In 2015, EPA lowered the National Ambient Air Quality standard for ozone to 0.070 parts per million. Since EPA has lowered the standard down to background levels in South Dakota, South Dakota may have areas that can exceed the lower ozone standard in both rural and urban areas of the state.

Figure 3 was derived from the 2017 South Dakota Ambient Air Monitoring Annual Plan and represents ozone data through calendar year 2016. The ozone design value is the 4th highest ozone concentration averaged over three years for each monitoring site. The ozone design values in Figure 3 represent calendar year 2014, 2015, and 2016 and demonstrate each site is in compliance with the federal National Ambient Air Quality Standard for ozone.

Figure 3: Ozone Design Values in South Dakota



Based on ozone data through 2016, ozone design values in South Dakota are within approximately 10% of each other throughout the state but the highest ozone concentrations are in the eastern edge of the state (Sioux Falls, Brookings, and UC #1, which represents Union County).

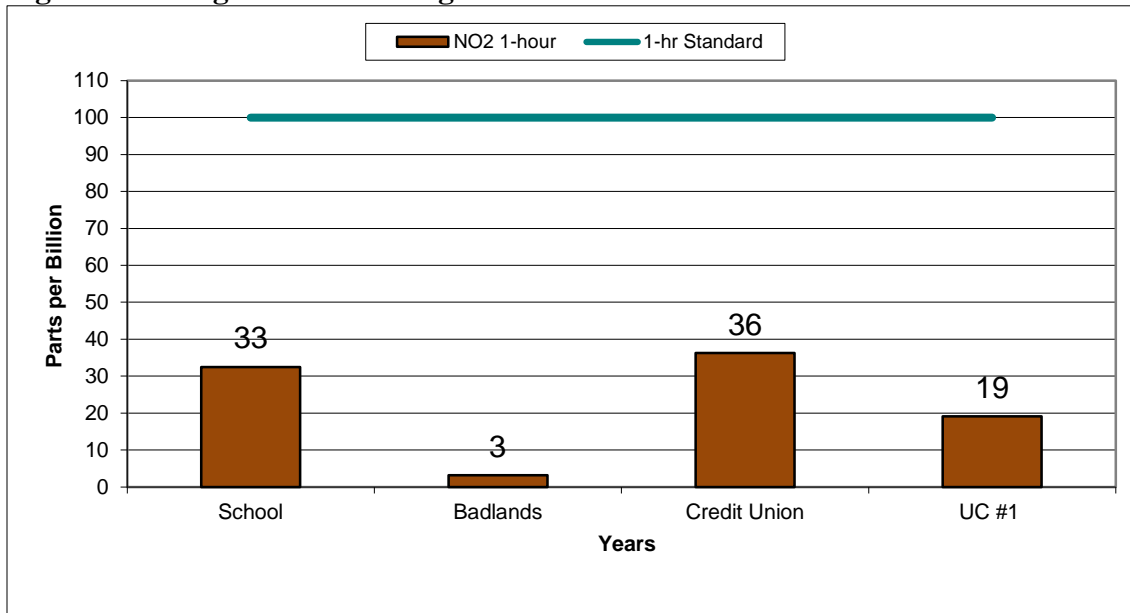
Modeling conducted by Western Regional Air Partnership (WRAP), an organization the Department is a member of, indicates that South Dakota contributes approximately 0.003 parts per million to its ozone concentration which represents approximately 5% of South Dakota's ozone levels. The remaining 95% is from natural sources and/or transported into South Dakota from other states and countries. Since nitrogen oxide is a precursor of ozone, reducing nitrogen oxide emissions throughout the state may help reduce the ozone concentrations.

Nitrogen Dioxide Concentrations in South Dakota

There were four ambient air monitoring sites operated in South Dakota that measured nitrogen dioxide concentrations in 2017. The sampling locations were in Sioux Falls, Rapid City (Credit Union), Badlands National Park, and Union County. Figure 4 was derived from the 2017 South Dakota Ambient Air Monitoring Annual Plan and represents nitrogen dioxide data for calendar year 2016.

The nitrogen dioxide design value is the 98th percentile averaged over three years for each monitoring site. The nitrogen dioxide design values in Figure 4 represent calendar year 2014, 2015, and 2016 and demonstrate each site is in compliance with the federal National Ambient Air Quality Standard for nitrogen dioxide.

Figure 4: Nitrogen Dioxide Design Values in South Dakota



Based on nitrogen dioxide data through 2016, the design values for nitrogen dioxide in South Dakota are less than 40% of the federal National Ambient Air Quality Standard. Even though the monitoring data shows compliance with the federal standard, nitrogen oxide is a precursor of nitrogen dioxide and reducing nitrogen oxide emissions throughout the state may help maintain nitrogen dioxide concentrations below the standard. This may be necessary in the future if EPA continues to lower the standard for nitrogen dioxide like it has for ozone.

Summary of Monitoring Data

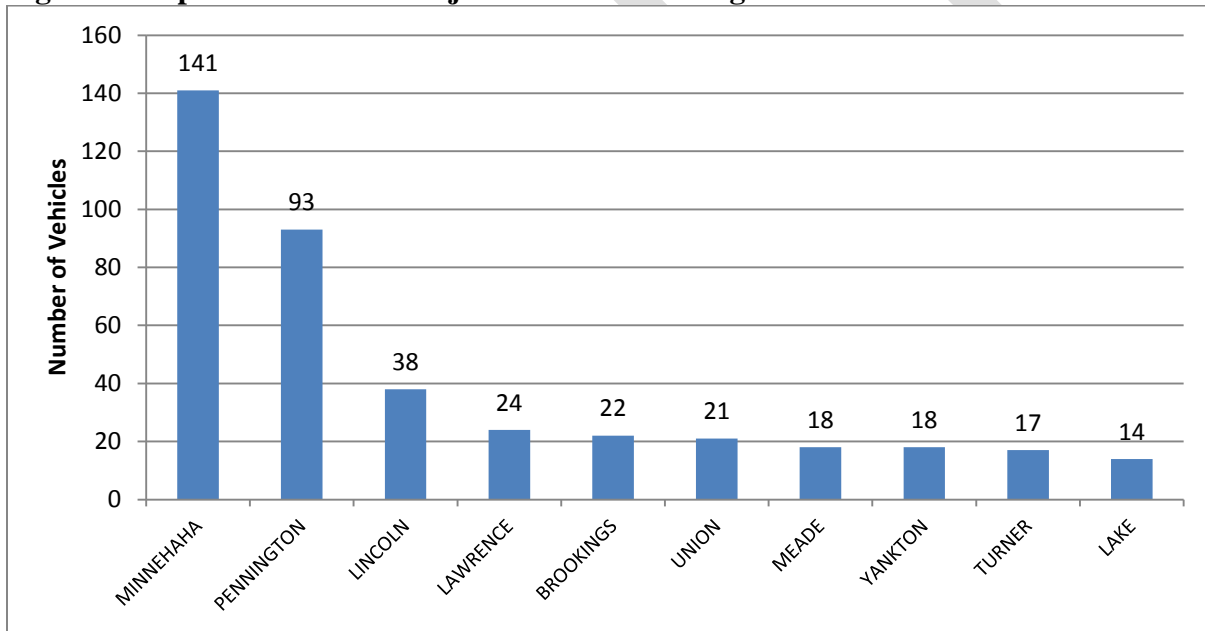
The Department's monitoring data does not indicate that nitrogen oxide emissions in a specific city, county, or geographic area are causing exceedances of the federal national ambient air quality standards. Therefore, the Department considered other metrics to meet South Dakota's goal with the Trust funds.

Subject Volkswagen Diesel Vehicles Registered in South Dakota

The South Dakota Department of Revenue maintains data on the type and number of vehicles registered in South Dakota. Based on South Dakota's Department of Revenue data, there is a total of 575 diesel Volkswagen, Audi, and Porsche (VW) vehicles, model year 2009 through 2015, registered in South Dakota as of January 2018, that are subject to the Settlement. The total number of counties in South Dakota is 66, of which only 55 of those counties have registered VW vehicles subject to the Settlement. Figure 5 provides a graph displaying the top 10 counties with registered VW vehicles.

The largest percentage of VW vehicles is registered in Minnehaha County at 25% followed by Pennington County at 16%. The next eight counties in Figure 5 represent 30% of the VW vehicles registered in South Dakota. The remaining 45 counties having subject vehicles not identified in Figure 5 represent 29% of the registered VW vehicles and the range of registered vehicles declines from 12 to one per county.

Figure 5: Top 10 Counties – Subject VW Vehicles Registered in South Dakota



Nitrogen Oxide Emissions in South Dakota

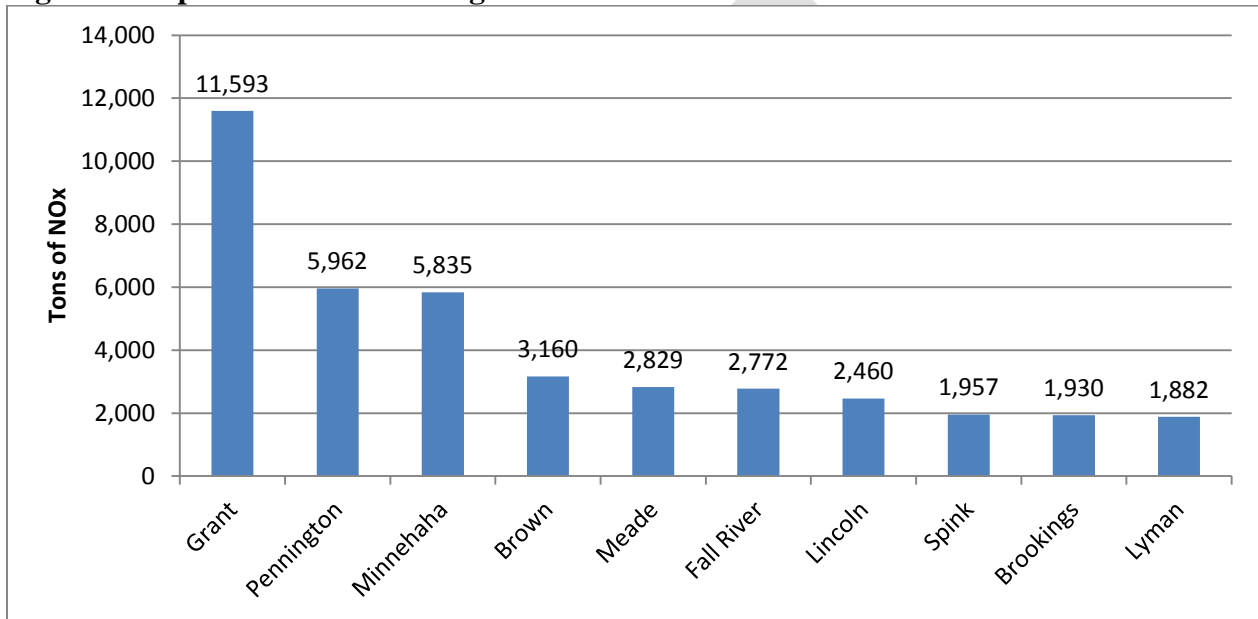
The EPA develops and maintains a National Emission Inventory, which is available on EPA's webpage at <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>. EPA's National Emission Inventory is a comprehensive and detailed estimate of air emissions for criteria air pollutants, criteria precursors, and hazardous air pollutants from stationary, mobile and natural air emissions sources. The National Emission Inventory is released every three years based primarily on data provided by state, local, and tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA. The National Emission Inventory includes emissions for different sectors such as point, nonpoint, on-road, non-road, and event

sources. The most current inventory is the 2014 National Emission Inventory which was released in December 2016.

Nitrogen Oxide Emissions – County Distribution

The Trust funds shall be used for environmental mitigation projects that reduce nitrogen oxide emissions. The 2014 National Emissions Inventory for South Dakota provided nitrogen oxide emissions by county which the Department used to determine which counties have the greatest nitrogen oxide emissions. Figure 6 lists the top 10 counties with the greatest nitrogen oxide emissions.

Figure 6: Top 10 Counties – Nitrogen Oxide Emissions in South Dakota



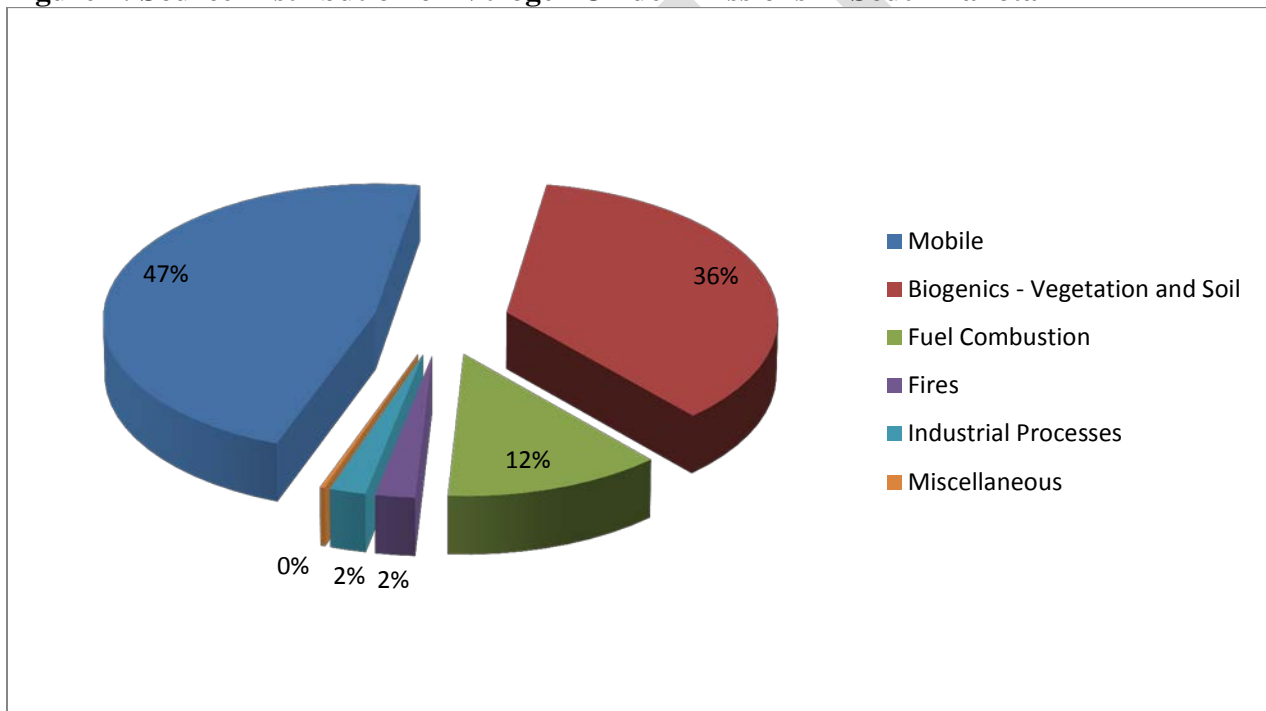
Grant County has the largest nitrogen oxide emissions with 11,593 tons in 2014. Approximately 91% or 10,507 tons of the nitrogen oxide emissions is from the Big Stone coal-fired power plant. Reducing nitrogen oxide emissions from a coal-fired power plant is not one of the Eligible Mitigation Actions. However, the owners of the Big Stone coal-fired power plant have already installed air pollution control equipment and reduced its nitrogen oxide emissions by approximately 90%.

Nitrogen oxide emissions from Pennington and Minnehaha counties represent the second and third largest contributors to nitrogen oxide emissions in South Dakota, respectively. Both counties represent approximately half of Grant County's nitrogen oxide emissions or just under 6,000 tons each in 2014. The fourth highest nitrogen oxide contributor is Brown County which represents approximately a quarter of Grant County's nitrogen oxide emissions or approximately 3,000 tons in 2014. The nitrogen oxide emissions from the 56 counties not displayed in Figure 2 ranges from 1,779 tons to 378 tons in 2014.

Nitrogen Oxide Emissions – Sector Distribution

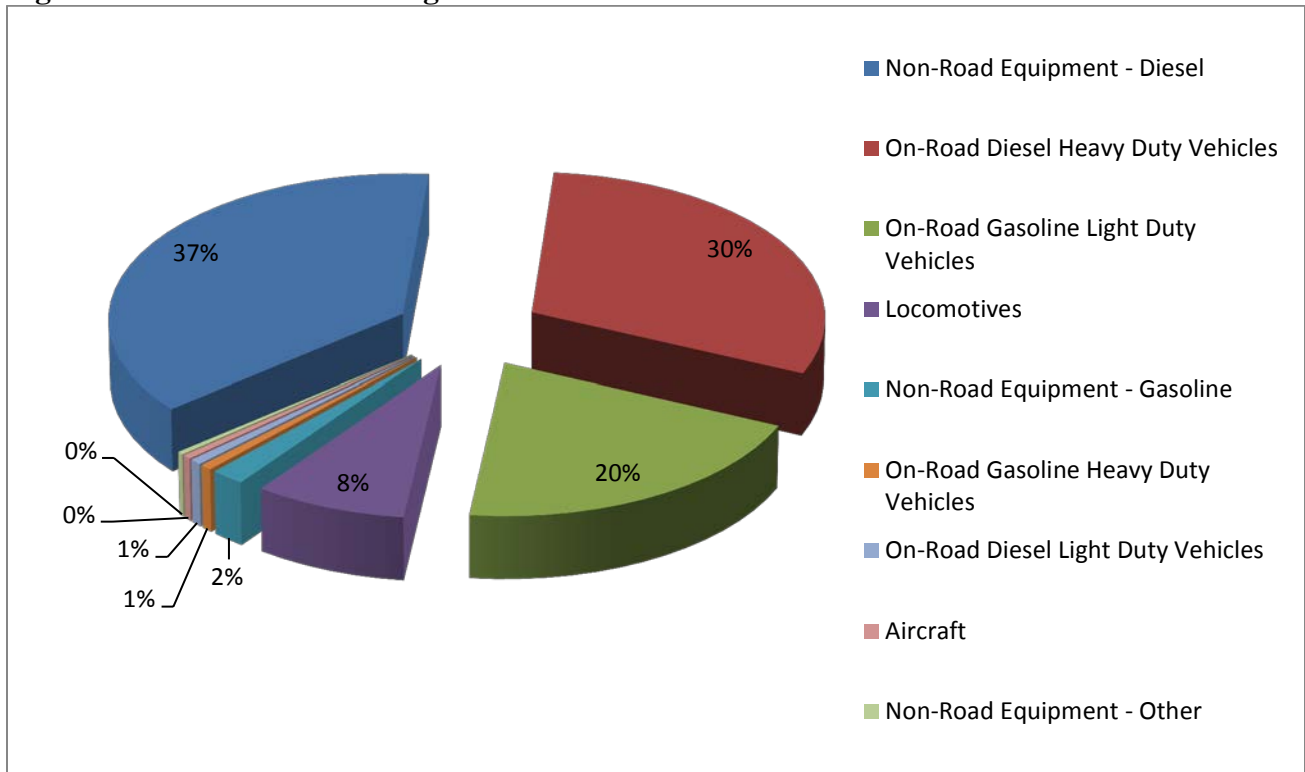
EPA’s 2014 National Emission Inventory for South Dakota divided the nitrogen oxide emissions throughout the state by sector or source of emissions such as mobile, biogenic, fuel combustion, fires, industrial process, and miscellaneous (see Figure 7). According to the 2014 National Emissions Inventory, the mobile sector represents 47% of South Dakota’s total nitrogen oxide emissions. The second highest sector of nitrogen oxide emissions in South Dakota is “Other” at 36%. The “Other” sector consists mainly of nitrogen oxide emissions from biogenic sources with less than 1% from bulk gasoline terminals and waste disposal. Therefore, the Department identified it in Figure 7 as “Biogenics” instead of “Other”. The remaining sectors represent 17% of the nitrogen oxide emissions in South Dakota and are made up of fuel combustion, fires, industrial processes, and miscellaneous activities.

Figure 7: Source Distribution of Nitrogen Oxide Emissions in South Dakota



The 2014 National Emission Inventory broke down each sector even further. For example, the mobile sector was subdivided into non-road equipment – diesel, on-road diesel heavy duty vehicles, on-road gasoline light duty vehicles, locomotives, non-road equipment – gasoline, on-road gasoline heavy duty, on-road diesel light duty vehicles, aircraft, and non-road equipment – other (see Figure 8). Non-road equipment that burns diesel emitted the greatest amount of nitrogen oxide from the mobile sector at 37% followed closely by on-road heavy duty diesel vehicles at 30%. On-road gasoline light duty vehicles were next at 20% of the nitrogen oxide emissions from the mobile sector, but are not considered one of the Eligible Mitigation Actions and will not be discussed further. The remaining nitrogen oxide emissions from the mobile sector represent 13% and are made up mostly of nitrogen oxide emissions from locomotives at 8%.

Figure 8: Distribution of Nitrogen Oxide Emissions from Mobile Sector



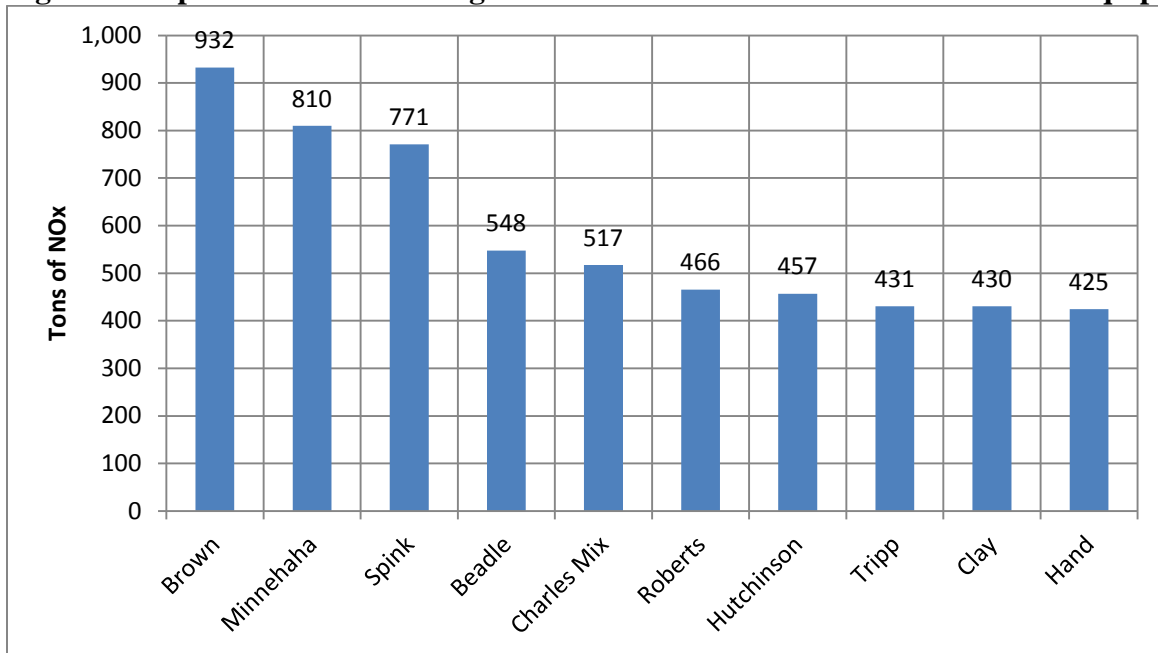
Nitrogen Oxide Emissions – Non-Road Diesel Equipment Distribution

As stated previously, non-road diesel equipment represents 37% of the nitrogen oxide emissions from the mobile sector in the 2014 National Emission Inventory. The 2014 National Emission Inventory provides nitrogen oxide emissions from non-road diesel equipment by county. Figure 5 displays nitrogen oxide emissions from non-road diesel equipment for the top 10 counties in South Dakota.

Brown County represents the largest nitrogen oxide emissions from non-road diesel equipment under the mobile source sector at 932 tons. Minnehaha and Spink counties follow next at 810 and 771 tons of nitrogen oxide emissions, respectively. After that the next seven counties drop from 548 to 425 tons of nitrogen oxide emissions. The remaining 56 counties not displayed in Figure 9 drops from 408 to 42 tons of nitrogen oxide emissions from non-road diesel equipment.

Non-road diesel equipment includes construction equipment, lawn and garden equipment, aircraft ground support equipment, etc. Although not listed in EPA’s website, the Department assumes farming equipment is included in non-road equipment. Category 4, 5, 7, and 8 of the Eligible Mitigation Actions represent non-road diesel equipment.

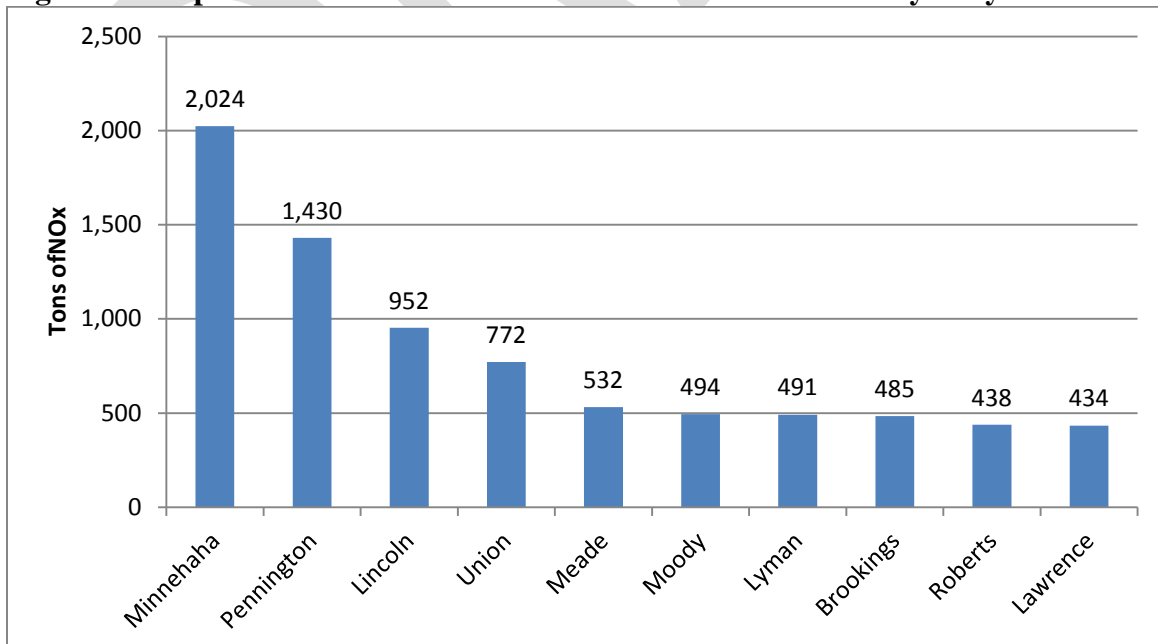
Figure 9: Top 10 Counties – Nitrogen Oxide Emissions from Non-Road Diesel Equipment



Nitrogen Oxide Emissions – On-Road Heavy Duty Diesel Vehicle Distribution

On-road heavy duty diesel vehicles represent 30% of nitrogen oxide emissions from the mobile sector in the 2014 National Emission Inventory. The 2014 National Emission Inventory also provided nitrogen oxide emissions from on-road heavy duty diesel vehicles by county. Figure 10 displays the top 10 counties that emit the largest amount of nitrogen oxide from on-road heavy duty diesel vehicles.

Figure 10: Top 10 Counties – NOx Emissions from On-Road Heavy Duty Diesel Vehicles

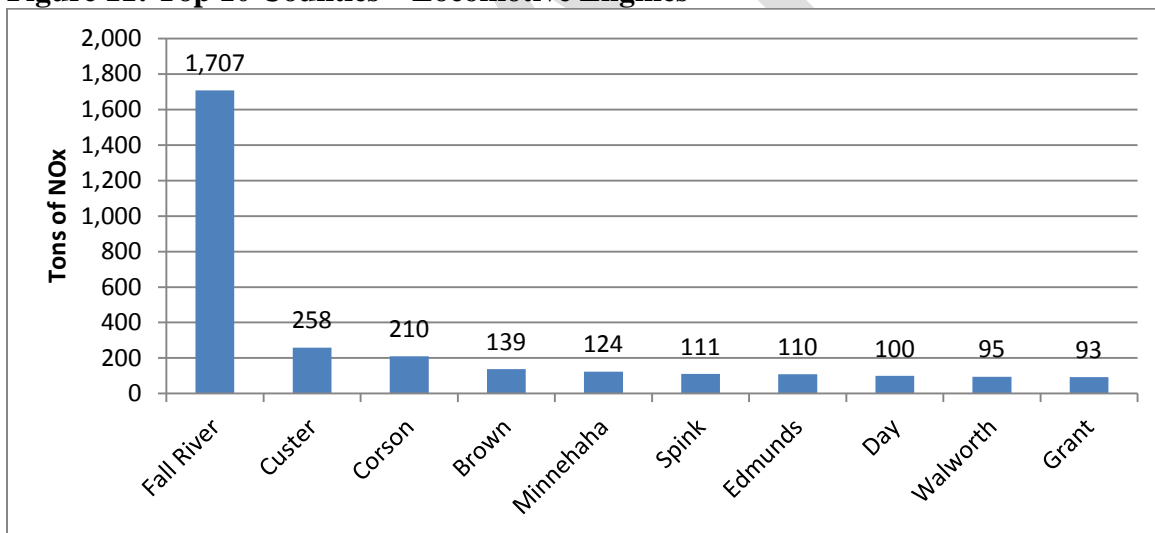


Minnehaha and Pennington counties, as expected, emit the greatest amount of nitrogen oxide because these are the two areas with the greatest population and mobile source activity. Lincoln County is in third with 952 tons of nitrogen oxide emissions followed by Union County with 772 tons. After that the nitrogen oxide emissions drop from 532 tons (Meade County) to 434 tons (Lawrence County) to round off the top ten counties. The remaining 56 counties not displayed in Figure 6 drop from 415 tons to 22 tons of nitrogen oxide emissions from on-road heavy duty diesel vehicles. Categories 1, 2, and 10 represent Eligible Mitigation Actions for on-road heavy duty diesel vehicles.

Nitrogen Oxide Emissions – Locomotive Engine Distribution

Locomotive engines represent 8% of South Dakota’s nitrogen oxide emissions from the mobile sector in the 2014 National Emission Inventory. The 2014 National Emission Inventory provided nitrogen oxide emissions from locomotive engines by county. Figure 11 displays the top 10 counties that emit the greatest amount of nitrogen oxide from locomotive engines. Fall River County emits by far the greatest amount of nitrogen oxide from locomotive engines at 1,707 tons. After that it drops from 258 tons (Custer County) to 93 tons (Grant County) of nitrogen oxide emissions for the top 10 counties. Category 3 of the Eligible Mitigation Actions addresses freight switchers.

Figure 11: Top 10 Counties – Locomotive Engines



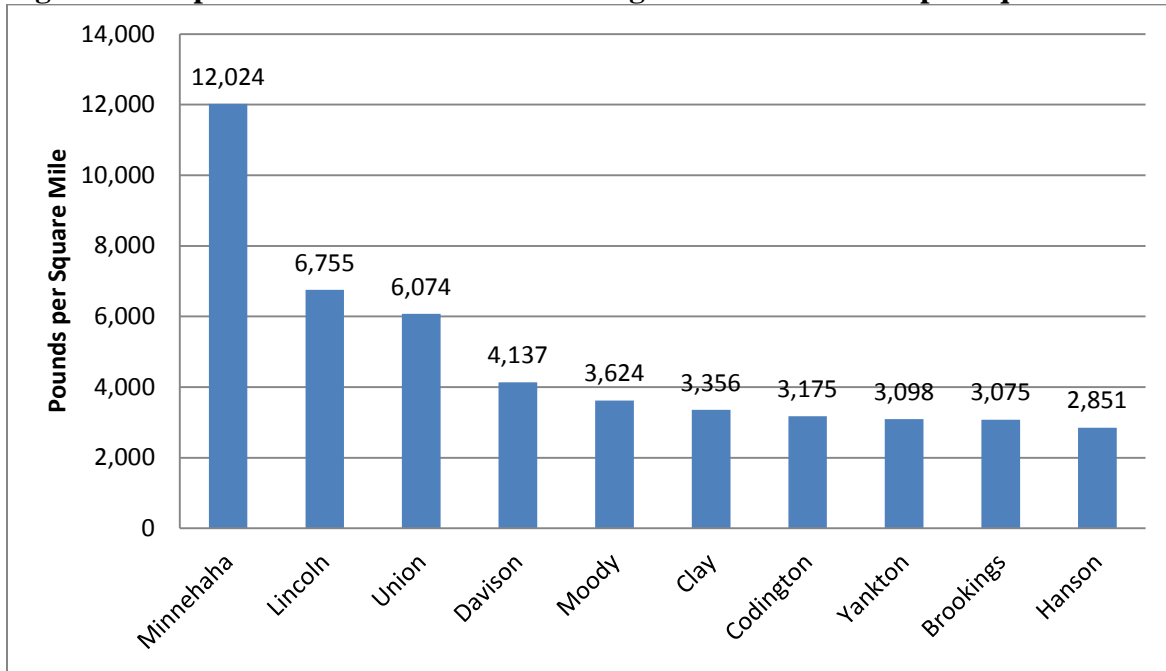
Nitrogen Oxide Emissions – Area and Population

The U.S. Census Bureau maintains data on the population and land area within the state, which may be found on their webpage at <https://www.census.gov/quickfacts/fact/table/US/PST045217>. The U.S. Census Bureau compiles the population and land area data on a county wide basis. The Department combined the data from EPA’s 2014 National Emission Inventory for nitrogen oxide with the data from the U.S. Census Bureau for each county to identify areas that could be considered for mitigation strategies. By using the emissions inventory data and converting it from tons to pounds by county and dividing by the land area (square miles) in the county, the

Department is able to generate a metric of pounds of nitrogen oxide emissions per square mile per county.

Figure 12 displays the top 10 counties that have the highest pounds of nitrogen oxide emissions per square mile. Existing infrastructure may disproportionately impact these counties. For example, Interstate 29 either runs through or near most of the 10 counties noted in Figure 12.

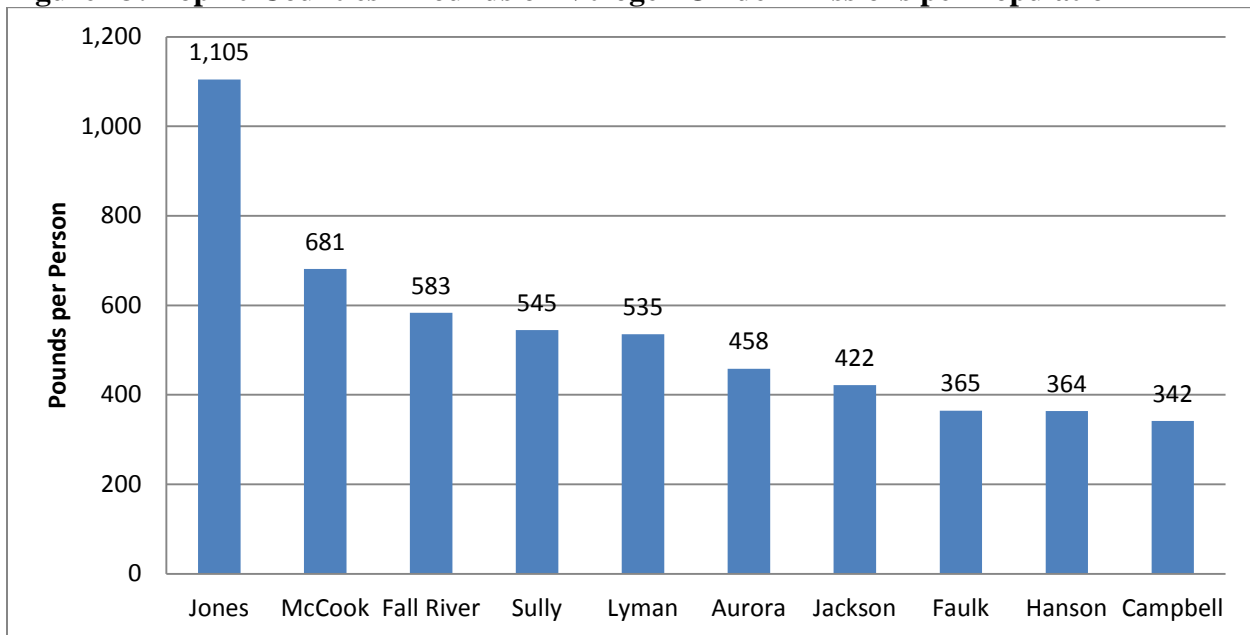
Figure 12: Top 10 Counties – Pounds of Nitrogen Oxide Emissions per Square Mile



By using the emissions inventory data (pounds) by county and dividing by the population (number of persons) of the county, the Department is able to generate a metric of pounds of nitrogen oxide emissions per person. In developing this metric, the Department used the 2014 estimated population from the U.S. Census Bureau data to correlate with EPA's 2014 National Emission Inventory.

Figure 13 displays the top 10 counties that have the highest pounds of nitrogen oxide emissions per person. Existing infrastructure in these counties may be more prone to use diesel fuel than other energy sources. Most of the 10 counties in Figure 13 have some of the lowest populations in South Dakota.

Figure 13: Top 10 Counties – Pounds of Nitrogen Oxide Emissions per Population



Funding Allocations for Eligible Mitigation Actions

The categories of Eligible Mitigation Actions that will be appropriate to achieving South Dakota’s overall goal are largely dependent on the availability of the category. Based on an initial assessment of the 10 categories of Eligible Mitigation Actions, three of them are not applicable to South Dakota (Category 4 (ferries and tugs), 5 (ocean going vessels shorepower), and 8 (forklift and port cargo handling equipment)).

Category 1 and 6 – Large and Medium Trucks

On-road heavy duty diesel vehicles emitted 14,827 tons or 30% of all mobile sector nitrogen oxide in South Dakota during 2014. For example, replacing older heavy duty highway diesel vehicles with newer vehicles may provide up to a 96% reduction in nitrogen oxide emissions per vehicle based on replacing a model year 1992 engine with a model year 2007 engine or newer. Investing Trust funds to replace large and medium local freight trucks with new diesel, alternate fueled, or all-electric engines is a cost-effective method to reduce nitrogen oxide emissions and improve South Dakota’s air quality.

The Department has already received input from the public and other state agencies interested in using Trust funds for these two categories. The Department proposes to budget approximately 50% of the Trust funds to replace and scrap 1992-2009 model year Class 8 Local Freight Trucks (Heavy-Duty) and Class 4-7 Local Freight Trucks (Medium-Duty). This percentage may change depending on the number and types of requests the Department receives each year.

Category 2 – School, Shuttle, and Transit Buses

Category 2, Class 4-8 school bus, shuttle bus or transit bus, also contributes to nitrogen oxide emissions under the on-road diesel vehicles discussed above. However, they are also eligible options under Category 10, Diesel Emission Reduction Act (DERA) option. The Clean Diesel Grant Program in South Dakota, which is derived from DERA, has helped public schools throughout the state replace older buses and reduce not only nitrogen oxide emission but other air emissions that may impact school children.

The Department has already received recommendations from the public to provide Trust funds available for this category. Therefore, the Department proposes to fund Category 2 vehicles using Category 10 but if the response for projects is extensive in a particular year, the Department may provide funding for Category 2 vehicles at approximately 10% of the Trust funds. This percentage may change depending on the number and types of requests the Department receives each year.

Category 3 and 7 – Freight Switches and Airport Equipment

Category 3 and 7, freight switchers and airport ground support equipment, respectively, are non-road equipment that contributes to nitrogen oxide emission in South Dakota. The Department has received a request for using funds for airport ground support equipment. The Department is not proposing to use funds on these two categories but will reconsider based on public input and the impact it will have on helping the Department meet South Dakota's goal in this Plan.

Category 9 – Light Duty Zero Emission Vehicle Supply Equipment

Category 9, light duty zero emission vehicle supply equipment, does not appear to be cost effective in reducing nitrogen oxide emissions in South Dakota because of the lack of electric vehicles. However, the Department has already received a request from the public that this category should be considered. Therefore, the Department may fund this category at approximately 5%. This percentage may change depending on the number and types of requests the Department receives each year.

Category 10 – The Diesel Emission Reduction Act (DERA) Option

The Department's Clean Diesel Grant Program, funded under the federal DERA program was established to reduce emissions from South Dakota's fleet of diesel-powered equipment. With the Department's Clean Diesel Grant Program, South Dakota has provided DERA funding to public schools in South Dakota in order to effectively and permanently reduce nitrogen oxide and particulate matter 2.5 micrometers and smaller in diameter (PM_{2.5}) emissions. Historically, the program has worked with school district fleets across the state to perform diesel retrofit projects and support the early retirement of fleet vehicles. The program maximizes public health benefits since children are especially vulnerable to the effects of diesel exhaust. Their lungs are not yet fully developed, and they breathe twice as much air as adults per pound of body weight. Some children can spend an average of an hour per day on diesel powered buses, inhaling the

mixture of pollutants. Diesel fuel contains 40 chemicals listed as hazardous air pollutants under the federal Clean Air Act. And, you don't have to ride the bus to breathe in these fumes. The air quality in and around schools is compromised by idling buses during morning and afternoon drop off and pick up, exposing not only students, but parents, teachers, administrators and bus drivers to unhealthy diesel emissions. Bus stops are areas of the state that bear a disproportionate share of the impact of nitrogen oxide emissions, since diesel engine emissions are concentrated at a small area with many people. Information about the Department's Clean Diesel Grant Program is available at <http://denr.sd.gov/des/aq/aadera.aspx>.

There have been several requests from the public for using some of the Trust funds for this purpose. Therefore, the Department is proposing to use Trust funds to meet the State's Clean Diesel Grant Program's non-federal voluntary match. In meeting the voluntary match equal to the base allocation offered by the EPA, the EPA will provide a matching incentive equal to 50 percent of the base allocation. Based on federal fiscal year 2017 DERA award, it is expected that South Dakota will use approximately 25% to meet the non-federal voluntary match.

The program is cost effective. For federal fiscal year 2017, EPA awarded South Dakota with a base allocation of \$223,801. By providing the \$223,801 non-federal voluntary match with Trust funds, South Dakota will receive a 50 percent bonus of \$111,901 to spend on qualifying DERA projects that it otherwise would not receive. The recipients purchase the bus and receive a rebate per replacement bus of up to 25% of the purchase price of a 2017 engine model year or newer engine certified to EPA emission standards, 35% of the purchase price of a 2017 engine model year or newer engine certified to meet CARB's Low-NOx standards, or 45% of the purchase price of an all-electric bus. The recipient incurs the mandatory cost share of 75%, 65% or 55%, respectively.

The Clean Diesel Grant Program can also be used to help replace other public transit systems. Therefore, the Department may consider options other than public school buses in the future for emissions reduction projects under the Clean Diesel Grant Program.

Trust Funding Options

Table 1 lists the ten categories listed as Eligible Mitigation Actions and the anticipated percentages proposed for those categories to achieve the stated plan goals.

Table 1: Eligible Mitigation Actions and Anticipated Funding

Category	Eligible Mitigation Action	Funding
1/6	Class 8 (large) and 4-7 (medium) eligible local freight trucks	50%
2	Class 4-8 eligible school bus, shuttle bus, or transit bus	10%
3	Freight switchers	0%
4	Ferries and tugs	0%
5	Ocean going vessels shorepower	0%
7	Airport ground support equipment	0%
8	Forklifts and port cargo handling equipment	0%
9	Light duty zero emission vehicle supply equipment	5%
10	Diesel Emission Reduction Act (DERA) option	25%
Total		90%

The funding percentage in Table 1 equal 90%. As discussed below in the “Administrative Expenses” section, the Department is proposing to use 10% to cover administrative expenses. The Department will need to adjust each funding percentage in Table 1 depending on the number of projects submitted under each category and the administrative expenditures associated with administrating the Trust funds each year.

Final project selection criteria have not been determined at this time, but they will reflect the program’s goal and objectives outlined in this Beneficiary Mitigation Plan. The proposed funding priorities may include, but are not limited to:

1. Projects scaled to achieve the greatest nitrogen oxide emission reduction and cost-effectiveness of the project;
2. Projects in areas that receive a disproportionate quantity of air pollution from diesel fleets;
3. Projects with verified funding (e.g., for projects that require a cost-share) or leveraged funding; and
4. Projects that can be implemented within eighteen months of the award date.

It is important to note that the above list consists of preferential funding criteria and should not be considered as eligibility criteria. Funding priorities are subject to change based on public input, new or supplemental air quality or other data, and other applicable factors.

Anticipated Benefits from Eligible Actions

The Department expects the benefits from funding these eligible actions include, but are not limited to:

1. Heavy duty highway vehicles may provide up to a 96% reduction in nitrogen oxide emissions per vehicle, based on replacing a model year 1992 engine with a model year 2007 engine;
2. Tons of pollution reduced over the lifetime of the vehicles, specifically nitrogen oxide;
3. Improved ambient air quality in communities located in areas that bear a disproportionate share of the air pollution burden; and
4. Reduced public exposure to diesel particulate matter, which EPA has classified as a likely human carcinogen.

The Department is being general in stating the anticipated benefits because it is difficult to provide quantitative benefits until after the actual projects are selected.

Administrative Expenditures

The Department may use Trust funds for the following administrative expenditures, but not to exceed 15% of the Trust funds:

1. Personnel including costs of employee salaries and wages, but not consultants;
2. Fringe benefits including costs of employee fringe benefits such as health insurance, FICA, retirement, life insurance, and payroll taxes;
3. Travel including costs of Eligible Mitigation Action-related travel by program staff, but does not include consultant travel;
4. Supplies including tangible property purchased in support of the Mitigation Action that will be expensed on the Statement of Activities, such as educational publications, office supplies, etc. Identify general categories of supplies and their Mitigation Action costs;
5. Contractual including all contracted services and goods except for those charged under other categories such as supplies, construction, etc. Contracts for evaluation and consulting services and contracts with sub-recipient organizations are included;
6. Construction including costs associated with ordinary or normal rearrangement and alteration of facilities; and
7. Other costs including insurance, professional services, occupancy and equipment leases, printing and publication, training, indirect costs, and accounting.

The 15% cap includes the aggregated amount of eligible administrative expenditures incurred by the Department and any third-party contractor(s). The Department is proposing to use approximately 10% of the Trust funds for administrative expenditures. This percentage may change depending on the workload the Department actually experiences each year.

Public Input Process

This section describes the public input process that the Department will implement to provide information on the development of this Beneficiary Mitigation Plan, as well as the public input process to be employed when revising this Beneficiary Mitigation Plan. The Department developed a website at <http://denr.sd.gov/des/aq/aaVW.aspx> where information regarding funding requests will be made publicly available. Additionally, SDCL 1-27, PUBLIC RECORDS AND FILES, makes public records available that are not exempt, open for inspection by all citizens of South Dakota and other interested persons.

The Department launched its VW website on September 13, 2017, as a clearinghouse for information related to the VW Partial Consent Decrees and soliciting informal input on what Eligible Mitigation Actions should be funded in the Beneficiary Mitigation Plan that best meets the needs of South Dakota. The Department will continue to use the VW website for future revisions to the Beneficiary Mitigation Plan. The Department is seeking public input on the draft Beneficiary Mitigation Plan through the following public participation process:

1. The Department's VW website will be used to provide the public with an opportunity to review and comment on the draft Beneficiary Mitigation Plan. Submitted comments will be available on the website for review. The opportunity for public comment will be identified on the VW website and provide the public with a 30-day public comment period for the current draft Plan and any future Plan revisions;

2. Face-to-face public meetings will be scheduled to provide additional opportunities for public input in Sioux Falls and Rapid City for the current draft Plan. The Department is not currently proposing any face-to-face public meetings for any future Plan revisions;
3. The Department will consider all comments received, review any new or revised requirements the Trustee develops, and make any relevant revisions to the current draft Beneficiary Mitigation Plan or any future Plan revisions;
4. A public hearing will be held by the Board of Minerals and Environment to revise and/or adopt the Beneficiary Mitigation Plan and any future revised Plan; and
5. The final Beneficiary Mitigation Plan and any future revised Plan will be posted on the Department's VW website and submitted to the Trustee.

The Department will periodically evaluate implementation of the Beneficiary Mitigation Plan after each year of funding and will determine whether any revisions to the Beneficiary Mitigation Plan and funding levels for each of the Eligible Mitigation Actions are appropriate or necessary. If future revisions to the Beneficiary Mitigation Plan are necessary, the Department will seek public input on the revisions consistent with the process outlined above.

DRAFT



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

August 2, 2018

MEMO TO: Members of the Board of Minerals and Environment

FROM: Vonni Kallemeyn, Administrator, Waste Management Program

SUBJECT: Solid Waste Permit Actions

Listed below are the solid waste permit actions since my last memo dated January 2, 2018.

Individual Permits Public Noticed and Issued

1. Black Hills Rubble Management (Box Elder) – restricted use site (five-year renewal)
2. City of Tyndall – yard waste compost site (two-year initial)
3. Custer-Fall River Waste Management District (Edgemont) – municipal solid waste landfill (five-year renewal)
4. Stericycle, Inc. (Rapid City) – medical waste transfer station (five-year renewal)
5. City of Yankton – restricted use site and solid waste transfer station (five-year renewal)
6. Southern Missouri Recycling & Waste Management District (Lake Andes) – municipal solid waste landfill (five-year renewal)
7. City of Philip – restricted use site (five-year renewal)
8. Town of Gayville – yard waste compost site (two-year initial)
9. T&R Electric Supply (Colman) – resource recovery (five-year renewal)
10. Town of Tabor – restricted use site (five-year renewal)
11. City of Sturgis – restricted use site (five-year renewal)

Individual Permit Amendments Public Noticed and Issued

1. Medical Waste Transport, Inc. (Sioux Falls) – medical waste treatment facility permit amendment to allow additional treatment of trace chemotherapy and pathological wastes
2. Ottertail Power Company (Big Stone City) – solid waste permit amendment to allow storage of slag waste in a former lime sludge storage lagoon
3. Richard Weaver (Wessington Springs) – waste tire processing facility permit amendment to reduce financial assurance obligation and clarify loose tire storage requirements

General Permit Authorizations Issued

1. City of Clear Lake – restricted use site (five-year renewal)
2. Heavy Constructors, Inc. (Rapid City) – construction and demolition debris disposal site (five-year renewal)
3. City of Frankfort – restricted use site (five-year renewal)
4. City of Sisseton – restricted use site (five-year renewal)
5. Town of Bristol – restricted use site (five-year renewal)
6. Ronald Hins (Huron) – construction and demolition debris disposal site (five-year renewal)
7. Town of Hitchcock – restricted use site (five-year renewal)
8. City of Pierre – municipal solid waste transfer station (five-year renewal)
9. Town of Ethan – restricted use site (five-year renewal)
10. Walworth County (Java) – restricted use site (two-year initial)
11. City of Mount Vernon – restricted use site (five-year renewal)
12. City of Blunt – restricted use site (five-year renewal)